Access to justice in environmental matters

If you are the victim of an environmentally damaging activity or if you are just a vigilant citizen who wants to protect the environment, it is useful to know your rights in either addressing a court of law or introducing a complaint to one of the competent national bodies, particularly if you are abroad. In practising these rights you can also ask for help with practical information from national authorities and organisations. In some cases it may be difficult to know what to do and whom to turn to. These fact sheets will provide you with a range of information on what you can expect in every country in the European Union.

The fact sheets on environmental access to justice are aimed at providing easily accessible rules on starting a review procedure before an independent court of law or an administrative body. If you encounter, for example, an environmentally damaging activity or you are simply not provided with the procedural guarantees during a decision-making process (such as access to environmental information, environmental impact assessment or public participation), you may want to challenge this before a court of law or another independent body of law. In such cases it is useful to know the specific rules in each Member State on the rights for citizens and their respective regional governments in a review procedure.

Firstly in order to be able to challenge administrative acts, decisions and also omissions, it is important to know the rules giving access to courts, sometimes referred to as "locus standi" or "standing". Secondly, if you have successfully filed an appeal before a court, it is also important to know that citizens and their groups are eligible to certain guarantees covering the conditions of access where an entitlement to challenge exists. This means, in particular, that the procedure for appeal should be concluded in a reasonable time-frame without undue delays and that parties to the proceedings cannot face prohibitively expensive procedures. It is also useful to know that in the environmental sector, non-governmental organisations active in environmental protection also have privileged status in review procedures, playing their role of environmental watchdogs and as agents to defend the environment that cannot protect itself, since "the environment has no voice".

When identifying the best approach to following up an actual or potential environmental harmful action having an impact on, for example, a protected area or on the health of citizens, it is important to know that in certain cases specialized bodies such as prosecutors or ombudsman may be available to citizens who can file a complaint.

The following fact sheets will guide you through the most important steps of environmental proceedings in each Member State, explaining the rights you have and the basic rules you need to follow to exercise them. This information is not a substitute for legal advice and is intended to be for guidance only.

Please select the relevant country’s flag to obtain detailed national information.

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Access to justice in environmental matters - Belgium

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
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

Main elements of the fact sheet:

1.1.1. A Complex Federal State

Belgium is a federal state (article 1 of the Constitution). It is a federal state with a somewhat complex character, because it is composed at the same time of three communities (the Flemish-, French- and German-speaking Communities) and three regions (the Flemish, Walloon and Brussels-Capital Regions), which partly overlap. The powers of the state are indeed distributed over the Federal State, on the one hand, and the regions and communities, on the other hand. It is a basic characteristic of the Belgian federal system that powers are allocated to the regions and communities (by the Constitution and the related institutional legislation), while the Federal State has reserved powers assigned to the legislator by the Constitution, and residual powers. The competencies of the communities are in the areas of culture, education, social welfare and other so called “person-related matters”, while the competencies of the regions are in fields such as land use planning, environmental protection, housing, agriculture, economic development, energy, local government, employment, mobility and the related infrastructure. A particular feature is that the German-speaking Community has taken over some competencies of the Walloon Region in the German-speaking part of Belgium, including land use planning and the conservation of landscapes and monuments. All matters that have not been entrusted to the regions or communities continue to fall under federal competence, even if this is not explicitly stated in law. The Federal State has some competencies in the field of environmental protection and has an important role to play in the enforcement of legislation through its competence for policing and justice. One other important basic characteristic of the Belgian constitutional system is that the regions and communities in principle have exclusive powers which are hierarchically not subordinated to those of the federal legislator. The federal government cannot intervene in matters entrusted to the regions and communities. They are autonomous in these fields. However, certain exceptions apply. As regards environmental matters, the regions are particularly important. In fact, like the communities, they have their own legislative power and their own executive power. The legislative power is exercised respectively by the Flemish, the Brussels-Capital and the Walloon Parliaments. These institutions are directly elected every five years, together with the elections for the European Parliament. The Flemish, Walloon and Brussels-Capital Governments are at the head of the respective regional executive powers.
Legislative power on the federal level is exercised by Acts of Parliament (called loi/wet), while executive power is exercised by means of Royal Decrees (arrêtés royaux/koninklijke besluiten). Regional and community competencies are exercised through Decrees (décrets/decreten), except in the Brussels-Capital Region, where they are called Ordinances (ordonnances/ordonnantes).

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

1.1.2 The Constitution

In the Belgian Constitution there is reference to environmental protection in two different provisions. Article 7 bis, the single provision of Title Ibis “General Policy objectives of Federal Belgium, the Communities and the Regions” of the Belgian Constitution, introduced by the Constitutional Amendment of 25 April 2007, states: “In the exercise of their respective competencies the Federal State, the Communities and the Regions foster the objectives of sustainable development in their social, economic and environmental aspects, taking into account the solidarity between generations”. This provision is the only provision of the Constitution that sets policy objectives for the different authorities. It calls for integration of sustainable development concerns in the different policies of the authorities concerned. The fundamental rights of the Belgians are established in Title II of the Constitution. One of the provisions of that Title deals with social, economic and cultural rights. Article 23 of the Constitution, introduced by the Constitutional Amendment of 31 January 1994, provides: “Everyone has the right to lead a life in conformity with human dignity. To this end, the laws, decrees […] guarantee, taking into account corresponding obligations, economic, social and cultural rights, and determine the conditions for exercising them. These rights include notably: […] 4 “the right to enjoy the protection of a healthy environment; [...]”. The Constitution also recognises everyone’s right to consult any administrative document and to obtain a copy, except in relation to the cases and conditions stipulated by law (Art. 32).

Article 23 of the Constitution has no direct effect. It cannot be invoked by private persons in regard to authorities or third parties. Art. 23 offers a framework within which legislators can establish more specific rights for individuals. Article 23 of the Constitution includes, however, a standstill obligation, also known as the principle of non-regression. The authorities may not reduce the level of environmental protection guaranteed by the applicable environmental laws. The standstill obligation does not prohibit any relaxation of environmental laws, but opposes significant reductions in the level of protection, unless these can be justified by reason of public interest. When interpreting legal norms, judges should choose the interpretation which is most in accordance with the right to enjoy the protection of a healthy environment (principles of “constitutional interpretation” and “in dubio pro natura”). In case of conflicting interests, judges must take into account the constitutional status of the right to the protection of a healthy environment. The Constitutional Court can directly examine laws for compatibility with article 23 of the Constitution. The Council of State can test government decisions against article 23 of the Constitution. In accordance with the Aarhus Convention, it is believed that article 23 of the Constitution contains not only substantive rights, but also procedural rights on access to information, on public participation in decision-making and on access to justice in environmental matters.

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

1.1.3 Environmental legislation

The main environmental legislation on the federal level consists of:

Federal Act of 12 January 1993 on a right of action for the protection of the environment
Federal Act of 15 April 1994 on the protection of the population and the environment against the dangers of ionising radiation and concerning the Federal Agency for Nuclear Control
Federal Act of 21 December 1998 concerning product standards for the promotion of sustainable production and consumption patterns and for the protection of the environment, public health and employees
Federal Act of 20 January 1999 on the protection of the marine environment and the marine spatial planning in the marine areas under Belgian jurisdiction
Federal Act of 13 February 2006 concerning strategic environment assessment of certain plans and programmes and public participation concerning plans and programmes related to the environment
Federal Act of 5 August 2006 concerning public access to environmental information

In the Flemish Region, the main environmental legislation consists of:

Forest Decree of 13 June 1990
Decree of 5 April 1995 concerning general provisions of environmental policy (with provisions concerning objectives and principles of environmental policy, environmental policy planning, environmental quality standards, corporate environmental management, environmental impact assessment and safety reporting, the operation of establishments and activities and recognised persons, environmental covenants, climate change, environmental agencies, advisory boards, environmental damage and enforcement)
Decree of 21 October 1997 concerning nature conservation and the natural environment
Decree of 18 July 2003 on integrated water management (coordinated)
Decree of 27 October 2006 concerning soil remediation and protection
Decree of 22 December 2006 concerning the protection of waters against pollution by nitrates from agricultural sources

Flemish Land Use Code of 15 May 2009
Decree of 23 December 2011 concerning the sustainable management of material cycles and waste
Decree of 25 April 2014 on the integrated environmental permit
Decree of 27 November 2015 on low emission zones

In the Walloon Region, the main environmental legislation consists of:

Decree of 27 June 1996 on waste
Decree of 11 March 1999 on environmental licences
Decree of 10 November 2004 establishing a system of negotiable emission rights for greenhouse gases, setting up a Walloon Kyoto Fund and on the flexible mechanisms of the Kyoto Fund
Decree of 27 May 2004 introducing Volume I of the Walloon Environmental Code
Decree of 15 July 2006 containing the Forest Code
Decree of 20 February 2014 on climate policy
Decree of 1 March 2018 on soil protection and soil remediation
Territorial Development Code of 20 July and 22 December 2016
Decree of 17 January 2019 combatting air pollution from cars

In the Brussels-Capital Region, the main environmental legislation consists of:

Ordinance of 5 June 1997 concerning environmental permits

Code on inspections, prevention, reporting and sanctioning of environmental offences and on environmental liability (25 March 1999)
**Ordinance of 17 July 1997 on combating noise pollution in an urban environment**

**Ordinance of 18 March 2004 on the environmental assessment of plans and programmes**

**Brussels Land Use Code of 9 April 2004**

**Ordinance of 29 April 2004 on environmental covenants**

**Ordinance of 20 October 2006 establishing a framework for water policy**

**Ordinance of 1 March 2007 concerning the protection of the environment against potential negative effects of non-ionising radiation**

**Ordinance of 5 March 2009 on the management and remediation of polluted soils**

**Ordinance of 1 March 2012 on nature conservation**

**Ordinance of 14 June 2012 on waste management**

**Ordinance of 2 May 2013 containing the Brussels Code on Air, Climate and Energy**

Common Ordinance and Decree of 16 May 2019 of the Brussels-Capital Region, the Joint Community Commission and the French Community Commission on the publicity of the administration in the Brussels institutions

Those Federal Acts and Regional Decrees and Ordinances have been complemented with a large number of executive orders in the form of Royal Decrees or Executive Orders of the respective regional governments.

Some matters are regulated in a uniform way for the whole country by Co-operation Agreement. That is the case with:

- Co-operation Agreement of 25 April 1997 between the Federal State and the Regions concerning administrative and scientific coordination in the field of Biosafety
- Co-operation Agreement of 14 November 2002 between the Federal State and the Regions concerning the national climate plan
- Co-operation Agreement of 4 November 2008 between the Regions concerning the prevention and management of packaging waste
- Co-operation Agreement of 16 February 2016 between the Federal State and the Regions on the control of major-accident hazards involving dangerous substances
- Co-operation Agreement of 12 February 2018 concerning the intra-Belgian effort-sharing of climate and energy objectives for the period 2013-2020

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

1.1.4. Jurisprudence

In general, we can say that through amending existing (Art. 17 of the Judicial Code Amended by the Federal Act of 21 December 2018) and introducing new legislation and the evolution of the case law of the courts, the Belgian legal system is now in line with the Aarhus Convention insofar as procedural rights of natural and legal persons and NGOs are concerned. We can refer in this respect e.g. to the case law of the Constitutional Court (Constitutional Court, N° 7 (2016, 21 January 2016 Vogelbescherming Vlaanderen) and of the Court of Cassation, the supreme court, (Cass. 11 June 2013, PP and PSLV v. Gewestelijk Stedenbouwkundig Inspecteur and vzw Milieusteunpunt Huldenberg, Nr. P.12.1389.N) on the right of environmental NGOs to claim moral damages for harm to the environment and to take action as a civil party for reparation in criminal proceedings, or to the case law of the Council of State, the supreme administrative court, on access to justice and interim relief (e.g. Council of State, N° 193.593, 28 May 2009, VZW Milieufront Omer Wattez; Council of State, N° 211.784, 18 December 2012, BVBA Immo Dominique).

1.2. Jurisdiction of the courts

1) Number of levels in the court system

**Constitutional Court**

The Constitutional Court has the exclusive power to review federal acts, decrees or ordinances for compliance with the rules that determine the respective powers of the Federal State, the Communities and the Regions. These power-defining rules are set forth in the Constitution as well as in federal acts (usually passed by a special majority) that are enacted with a view to institutional reform in federal Belgium. The Constitutional Court is also competent to decide on any violation by a federal act, decree or ordinance of the fundamental rights and freedoms guaranteed in Title II of the Constitution (Articles 8 to 32), of Article 170 (legality principle in tax-related matters), Article 172 (equality in tax-related matters), Article 191 (protection of foreigners) and Article 143, §1 (principle of "federal loyalty"). The Constitutional Court combines its constitutional review with the review of compliance with international and European Law, including environmental law. The Constitutional Court can annul or suspend federal acts, decrees or ordinances (or part thereof). In the event that the lower courts have doubts about the conformity of federal acts, decrees or ordinances with the above-mentioned articles of the Constitution, they must refer the case to the Constitutional Court for preliminary ruling. Of such cases, 7 to 9% concern environmental law in the broad sense.

**General courts**

Belgium is judicially organised on the basis of a territorial subdivision on four levels with a supreme court (Court of Cassation) for the whole country at the top, five major judicial areas, each within the jurisdiction of a Court of Appeal and a Labour Appeal Court (Antwerp, Brussels, Ghent, Liège and Mons), 12 districts (largely coinciding with the provincial borders) and 162 cantons (each with a Justice of the Peace Court). There are nine Labour Tribunals and nine Commercial Courts, each with local departments. There are 13 Courts of First Instance, each with local departments, and 15 Magistrates' Courts. The Court of Cassation is the highest court of law and oversees the correct enforcement of the law by the courts and tribunals. The Court of Cassation does not examine the facts of the case referred to it, but rather whether the judgment complies with the law. Appeal to the Court of Cassation does not constitute a third instance. A lawsuit can only be brought before the Court of Cassation after it has already been adjudicated by the court hearing the main action and by the appeal court. When the Court of Cassation finds that a court has infringed the law, it will quash the verdict and refer the case to a court of law of the same level as the court that passed the unlawful verdict. That court will have to hear the case all over again.

The five Belgian Courts of Appeal and Labour Appeal Courts are the appeal bodies for the courts in the districts of their jurisdiction. A Court of Appeal has three divisions. There are the divisions for civil cases, which hear appeals against judgments delivered in the first instance by the civil divisions of the courts of first instance and the company courts. Then there are the criminal law divisions, which decide in criminal cases on appeals against sentences passed by the corresponding divisions of the courts of first instance. Finally, there are the family and juvenile divisions, which handle appeals against judgments of the family and juvenile judges at the court of first instance. The Courts of Appeal of Antwerp and Ghent have chambers specialising in environmental and town planning law and a specialised Attorney-General. The Labour Appeal Courts have jurisdiction in matters of social and labour law.
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)?

A Court of First Instance has three divisions. The civil divisions have jurisdiction in all cases that have not been exclusively assigned to other courts of law. These divisions also rule on appeals against judgments delivered by the Justices of the Peace and the Magistrates’ Courts in criminal matters. Divisions for criminal law (also called the penal court or tribunal correctionnel) decide on offences that have not been assigned to the Magistrates’ Court or the Assize Court (criminal court). They also rule on appeals against sentences passed by the Magistrates’ Courts in criminal cases. The juvenile divisions (or juvenile court) rule on protective measures towards minors or take repressive measures against juvenile offenders. The Court of First Instance has general and full jurisdiction. This means that it has power to rule on all matters that are not reserved for another court of law. So the Court of First Instance tries most environmental cases, in criminal matters as well as in civil matters. It is, however, not mandatory to install specialised environmental chambers as is the case for juvenile cases or tax-related matters. Only the Courts of First Instance of Antwerp (Antwerp department), West-Flanders (Kortrijk department), Liège (Huy department), Luxembourg (Arlon department) and Namur (Namur department) have formally installed a department specialised in and handling all the environmental cases of the district. The president of the Court of First Instance has special powers in urgent cases. He may decide in interim injunction proceedings on urgent matters. Judgments delivered by the Court of First Instance (except for cases that are already an appeal against a decision of a Justice of the Peace or a Magistrates’ Court) are open to appeal before a Court of Appeal. The Industrial Tribunals and Company Courts have jurisdiction in cases of social and labour law and in conflicts between companies respectively.

Each canton has one Justice of the Peace Court (162 in total). This court stands closest to the citizens. A Justice of the Peace hears all cases where the value of the petition does not exceed 5,000.00 euro. Some cases of neighbourhood nuisances can be considered as environmental, dealing with issues such as noise, odour or distance of plantations. In addition, the Justice of the Peace has extensive powers in rent disputes, expropriations, easements, agricultural affairs and the mentally ill. Judgments delivered by a Justice of the Peace are open to appeal before the Court of First Instance or the Company Court, depending on the type of case. Magistrates’ Courts decide on claims for compensation for damage suffered in road accidents. Magistrates’ Courts also punish traffic offences and some offences against the Forest Code, the Rural Code, the River Fishery Code and the Railway Code. Judgments are open to appeal before the Court of First Instance.

Administrative Courts

The Council of State is the supreme administrative court. The Council of State is not part of the ordinary judiciary. It has two sections: the Legislation Section, which advises the legislator on new legislation, and the Administrative Jurisprudence Section, which rules as an administrative court. The Administrative Jurisprudence Section protects citizens against unlawful administrative acts (individual legal acts and regulations). Any natural or legal person having an interest can bring a request for annulment before the Administrative Jurisprudence Section of the Council of State against irregular administrative acts that have caused them detriment. As the highest administrative court, the Council of State also acts as a cassation body against judgments of lower administrative courts. The rulings of the Council of State are not open to appeal. A request for suspension may be brought along with a request for annulment. The Council of State may suspend the challenged decision, provided that the grounds for annulment seem valid and there is urgency. Within the Administrative Jurisprudence Section of the Council of State there are two Dutch-speaking chambers and two French-speaking chambers specialising in environmental and town planning cases. The environmental cases and town and country planning cases account for around 25% of all cases.

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

Specialised environmental administrative courts in the Flemish Region

The Flemish Region has two specialised environmental administrative courts: the Council for Permit Disputes (Raad voor Vergunningsbetwistingen) and the Enforcement College (Handhavingscollege). The Council for Permit Disputes was established in 2009 as an administrative court for permits in the area of town and country planning and, recently, for ‘integrated environmental permits’ (the former town planning permit and environmental permit combined) and other related matters. The Council for Permit Disputes has taken over the competencies of the Council of State with regard to permits in the Flemish Region. The Council of State now acts as an appeal (cassation) body against judgments of the Council for Permit Disputes. The Council for Permit Disputes has competence for annulment and suspension of permits. The ‘public concerned’ can bring a request for annulment before the Council against illegal permits. Some administrations also have standing in front of the Council. A request for suspension may be brought along with the action for annulment. The Council can suspend the challenged decision if the grounds for annulment are found to be valid and if there is urgency. The Council for Permit Disputes has the power to decide on the suspension and annulment of permits. The Council also has the competence to impose an injunction on administrative authorities. In rare cases, and only if the administrative authority has circumscribed powers, the Council can make a decision instead of the administrative authority. The Council can also decide on mediation at the request of the parties.

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

The Environmental Enforcement College was established in 2009 and was renamed the Enforcement College when the ‘integrated environmental permit’ came into force. Infringements of environmental law are often sanctioned through administrative fines. These administrative fines can be challenged before the Enforcement College. The appeal has a suspensive effect. The Enforcement College can annul and substitute a decision of the government agency. The Council of State acts as an appeal (cassation) body against judgments of the Enforcement College.

1.3. Organisation of justice at administrative and judicial level

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

1.3.1. Administrative decision making

Permits are a very important tool in environmental policy. Traditionally in Belgium a distinction is made between the building permit, which is inter alia necessary for the construction of projects, including infrastructure projects and industrial installations, and the operating or environmental permit, which regulates the operation of installations that can cause environmental disturbances. In the Walloon Region, a ‘permis unique’ (integrated permit) has been introduced. If a project needs both permits, they are integrated and delivered through a unified procedure, resulting in a building permit (without limitation in time) and an environmental permit with a term of validity of maximum 20 years (renewable) delivered by one authority. In the Brussels-Capital Region, measures have also been taken to co-ordinate building and environmental permits, but in a more lenient way than in the Walloon Region. In the case of a ‘mixed project’, where the project requires an environmental permit for 1A or 1B class and a building permit, both applications are to be introduced at the same time, will be submitted to the opinions of the environmental and planning authorities and a public inquiry at the same time, and will result in two decisions taken by the authorities at the same time, resulting in a planning permission that is not limited in time and an environmental permit with a validity of maximum 15 years (renewable). In the Flemish Region, a new permitting system integrates the building and environmental permit in a new integrated permit, the ‘Ongemengdvergunning’ or ‘Integrated Permit’. Environmental, building or integrated permits are delivered, generally after public consultation and expert opinions of relevant specialised environmental agencies, by political or administrative authorities in first instance on the local, provincial or, exceptionally, regional level, depending on the size of the project and the nature of the operator. Permit decisions must be formally reasoned. An administrative appeal with a higher political authority (on the provincial or regional level) is generally possible. However, in the Brussels-Capital Region there is a somewhat unusual situation. In that region, an appeal can be made
against decisions taken in first instance by the Brussels Environmental Administration (the administration in charge of the environment for the Brussels-Capital Region) or by municipalities/towns before a specific organ, the "Milieucollege – Collège d’environnement" (Environmental Appeal Board or Environmental College), which is a kind of specialised Environmental Administrative Body presided over by a professional judge and composed of nine independent experts (environmental lawyers and scientists) proposed by the Brussels-Capital Parliament and appointed by the Brussels-Capital Government. They can review the decision of the Brussels Environmental Administration or the decision of a municipality/town (local level) in all aspects and thus grant a permit where it was refused in first instance, refuse it when it was granted in first instance, modify the conditions of the permit, etc. The Environmental Appeal Board can also review decisions to modify, withdraw, suspend or extend a permit. It can also take decisions on appeals on administrative fines/sanctions, accreditations and law enforcement measures relating to the management and remediation of polluted soil. The decision of the Environmental Appeal Board can in turn be appealed before the Regional Government, which can again fully review the decision.

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

1.3.2. Administrative appeals
In administrative appeals, all aspects of the permit decision are reviewed, both from a legal and from an "opportunity" point of view. The decision shall replace the one taken at first instance, having regard to the same matters of fact and law. A full review of the case shall be carried out. This is called an "action for reversal" (recours en réformation). The appeal body is not restricted in its review by the arguments that have been introduced by the appellant; it exercises discretion. In general, administrative appeals can be introduced by the natural or legal person who applied for or holds the permit, by members of the "public concerned" in the sense of art. 2 (5) and 6 of the Aarhus Convention, including environmental NGOs, and by some representatives of competent authorities and advisory agencies. In the Wallon region, administrative appeals can be lodged "by any natural or legal person justifying an interest as well as to the technical official and the municipal college of the municipality in the territory in which the establishment is located". In the Brussels-Capital Region, the administrative appeal before the Environmental Appeal Board and the Government is open to the applicant, to any member of the public concerned, including environmental NGOs, and to other public bodies, such as the municipality, the Brussels Environmental Administration and the competent land use planning officer (gemachtigde ambtenaar ruimtelijke ordening – Fonctionnaire délégué de l’urbanisme).

As permits for operating nuclear installations are delivered by the King (the Federal Government), there is no administrative appeal available in such cases. The same holds true for permits delivered by the Federal Minister for the North Sea for activities in the Belgian marine areas.

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

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


1.3.3. Administrative court appeals
Permit decisions and other administrative decisions (safety measures, some administrative sanctions, other types of authorisations or approval, etc.) that are final because they cannot be further appealed in the administrative track can be challenged in court. After exhaustion of the administrative appeals, permit decisions taken in the last instance by the administrative/political authorities can be appealed before the Council of State (within 60 days of notification of, or acquaintance with, the challenged administrative decision), which can review the legality of the decision, both from a procedural and from a substantive point of view. Only the final decision can be challenged before the Council of State (for instance, if an appeal before the Brussels-Capital Government can be lodged against a decision of the Environmental Appeal Board (Environmental College), only the decision of the Government may be annulled by the Council of State). Insofar as there are no other competent courts, any natural or legal person can bring an action for annulment and suspension before the Council of State against unlawful administrative acts that have caused them detriment. In the past, there were no administrative courts of first instance dealing with environment-related issues, so all these cases went directly to the Council of State.

This situation has partially evolved, but only in the Flemish Region. Since 1 September 2009, the regionally established Council for Permit Disputes has been responsible for dealing with disputes regarding building permits and, for the mean time, integrated permits in the Flemish Region instead of the Council of State. The Council for Permit Disputes is authorised to deal with appeals against explicit or implicit administrative decisions that are final (decisions taken on administrative appeal or that cannot be administratively appealed) on the granting or refusal of an integrated permit. The appeal must be lodged within 45 days of notification of, or acquaintance with, the challenged administrative decision. The Enforcement Court hears appeals against administrative fines imposed for breaches of environmental and planning law in the Flemish Region. The appeals can be introduced, within 30 days, by persons who have been fined. The judgments of both courts are subject to cassation appeal before the Council of State.

In the other regions, and in the areas not covered by those Courts, appeals against administrative decisions, such as permits, must be made directly to the Council of State. The same holds true for administrative decisions taken under federal legislation. Administrative fines for breaches of Walloon environmental legislation can be appealed, within 30 days, before the Magistrates’ Court or the Penal Court, depending on the category of sanctions imposed.

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

1.3.4. Mediation
Mediation in environmental matters is not very well developed. The Council for Permit Disputes has a mediation option available that suspends the annulment or suspension procedure, but the number of mediations is very low and the success rate even lower.

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

There are different Ombudsmen active at the various government levels in Belgium (NL: FR). Regional, federal and local Ombudsmen work in their respective competence fields, including the environment (NL: FR).

In the Brussels-Capital Region, the Common Ordinance and Decree of 16 May 2019 on the publicity of the administration in Brussels institutions provides the establishment of an ombudsman for complaints regarding unilateral administrative acts with individual scope (to be implemented).

In principle, Ombudsmen will not treat the complaint if it is on the same subject as an administrative appeal or a court case has been introduced. The deadline for the introduction of a demand for annulment before the Council of State will, however, be suspended if a complaint is introduced with an Ombudsman, for a maximum of 4 months while the complaint is handled.

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)?

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

1.4.1. Who can challenge environmental administrative decisions?

The procedure for judicial review of administrative decisions by the Council of State is laid down in its basic act (lois coordonnées sur le Conseil d’Etat) and complementary regulations. This procedure can be used to challenge any unilateral, final, legally binding act of a Belgian administrative authority, whether of an individual or regulatory nature (i.e. administrative decisions in individual cases as well as executive orders and administrative regulations laying down generally applicable rules). An action for annulment of an administrative act can be brought by any party (any natural or legal person) which has been "harmed" or has an "interest" at stake. Meeting this requirement does not pose particular problems for individual claimants (legal or natural persons) in environmental cases, and the standing requirements do not vary according to the type of environmental legislation concerned. Proof of actual harm is not
required. A legitimate interest in the contested act is sufficient. This interest need not necessarily be based on a legally recognised subjective right. Whether a natural person has the interest required to seek judicial review of an administrative decision affecting their environment is essentially a factual matter, which will be judged by the Council of State based on the specific circumstances of the case. Although the notion "public concerned" within the meaning of the Aarhus Convention is not actually used as such, the case law on the criteria forstanding for individual members of the public in substance comes very close to the definition of this notion in the Convention. The Council will examine whether the claimant will or may be affected by the environmental effects of the implementation of the decision. The nature and range of those effects will be taken into account. In the event of uncertainties, the decision on standing tends to be in favour of the claimant. The distance between the claimant's home and the activity that is the subject of the contested decision is an important consideration, but it is not necessarily decisive. In planning cases, e.g., the settled case law is that any "inhabitant of the neighbourhood" has a legitimate interest to seek review of planning decisions affecting its aspect and development. There is also case law in which the Council held that a person using a forest area for recreational purposes (e.g. walking) can challenge the legality of an administrative act which will result in the deterioration of that area.

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.)

1.4.2. Standing of NGOs

Insofar as standing of NGOs is concerned, the jurisprudence of the Council of State, which had been developed in a strict way in the past, was relaxed more than a decade ago under the influence of the case law of the Constitutional Court, the CJEU and the ECHR and brought into line with the Aarhus Convention. Since the judgment of the general assembly of the Council of State of 2008 (Council of State, N° 187.998, 17 November 2008, Coomans), the Council is using the formula of the Constitutional Court concerning standing requirements for NGOs in stating that a non-profit organisation that has legal personality (association sans but lucratif) has standing if its statutory objective is of a particular nature, and thus different from that of general interest, that it is defending a collective interest, that the statutory aim can be affected by the challenged act, and that it is obvious that it is pursuing its statutory objective in an active way. There are no recent cases in which an environmental NGO has been declared inadmissible. In principle, foreign NGOs should be treated on an equal footing, as is the case with foreign administrative authorities (Council of State, N° 239.291, 5 October 2017, Provincie Noord-Brabant). The Council for Permit Disputes is following the same approach (RvBv 5 September 2017, RvBv/A/1718/002, vzw Natuurpunt).

Organisations without legal personality have no standing, but different persons can introduce a collective demand for annulment and suspension, each of them being required to pay the court fee. The judgments of the Council of State or the Council of Permit Disputes have an "erga omnes" effect. Thus, when an administrative act or regulation is annulled, everyone who would have been harmed by the act or regulation benefits from the annulment, even if they were not a party in the procedure.

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

1.4.3. Use of languages

Cases can only be introduced in the official languages, namely Dutch, French and German for the Council of State and Dutch for the Council of Permit Disputes. Foreign parties have to rely in practice on lawyers or representatives who have mastery of (one of) the official language(s). When the case is treated by the Council of State in an official language other than that used by a party, interpretation or translation can be requested. The State will have to cover the costs.

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?

2) Can one introduce new evidence?

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

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

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

3.3) Rules for experts called upon by the parties.

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

The Council of State (and its court advisers), the Council of Permit Disputes and the Enforcement College may, at their own initiative or at the request of a party, appoint an external expert to advise the court on a technical matter. In practice, this possibility is never used. If a court finds that a certain relevant aspect has not been (sufficiently) investigated by the public authority, the challenged administrative decision will usually be annulled and the public authority must ensure that it is adequately investigated and assessed when taking a new decision. The court may order as an injunction (order) that this investigation must be carried out (e.g. granting of a permit in the vicinity of a special protection zone without appropriate assessment: injunction to make a new decision based on results of an appropriate assessment the applicant must prepare).

The court can also annul the decision and refuse the permit application due to incompleteness (in the absence of the required investigation) such that the application must be resubmitted (with the required documents, e.g. an appropriate assessment, an EIA, an air quality investigation, etc.). The most important source of "expert advice" in the files of the Courts can be found in the administrative file. The administrative file contains the project EIA (if required), other documents that have to be annexed to the permit application (e.g. mobility report, memorandum on environmental effects prepared by recognised experts) and the mandatory advice of certain specialised bodies. The opinions of the advisory bodies are deemed to have been prepared by technical experts in various areas (nature, heritage, water, etc.).

The legislation leaves considerable margin for discretion by the government agency which adopts administrative decisions in environmental matters. The courts only verify whether the decision of the government agency is in this respect not manifestly unreasonable. If a party relies on expert advice that is contrary to the advice on which the government has relied when taking the decision, the court will check whether the government agency has taken its decision carefully and whether the decision is not manifestly unreasonable.

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

1.6.1. Barristers

Cases before the Council of State, the Council of Permit Disputes and the Enforcement College can be introduced in person without legal assistance or through a barrister (including a trainee barrister). Specialised barristers can be found through the websites of the bar associations (NL - FR).

1.1. Existence or not of pro bono assistance

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.)?

1.3 Who should be addressed by the applicant for pro bono assistance?

1.6.2. Legal aid
A distinction can be made between primary and secondary legal aid. Primary legal aid consists of practical information, referral to a specialist, or initial legal opinions given by a lawyer or representatives of public welfare assistance centres or of the social sector. This consultation is totally free. Primary legal aid is also organised by the commissions for legal aid in each judicial district. They are composed of barristers and representatives of the social sector.

Secondary legal aid consists of detailed legal advice or legal assistance/representation within the framework of proceedings and is exclusively provided by barristers (NL - FR). The federal government finances the system of secondary legal aid. In each judicial district, there is a bureau for legal aid, operated by the local bar association, which takes care of secondary legal aid. The barristers providing legal aid are registered once a year on a list drawn up by the bar association. The bureau for legal aid appoints barristers on the basis of this list. The bureau for legal aid can grant partially or completely free of charge secondary legal aid, depending on the income situation of the client. In that case, the barrister will be paid by the government after, as the case may be, reclamation of the compensation or “judicial allowance” (see further below).

Persons with insufficient resources may also enjoy “free of charge” procedures by decision of the concerned court or of the bureau for judicial assistance (art. 664–699ter of the Judicial Code). Judicial assistance consists of exempting those who do not have sufficient resources to pay the cost of proceedings (not the lawyers’ fees), in full or in part, from paying the relevant costs, which are consequently paid from the State budget.

Articles 508/13/1 to 508/13/4 of the Judicial Code determine who can benefit from free legal aid and judicial assistance and who can benefit from partially free legal aid and judicial assistance. The Council of State and the Council of Permit Disputes can, under the same conditions, grant exemption from court fees and expenses.

There are no specific provisions concerning legal aid for legal persons or NGOs. Judicial assistance can be granted to legal persons (art. 666 Judicial Code).

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

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

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

1.6.3. Environmental NGOs

Some environmental NGOs are litigating and will from time to time support citizens who are going to court. These include:

- ClientEarth
- WWF (FR - NL)
- Friends of the Earth
- Bond Beter Leefmilieu (the Flemish umbrella ENGO) and its member organisations
- Inter-Environnement Wallonie (the Walloon umbrella ENGO) and its member organisations
- Inter-Environnement Bruxelles (a Brussels umbrella ENGO) and its member organisations
- BRAL/ Stadsbeweging voor Brussel (a Brussels umbrella ENGO) and its members.

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).

2) Time limit to deliver decision by an administrative organ

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

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

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

Administrative appeals in environmental permitting procedures

The procedural time limits in administrative appeals depend on the legislation concerned and reference should thus be made to each piece of relevant legislation for the details. To give an idea of those limits, we will present the most relevant legislation here, namely the regional environmental or integrated permit legislation.

In the Flemish Region, the legislation concerning the integrated permit (omgevingsvergunning) provides a regular and simplified procedure. Decisions taken in first instance can, as a rule, be appealed to the higher authority, so decisions of the local government (college van burgemeester en schepenen) can be appealed to the provincial government (deputatie van de provincieraad) and decisions taken in first instance by the provincial government can be appealed to the regional environmental minister (minister van omgeving). No administrative appeal is, however, possible against decisions taken at first instance by the minister or the regional environmental officer. These can only be challenged before the Council for Permit Disputes. The appeal must be introduced within 30 days after notification or publication of the decision concerned and must contain the objections. Furthermore, the appeal must include all information specified in the legislation and all supporting material, and a fee of 100 EUR is payable. An appeal can be made using a registered letter or via the digital platform Omgevingsbureau. In the event that the person making the appeal wishes to be heard, they must indicate this in their appeal. In principle, the appeal suspends the permit decision taken in first instance. The higher authority has to render its decision within a period of 120 days, which will be reduced to 60 days where the simplified procedure is applicable or extended by 60 days where a new public inquiry is needed (because of a modification of the application), an administrative loop is applied (to correct a failure earlier on in the procedure) or an intervention of the municipal council is necessary (if road-related issues are at stake). The authority has to review the matter entirely and is not bound by the arguments introduced or to the specific provisions that are challenged. If the authority takes no decision within those time limits, the appeal is considered to be rejected and that implicit decision can be challenged in court.

In the Walloon Region, any interested natural or legal person and the technical officer of the Department of Permits and Authorisations of the Walloon Region (fonctionnaire technique du Département des Permis et Autorisations du Service public de Wallonie) can lodge an administrative appeal against an environmental permit (permis d’environnement) or integrated permit (permis unique) decision taken by the competent local authorities in first instance (collège communal). The communal college of the place where the establishment is or will be situated can appeal if the decision in first instance has been taken by the regional technical officer. The appeal has to be introduced by registered letter within 20 days after notification or publication of the contested decision and a fee of 25 EUR must be paid. The appeal has no suspensive effect on the challenged decision, except when lodged by the technical officer. The Government has to decide on the appeal within 70 days (in the case of a class 2 establishment) or 100 days (in the case of a class 1 establishment). Those time limits will be extended in the event that a (new) public inquiry is organised in the appeal phase. In the event that no decision is notified within the time limit, the appeal against the first-instance decision is considered to be rejected. A different solution is applicable in the event that the first-instance decision was not taken on time and that “tact decision” to refuse the permit was appealed.

In the Brussels-Capital Region, the Environmental College (Milleucollege - Collège d’environnement) is competent for administrative appeals against first-instance decisions on environmental permits (milieuvvergunning – permis d’environnement), against administrative fines, law enforcement measures relating to the management and remediation of polluted soil, accreditation measures and Natura 2000 exemption decisions. An appeal must be lodged within 30 days after notification or publication of the permit by means of a registered letter. The parties can ask to be heard. The college has to decide on the appeal within...
60 days. In the event of multiple appeals, that period can be extended by maximum 25 days; the period is also extended by 15 days in the case of an oral hearing. In summertime (appeals lodged between 15 June and 15 August), an extra 45-day period applies. The lodging of an appeal has no suspensive effect on the challenged decision, except in some particular instances for appeals introduced by public bodies and when duly motivated by grave peril or irreparable harm, if the College suspends the decision under appeal. When no decision is taken within those time limits, the appeal is considered to be rejected and the challenged decision is confirmed. A further administrative appeal against the explicit or implicit decision of the Environmental College is possible with the Government of the Brussels-Capital Region within 30 days, except for decisions regarding accreditations and administrative fines (those decisions of the Environmental Appeal Board can be challenged before the Council of State). The parties can ask to be heard. The Government decides within 60 days, extended by 15 days, in the case of an oral hearing. When the decision is not notified within those time limits, the applicant can send a reminder by letter. If no decision is notified within another period of 30 days, the challenged decision is confirmed. In that case, the decision of the Environmental College which is thus confirmed may be challenged before the Council of State.

That procedure is clearly described on a webpage of the Brussels Environmental Administration (FR or NL). Regarding the publicising of the decision on appeal, the decision of the Environmental College shall be notified to the applicant and to the competent authority. The Government's decision shall be notified to the parties. The address of the decisions is required to post a notice on the building housing the facilities, in a place visible from the public highway, mentioning the existence of the decision. The display must be kept in a perfect condition of visibility and readability for a period of 15 days.

The Brussels Environmental Administration shall keep a register of all decisions. Each municipality shall also keep a register of decisions regarding the facilities located in its territory. The register must also contain the decisions of the Environmental College and the Government. The registers shall indicate, as a minimum, the identity of the holders, the sector of activity, the date and nature of the decision and its expiry date. The register kept by the Brussels Environmental Administration shall be made accessible to the public by electronic means of communication. The website of the Brussels Environmental Administration provides information about environmental permits that are either under investigation, valid or invalid (refused or cancelled within the last 3 months).

Exhaustion of the administrative appeal as precondition for a court appeal

Where an administrative appeal is available, that avenue should be used first. Only after exhaustion of such an administrative appeal should an appeal with the competent administrative court be lodged. There are no time limits for the administrative courts to decide the matter.

1.7.2. Interim and precautionary measures, enforcement of judgments

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

Effect of introducing an administrative appeal on the appealed decision

There is no uniform rule concerning the effect on the appealed decision of introducing an administrative appeal. In the Flemish Region, administrative appeals concerning first-instance decisions with regard to the integrated permit (omgevingsvergunning) have suspensive effect. Consequently, the appealed decision cannot be executed as long as no decision on appeal has been taken. In the Walloon Region, an administrative appeal against environmental and integrated permit decisions (permis d’environnement / permis unique) has no suspensive effect, except when lodged by the technical officer. In the Brussels-Capital Region, administrative appeals concerning first-instance environmental permit (permis d’environnement / milieuvergunning) decisions with the Environmental College have no suspensive effect, but if the appeal is lodged by the local authority, the Brussels Environmental Administration (Leefmilieu Brussel – Bruxelles Environnement) or the competent land use planning officer (gemaachtsde ambtenaar ruimtelijke ordening – fonctionnaire délégué de l’urbanisme) and it is duly motivated by serious danger or irreparable harm, the president of the Environmental College or a member assigned by them will suspend the decision within five working days, after having heard the parties. The further appeal to the Government has no suspensive effect.

Effect of introducing a judicial appeal on the challenged decision

Introducing a judicial appeal against a final administrative decision has no suspensive effect of its own. Both the Council of State and the Council for Permit Disputes can, however, if suspension has been requested, suspend the challenged decision until the final judgment on the merits.

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

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?

Interim relief

The Council of State is empowered to suspend the implementation of a challenged administrative decision or regulation and to order provisional measures. An action for cessation (vordering tot schorsing/demande de suspension) may be brought immediately along with the action for annulment or later on, as long as the convener of the proceedings (auditeur) has not submitted his written report on the pending case (in that case, however, the party can ask the presiding judge to organise a hearing within a short period). No financial deposit is required, but a court fee of 200 EUR per requesting party is charged. The interim judgment should, in principle, be given within 45 days after its introduction, however this time limit is not sanctioned and not respected in practice. The Council of State may suspend the challenged decision if the grounds for annulment are found to be valid at first sight (a serious plea must be invoked, known as “moyen sérieux” or “ernstige middelen”) and the case is considered urgent where serious harm cannot be prevented if the case is treated in the usual way. Even when the conditions for suspension are present, the Council is, however, not obliged to suspend, considering the different interests at stake, including those of the authority that has taken the challenged decision and those of the intervening party that is the beneficiary of that decision (e.g. the permit holder).

According to the law, the Council shall reject the demand for suspension “if the adverse consequences of it are in a manifestly disproportionate way outweighing the benefits of it”. In the case of “extremely urgent necessity”, a fast-track procedure can be followed. If a provisional suspension is ordered without a hearing, such a hearing will be ordered in view of confirming or withdrawing the suspension. In the case of suspension, a final decision should be taken within 6 months, but this is also a time limit that is often not respected in practice. The case law shows that environmental harm of a certain seriousness is accepted as a reason to consider the case urgent and fit for interim relief (e.g. Council of State, 30 March 2017, n°. 237.852, vzw Unizo Vlaams-Brabant & Brussel; Council of State, 20 June 2017, n°. 238.574, Deijsens; Council of State, 7 February 2019, n°. 243.827, De Jaeghere).

Interim judgments cannot be appealed.

In the Flemish Region, the Council of Permit Disputes has the same powers. The court fee in this case is 100 EUR per requesting party. The procedure is very similar to the procedure before the Council of State. The case law is also very similar to the case law of the Council of State (e.g. Council of Permit Disputes, 14 January 2020, Rv/S-1920-0438, Machiels; 28 January 2020, Rv/S-1920-0492, Van Den Broeck; 4 February 2020, Rv/S-1920-0514, Bahrt; 11 February 2020, Rv/S-1920-0543, Gommers; 11 February 2020, Rv/S-1920-0539, De Belder).

Furthermore, according to Article 584 of the Judicial Code, the President of the Court of First Instance has the power to give a provisional solution (interim relief) to any case in summary proceedings (kort geding, procedure en référé) that is not beyond its competence. So in urgent cases, after summary proceedings, the president can order temporary measures in order to avoid serious detriment, without prejudice to the final solution of the case. This procedure can be used in the event that the administrative action for suspension before the Council of State or the Council of Permit Disputes cannot be used, e.g. when subjective civil rights are at stake.
The permit holder will be informed that a case has been introduced and can defend its interest, prior to the decision on interim relief, in the procedure before the Council of State, the Council for Permit Disputes or the President of the Court of First Instance. The decision of the latter can be appealed, also by the permit holder.

4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?
5) Is the administrative decision suspended once challenged before court at the judicial phase?
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?

Right of action for the protection of the environment

The President of the Court of First Instance also has special powers for the protection of the environment on the basis of the Federal Act of 12 January 1993 on a right of action for the protection of the environment (vorderingsrecht inzake bescherming van het leefmilieu, droit d’action en matière de protection de l’environnement). In accelerated proceedings, the public prosecutor, an administrative authority or an environmental organisation with legal personality can ask the President to order the cessation of actions that constitute, or threaten to constitute, an obvious breach of environmental law. In a judgment of 8 November 1996 (Cass., 8 November 1996, n° C.95.0206.N, Eurantex nv / Boterstraatcomité vzw), the supreme court considered that the purpose of the Act was not only to prevent damage to the environment, but also to ensure a viable environment for the population, so that the protection of the environment also extends to a protection of town and country planning. According to the Court, the Act not only makes it possible to order the cessation of illegal works that impair the environment, but also for works already completed to be undone if such an injunction is necessary to prevent further damage to the environment. The special environmental action on the basis of the Act of 12 January 1993 is normally only available to the public prosecutor, the administrative authorities (including municipalities) or environmental organisations with legal personality meeting the following requirements: their purpose is to protect the environment, their statutes define the territory to which their activities extend and they meet the conditions provided for in Article 17 of the Judicial Code. These conditions include:

- the corporate purpose of the legal person is of a special nature distinct from the pursuit of the public interest in general;
- the legal person pursues this social objective in a sustainable and effective manner;
- the legal person takes legal action within the framework of that corporate purpose with a view to the defence of an interest related to that objective;
- the legal person pursues merely a collective interest with the legal claim.

However, article 271 of the Federal Municipal Act and its regional successors such as art. 194 of the Flemish Municipality Decree – a Decree that had abolished article 271 of the Federal Municipal Act has been annulled by the Constitutional Court for violation of the standstill obligation of article 23 of the Constitution (Constitutional Court, N° 129/2019, 10 October 2019) – allows one or several residents of a municipality to act on behalf of the municipality if the mayor and aldermen fail to do so. This provision can be combined with the Act of 12 January 1993 such that individual citizens living in the municipality concerned are able to bring such an action themselves on behalf of a defaulting municipal authority by taking the place of the municipality that refuses to bring such an action. It follows from the joint reading of the two aforementioned Acts that, if the mayor and aldermen fail to act under those circumstances, one or several residents can take legal action on behalf of the municipality in order to protect the environment. No particular interest needs to be demonstrated because the municipality is presumed to have an interest. The circumstance that residents can bring an action for cessation on behalf of the municipality if the latter fails to do so actually gave rise to another problem. What if the municipality itself shares responsibility for the breach of environmental law by having issued an illegal permit? This matter has been settled by the Constitutional Court, which ruled that not allowing the action under such circumstances would constitute an infringement of the principle of equality and non-discrimination (Constitutional Court, n° 70/2007, 26 April 2007, M. Lenaerts and others/n.v. ‘s Heerenbosch).

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.
2) Cost of Injunctive relief/interim measure, is a deposit necessary?

Court fees

In cases before the Council of State, there is a court fee (rolrecht, droit de rôle) per applicant and per request of 200 EUR (demand for suspension and demand for annulment). The same is true for the Council of Permit Disputes, where the fee is 200 EUR per annulment request per applicant and 100 EUR per suspension request (regular suspension as well as suspension by extreme emergency) per applicant. The court fee for a mediation with the Council of Permit Disputes is 700 EUR and will be shared between the parties in the event of a mediation agreement. Furthermore, there is a mandatory contribution of 20 EUR per demand to the Legal Aid Fund.

In the Brussels-Capital Region, for an administrative appeal before the Environmental College or the Government concerning environmental permits or measures relating to the management and remediation of polluted soil, there is a fee of 125 EUR per applicant. An appeal before the Environmental Appeal Board for disputing an administrative fine is free.

Judicial allowance

The unsuccessful requesting or defending party has to pay a compensation or judicial allowance (rechtsplegingsvergoeding, indemnité de procédure) to the successful party. This is a flat-rate allowance for the costs and fees of the lawyer of the successful party. A basic amount has been set (700 EUR), which can be increased or decreased depending on the circumstances of the case and within certain limits (minimum 140 EUR; maximum 1,400 EUR). It will be increased by 20% in the event of a demand for interim measures. The Council has to take the following into account when deciding on the compensation in a particular case: 1) the financial capacity of the unsuccessful party to reduce the amount of the compensation; 2) the complexity of the case; 3) the manifestly unreasonable nature of the situation. If the unsuccessful party benefits from secondary legal aid, the legal compensation is set at the minimum amount, except in the case of a manifestly unreasonable situation. If several parties are awarded compensation at the expense of one or more unsuccessful parties, the amount thereof is at most double the maximum compensation to which the beneficiary who is entitled to claim the highest compensation can claim. It is divided between the parties. No party can be held liable for payment of compensation for the intervention of the lawyer of another party in excess of the amount of the court fee. The compensation cannot be granted or imposed on an intervening party. The amounts are adapted from time to time to developments in the cost of living (indexation). Most of the time, the basic amount of 700 EUR is awarded.

Aarhus Convention

The Constitutional Court has ruled, by referring inter alia to the Aarhus Convention case law of the CJEU and Directive 2011/92/EU, that the above-mentioned system of court fees and compensation does not violate art. 10, 11 and 23 of the Constitution (Constitutional Court, n° 17/2015, 12 February 2015, Neyrinck c.s.; n° 48/2015, 30 April 2015, Meurant c.s.; n° 103/2015, 16 July 2015, GERFA c.s.; n° 152/2015, 29 October 2015, vzw Ademloos c.s.; n° 87/2018, 6 July 20018, vzw Aktiekomitee Red de Voorkempen).

Other fees
In the event that a party wished to call witnesses, appoint experts or conduct extra investigations – this is extremely rare – the fees and disbursements of the experts, the witness money and the accommodation and travel costs arising from investigative acts would be at the expense of the losing party.

**Costs of attorneys**

The preparation of a case and the elaboration of additional documentation in the procedure and the pleadings are time consuming. With an hourly rate ranging from € 125 to € 200 or more (without VAT), barristers’ cost for a case will easily reach € 4,000 to € 10,000, and € 5,000 to € 12,000 if there is also a demand for suspension. In the event that a further appeal is necessary (before the Council of State against a judgment of the Council of Permit Disputes), another € 4,000 to € 8,000 will be needed. Environmental NGOs give an average cost of € 5,000 for a Council of State case and € 2,000 for a case before the ordinary courts. They often try to do a maximum of preparatory work themselves so that they can limit barristers’ costs. In some instances, barristers agree to a preferential tariff for an NGO (e.g. € 75 hourly). A case for less than € 2,000 seems, however, impossible. In complex cases, and in cases where there is a need to appeal, the cost can be much higher.

These costs have increased further since Belgium abolished VAT exemption for barristers in 2014. Barristers currently have to charge 21% VAT on their fees and costs. The Constitutional Court was of the opinion that this increase does not violate art. 10, 11 and 23 of the Constitution (Constitutional Court, n° 27 /2017, 23 February 2017, *Ordre des barreaux francophones et germanophone c.s.*), after having consulted the CJEU on the validity of the EU VAT Directive in the light of art. 47 of the EU Charter of Fundamental Rights and the Aarhus Convention (CJEU, 28 July 2016, Case C543/14, *Ordre des barreaux francophones et germanophone and Others*).

**Total costs**

Together with the court fees, and the risk of having to pay a judicial allowance as intervention in the lawyers’ fees and costs of the winning party if the case is lost, these costs might be an obstacle for access to justice by ordinary people and NGOs. If these costs are not covered by insurance (which can often be the case when a private party is suffering damages that can be considered as environmental), a party might often think or more before launching procedures. Although procedures in Belgium cannot be considered “prohibitively expensive”, lawyers’ fees and the new system of court fees, judicial allowances and VAT might have a dissuasive effect.

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

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?**

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

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

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?**

**Legal aid**

There are no specific provisions concerning legal aid for legal persons or for NGOs. There is only one case reported in which legal aid was awarded to an environmental NGO. The Constitutional Court held that Articles 508/1 and 508/13 of the Judicial Code violated Articles 10 and 11 of the Constitution, read in conjunction with Article 6.3 (c) of the European Convention on Human Rights, by not providing legal aid for legal persons that are prosecuted and have insufficient income (Constitutional Court, n° 143/2016, 17 November 2016, M.S.). However, the articles concerned have not been modified yet. There is no specific public funding for environmental litigation by NGOs. However, apart from project-related subsidies, federal and regional governments (as well as local governments) are giving some general subsidies to support the activities of certain environmental NGOs. Such non-earmarked subsidies can of course to some extent support litigation of those NGOs, but this is not seen as a very reliable source for funding litigation. Except the assistance provided for in the context of legal aid (see 1.6 above) by “pro deo” lawyers – junior lawyers are obliged to participate in the system, senior lawyers can do it voluntarily – there is no tradition of organised pro bono assistance. Public interest litigation as an institution is not known in Belgium. However, there are, within the group of specialised environmental lawyers, a few lawyers that nearly exclusively work for environmental NGOs or citizens keen to protect the environment. Law School Clinics dealing with environmental law do not exist.

**Security**

The appellant in an environmental case does not have to pay a bond in order to obtain an injunction of the appealed decision. However, when an individual citizen, or a group of citizens, acts instead of the defaulting municipality on the basis of art. 271 of the Municipal Act (and its regional counterparts), there is an obligation for the party to “offer” security that it will pay the costs of the proceedings and the condemnations if it loses. In general, a declaration that it will bear the costs and that it has paid the initial court fee is accepted as being sufficient in that regard. Protective cost orders as such are not known. The need for such orders may be felt less than that for other legal orders because most of the costs can be assessed more or less in an early stage or are fixed by law, with the notorious exception of the costs of experts.

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?**

On the [federal level](https://www.oma.fgov.be/nl-nl/toegang-tot-milieudocumentatie), information on access to information, including the applicable rules, can be found through this website (NL|FR|DE|EN). Information about the Federal Appeals Commission for access to environmental information is accessible through this website (NL|FR|DE).

For the [Flemish Region](https://milieukundigheidsrecht.vlaanderen.be), this website can be referred to. For the [Walloon Region](https://www.deelgemeenschap.vlaanderen.be/la-commission-dacces-aux-documents-administratifs-cada), consult this website.

For the [Brussels-Capital Region](https://www.brussels-cure.brussels/fr/cadeau), information is provided on these websites (NL|FR):

* Toegang tot milieu-informatie
* Accéder à l'information environnementale
* De Commissie voor Toegang tot Bestuursdocumenten (CTB)
* La Commission d'Accès aux Documents Administratifs (CADA)
* Commission for Access to Administrative Documents
* Toegang tot rechtspraak in milieuzaken
* Accéder à la justice en matière d’environnement?

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

**Information during environmental permitting procedures**

During environmental permitting procedures, most of the time there is an opportunity for public participation in which information on the application is at the disposal of the public. Insofar as access to information is concerned, there is no variation in the legislation between the rules applicable to and those applicable to other establishments, although the permit application for IPPC/IED installations will generally contain more information than that for smaller establishments, according to Directive 2010/75/EU.

In the Flemish Region, the legislation on the integrated permit (omgevingsvergunning) provides (except in cases where the simplified procedure is applicable) a public inquiry of 30 days, during which the application can be consulted at the local government of the place where the project is planned.
inquiry is announced with a poster at the affected location, a message on the website of the local government, for bigger projects, an announcement in a daily or weekly newspaper, and through some individual notifications. In the event that an EIA or Safety Report is part of the application in which location alternatives are discussed, the local governments affected by the alternatives shall also publish a notification on their websites. The application and the EIA and safety documentation can be consulted in hard copy at the local authority or digitally through the [online database](http://www.envigloket.be) and, where EIA's are concerned, through the [OMER-dossierrtdatabank](http://www.mer-dossierrtdatabank.be) (on request). Apart from the permit application, other documentation that will be available for consultation includes, when applicable, the EIA screening note, the scoping decision concerning the EIA, the approval or rejection of the EIA Report, the opinions of the specialised public bodies (on request), the EIA Report and the Safety Report. In the event of transboundary effects (meaning both regional and national borders) of the proposed project, the application will be sent to the competent authorities of the regions or countries concerned to obtain their opinion. The public concerned of those regions or countries can take part in the public participation process organised by the local authority in the Flemish Region or the public inquiry organised by the competent authority of the other regions or countries.

In the Walloon Region, applications for environmental permits and integrated permits are, as a rule, subject to a public inquiry of 30 days (if an EIA is necessary) or 15 days (in other cases) organised by the local authority(s) concerned. The public inquiry is announced through a poster at the location and on the official local announcement billboards. Some individual notifications (hard copy or digital) are necessary. When an EIA is required, additional notification should also be made in two newspapers (at least one with local circulation), in the local information journal or equivalent publication, and on the website of the local government. The file can be consulted by the public during the public inquiry and includes the application, and, if necessary, the EIA Report (with an executive summary and technical annexes), the comments and suggestions brought forward during the initial consultation in view of the EIA, and the opinions of competent bodies as soon they are available [here](http://www.envigloket.be).

In the Brussels-Capital Region, so-called special publication measures (speciale regelen van openbaarmaking, mesures particulières de publicité) are nearly always applicable for environmental permit procedures. This means that the local authorities where the effects of the planned project will occur shall organise a public inquiry. Reasonable time is given to the public to take part in a public consultation (no fewer than 15 days, but more generally 30 days (if an EIA is required). The public inquiry will be announced through different posters at the location and in the vicinity. The “public” is referred to in a very broad way, namely “one or more natural or legal persons, associations, organisations or groups” (or even “whoever” as per the Land Use Planning Code). Also, the local consultation commission (overlegcommissie, commission de concertation) will be asked to provide an opinion. During that period, the application file can be consulted at the local administration, including at least one evening a week, and a request can be made to be heard by the consultation commission.

A[stimus](http://www.brussels-environnement.brussels) website provides information about all ongoing public inquiries for building and environmental permits in the Brussels-Capital Region territory. The permit application file selected on this website can be viewed via an interactive map. Another website of the Brussels Environmental Administration provides information about environmental permits that are either under investigation (as soon as the file is declared complete), valid or invalid (refused or cancelled within the last three months). To further facilitate participation, public consultations will soon be centralised on a single webpage on the website of the Brussels Environmental Administration. That webpage will present both current and past public consultations.

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

**Environmental Impact Assessment**

In the Flemish Region, the EIA Report and all related documents (screening, scoping and quality control decisions) will be submitted for public participation together with the permit application within the framework of the integrated permitting procedure (see above). Prior to submitting the permit application to the competent authority, the initiator can ask the administration to withdraw information in the EIA Report that falls under one or more of the grounds for refusing access to environmental information during the public inquiry. They must explain which information is involved and on what grounds the withdrawal from public access should take place. The administration will balance the interests concerned against the right of access to environmental information. The administration may withdraw all or part of the aforementioned information from the public domain. If it decides to withdraw all or part of the indicated data from the public, it must include the relevant data in an appendix. That appendix to the EIA Report is not made available to the public during the permitting procedure.

In the Walloon Region, in the event that an EIA Report (étude d’incidence) is required, a first consultation of the public will take place in view of a scoping decision. Furthermore, within the framework of the permitting procedure, a file accessible to the public can be consulted during office hours at a place indicated by the competent authority. The file contains the permit application, a non-technical summary, the EIA notice (notice d’évaluation) or the EIA Report, and the opinions received. The competent authority can decide to withdraw from the file information that falls under one or more of the grounds for refusing access to environmental information, in which case this will be indicated in the file. The inquiry takes 30 days.

In the Brussels-Capital Region, the EIA Report (Etude d’incidences ou rapport d’incidences – Effectenstudie of effectenverslag) is part of the permit application and is submitted to the special publication measures mentioned above. The EIA Report is prepared by a licensed office that provides recommendations and includes a non-technical summary. The follow-up of the study is ensured by the Accompanying Committee, of which the Brussels Environmental Administration, Urban Brussels, the Municipality and Brussels Mobility are members.

The ordinance of 5 June of 1997 provides for an appeal sui generis before the Government if the Accompanying Committee fails to meet the deadline for a decision on the scope of the study (art. 24) or the completeness of the EIA Report, or against the decision of the Accompanying Committee considering the impact study incomplete (art. 28, §4). The Government replaces the Accompanying Committee. It shall notify its decision within 60 or 30 days of referral.

**Strategic Environmental Assessment**

On the Federal level, the competent administration decides on a case by case basis, and based on the advice of a Special Advisory Committee drawn from different federal administrations, whether federal plans and programmes can have a considerable environmental impact and should therefore be subject to an SEA. The authority that is initiating the SEA shall submit a draft outline of the SEA to the Committee, which will give comments and suggestions before the Government if the Accompanying Committee fails to meet the deadline for a decision on the scope of the study (art. 24) or the completeness of the EIA Report, or against the decision of the Accompanying Committee considering the impact study incomplete (art. 28, §4). The Government replaces the Accompanying Committee. It shall notify its decision within 60 or 30 days of referral.

The publication in the Belgian Official Journal states the start and end date of the public consultation and the way in which members of the public can make their advice and comments known. The comments and opinions are sent to the author of the plan or programme by post or electronically within the investigation period.

**Additional means of public consultation** can be provided for in order to make the draft plan or programme and the environmental impact report as widely available as possible (EN NL FR DE).

In the Flemish Region, it is up to the EIA/SEA Team (Team Mer) of the Department of Environment and Spatial Development in the screening phase to decide if an SEA is necessary for a certain plan or programme on the basis of a notification of the authority concerned and after consulting with some specialised authorities. In the event that an SEA is necessary, a detailed notification is submitted in view of scoping. This notification is published on the website and can be consulted at the local authorities concerned and the authority that is taking the initiative for the plan or programme. Within a period of 30 days, anyone can submit their comments and suggestions to the EIA/SEA Team or to the local authorities in view of the scoping decision of the EIA/SEA.
Team. Once the EIA Report has been drawn up, it will, together with the concerned plan or programme, be submitted to a public inquiry in all concerned communities for 60 days. In the case of transboundary effects, there will be a transboundary public inquiry. Similar rules apply for SEAs concerning land use plans within the framework of the integrated planning process of the Flemish Land Use Planning Code (Vlaamse Codex Ruimtelijke Ordening or VCRO). In the Walloon Region, the Walloon Government determines the content (scoping) of an SEA Report after consulting with the Environmental Section of the Economic, Social and Environmental Council of Wallonia (Pôle Environnement du Conseil économique, social et environnemental de Wallonie), the local authorities concerned, and agencies that the initiator has to consult. In the event that an SEA is necessary, the SE Report will be submitted to public participation, together with the related draft plan or programme, by the local authorities concerned. The public inquiry will be announced by posters and on websites, and, depending on the category, by notices in the Belgian Official Journal, newspapers or local bulletins, on the radio, or through the local information bulletin. The public inquiry will last 45 or 30 days, depending on the category to which the plan or programme belongs. The inquiry is suspended between 16 July and 15 August and between 24 December and 1 January. The publicly accessible file contains the draft plan or programme, the EIA notice or EIA Report, all complementary documentation and opinions received.

In the Brussels-Capital Region, the SEA procedure starts with a draft outline of the SEA (ontwerpbestek, projet de cahier des charges) that the initiator has to submit to some advisory bodies. They shall deliver their opinion within 30 days and the authority that is initiating the plan or programme will then decide on the outline of the SEA. When the SEA Report is finalised, it is submitted, together with the draft plan or programme, for public consultation. The public inquiry is announced by posters in every municipality of the Region, by a notice in the Belgian Official Journal, and in at least three Dutch-language and three French-language newspapers distributed across the Region, as well as by a radio and television announcement. The announcement states the beginning and the end of the public inquiry. The public inquiry is also announced electronically on the website of the Brussels Environmental Administration. After these announcements have been made, the draft plan or programme and the environmental impact report are made available to the public for at least 60 days at the town hall of each municipality of the Region. The comments and objections, the authors of which can send a copy to the mayor and aldermen of the municipalities concerned, are addressed to the initiating authority within the investigation period either by post or electronically. In the case of transboundary effects, there will be a transboundary public inquiry.

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

Information on access to justice

According to art. 19 of the basic act on the Council of State, individual administrative decisions must provide information about the possibility to challenge the decision with the Council of State, otherwise the period of 60 days to introduce a demand for annulment will, as a rule, not start to run. Insofar as the Flemish Region is concerned, integrated permit decisions must be made public and notified to the concerned parties and should indicate the possibility for and means of appeal against the decision taken. This includes information about the possibility to introduce a demand for annulment and suspension with the Council of Permit Disputes in the case of decisions that cannot be appealed any further within the administrative track. The same obligation applies to administrative decisions in the Brussels-Capital Region: citizens must be informed about available appeals. Any unilateral administrative act with individual scope notified to a citizen, or any decision to refuse access to information (totally, partially or in the requested format), must indicate:

- the possibility to contact the Brussels mediator (with the means);
- the means of and time limits for administrative appeal to which it may be subject as well as the competent authorities and the procedures for lodging this appeal.

The concerned parties may initiate an appeal procedure:

- to the College of the Environment against decisions, acts or omissions of the competent authority; and
- to the Government against decisions of the Environment College. Further appeal to the Council of State is possible.

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

Translation and interpretation

Before the Council of State, private parties, including NGOs, can use the official language of their choice (Dutch, French or German), while public authorities must use the language determined by the strict and complex Belgian administrative language legislation. In exceptional circumstances, the case will be processed by the bilingual chamber of the Council. If the case is processed by the Council of State in a language other than that used by the private party – in principle, the case will be treated in the language of the challenged decision – that party can ask for translation and interpretation. The costs are at the expense of the State. There are no provisions for the use of other languages. Thus, foreigners must rely on barristers that use one of the national languages when representing them before the Council and themselves meet the costs of translation.

Similarly, there are no rules on translation of documents for foreigners in the legislation concerning the Council of Permit Disputes in the Flemish Region, which has Dutch as its working language. However, during oral hearings the Council can, ex officio or at the request of the concerned party, provide interpretation for persons who are unable to speak or understand Dutch sufficiently. The costs will be at the expense of the Council. It seems that this possibility has not been used yet.

In the Brussels-Capital Region, the applicant can choose to submit their appeal in French or Dutch, the two official languages of the Region, before the Environmental Appeal Board. The decision will be rendered in both languages if another party speaks the other official language.

Decisions of the Government are bilingual.

Access to information and the right of administrative appeal

Access to information is essential for effective public participation and access to justice.

On the federal level, access to environmental information is dealt with in the Federal Act of 5 August 2006 concerning access of the public to environmental information. Appeals against refusals and the absence of a decision within the timeframe of 30 days can be addressed to the Federal Appeal Commission for Access to Environmental Information (Federale Beroepscommissie voor de toegang tot milieu-informatie – Commission fédérale de recours pour l’accès aux informations environnementales). The appeal is free of charge. An appeal shall be sent to the Commission within 60 days after the requester has been informed of the refusal or, in the absence of such a decision, after the date of expiry of the period within which the environmental instance had to take a decision on the request. The Commission has investigation and decision powers. It takes its decision within 30 days after the introduction of the appeal. The Commission publishes its decisions as soon as possible after the applicant has received the decision. The Commission also has an advisory function for federal environmental instances. All decisions and advice can be found on its website. Against decisions of the Commission, appeal is possible before the Council of State.

The Brussels-Capital Region has recently streamlined its legislation on access to information, including environmental information, into a single and comprehensive text. The new Brussels legislation on the publicity of the administration also provides for specific regional appeal bodies: a mediator (not entered into force yet) and a Regional Commission for access to administrative documents (La Commission d’accès aux documents administratifs (CADA) - De Commissie voor Toegang tot Bestuursdocumenten (CTB)). The Regional Commission deals with appeals relating to the dissemination of information, the refusal of access to information and the refusal to correct inaccurate or incomplete information relating to a person. The appeal is free of charge. The appeal
shall be sent to the Commission within 30 days (five working days in cases of urgency) of gaining knowledge of the decision of refusal or, in the absence of such a decision, of the date of expiry of the period within which the administrative authority had to take a decision on the request.

The Regional Commission has investigation and coercive power. It also has the power to grant access or demand rectification of the information in dispute. The Commission shall publish on its website, within 20 working days of adoption, the decisions, opinions and proposals it adopts. An annual report is also published. The Commission’s decisions can be contested before the Council of State.

In the Flemish Region, the right to access to environmental (and other) information is governed by the Governance Decree (Bestuursdecreet). Appeal can be lodged against any decision made by a public authority with regard to access to information, either after expiry of the term within which the decision had to be taken, or in the event of the decision being carried out reluctantly. This appeal must be lodged with an administrative appeal body (Beroepsinstantie openbaarheid van bestuur) composed of officials appointed by the Government of Flanders. This appeal is free of charge and must be submitted in writing, by web form or by e-mail, within 30 calendar days after the sending of the decision or after expiry of the implementation period. The decisions of the appeal body are public and are published on the internet (Publicaties | Vlaanderen.be). The public authority has to implement the appeal body’s decision as soon as possible and at the latest within 15 calendar days after receiving the decision. If the public authority has not implemented the decision of the appeal body in due time, then the appeal body will carry out the decision itself as soon as possible. An appeal for annulment can be lodged with the Council of State against the decision of the appeal body within 60 days.

1.8. Special procedural rules
Country-specific EIA rules related to access to justice

1) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)
2) Rules on standing relating to scoping (conditions, timeframe, public concerned)
3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?
4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO?
5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?
6) At what stage are decisions, acts or omissions challengeable?
7) Before filing a court action, is there a 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?
9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
10) How is the notion of “timely” implemented by the national legislation?
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?

Screening and scoping decisions
In Belgium, screening and scoping decisions, as well as decisions concerning the approval of SEA or EIA Reports by competent authorities, cannot be challenged in court separately. They are considered to be “preparatory decisions” that can only be challenged together with the administrative acts that are subject to SEA or EIA: the plans, programmes and permits concerned. The rules on standing and access to justice are thus those applicable for plans and programmes and permits, as presented above. It is settled case law of the Council of State that the Council is not authorised to substitute its assessment of the EIA screening, scoping or quality control for that of the competent authority. In the exercise of the legality check entrusted to the Council, the Council is only authorised to verify whether the competent authority could reasonably have decided, on the basis of correct factual information, that the intended plan, programme or project does not give rise to significant environmental impacts, that the drawing up of an SEA or EIA was not necessary, that the scope of the SEA or EIA was acceptable, or that the quality of the report was sufficient. However, although the Council is restricting itself to a “marginal review” of the legality of screening, scoping and quality decisions, we are witnessing over time that the Council is becoming more demanding concerning those decisions. The legality check includes both the substantive and the procedural legality. The Council can raise a plea on its own initiative. In the event that there is an organised administrative appeal provided for, that appeal must have been exhausted first before it is possible to challenge the decision taken on administrative appeal before the Council of State, but it is not necessary to have participated in the public consultation phase. We can say that the procedure applied by the Council is fair and equitable, but although things are improving over time, the procedure is still too time consuming (see above). Interim relief is available under the general conditions presented above.

The same can be said concerning the Council of Permit Disputes in the Flemish Region, with that exception that within the framework of the new system of integrated permits, by a Decree of 8 December 2017, some provisions had been introduced meaning that members of the public concerned could, in principle, only have access to administrative appeal and judicial appeal to the Council for Permit Disputes if they had participated in the public inquiry by submitting a reasoned opinion, comment or objection. Those restrictions have, however, been annulled by the Constitutional Court for violation of Articles 10, 11 and 13 of the Constitution (Constitutional Court, n° 46/2019, 14 March 2019, vzw Aktiekomitee Red de Voorkempen and Others).

1.8.2. Integrated Pollution Prevention and Control (IPPC) / Industrial Emissions Directive (IED) - provisions related to Directives 2003/35/EC
Country-specific IPPC/IED rules related to access to justice

1) Standing rules, at what stages can one challenge decisions (if one is an NGO, a foreign NGO, a citizen)? Is the final decision challengeable?
2) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)
3) Rules on standing relating to scoping (conditions, timeframe, public concerned)
4) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?
5) Can the public challenge the final authorisation?
6) 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?
7) At what stage are these challengeable?
8) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
9) 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?
10) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
11) How is the notion of “timely” implemented by the national legislation?
12) 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?
13) Is information on access to justice provided to the public in a structured and accessible manner?
1.7.1.-1.7.4.

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?

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

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

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

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)?

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?

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

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

In the Flemish Region, the following persons who are aware of environmental damage may submit comments to the competent authority of the Enforcement Division of the Department of the Environment (Afdeling Handhaving van het Departement Omgeving) and request that the competent authority take action: 1) natural and legal persons affected or likely to be affected by environmental damage; 2) natural and legal persons who have an interest in the decision-making regarding the damage; 3) legal persons referred to in Article 2 of the Federal Act of 12 January 1993 on a right of action for the protection of the environment (i.e. environmental NGOs) (see point 1.7.2). A request for measures must contain the following elements: name, capacity and address of the applicant; the way in which the applicant is suffering or is likely to suffer; description of the nature, extent, location and date of assessment of the damage; indication that it concerns a request for measures as provided for in Title XV, Chapter VI of the Decree of 5 April 1995; date and signature of the applicant. As far as possible, the request for measures should contain: 1) a description of the probable cause of the environmental damage; 2) an indication of the operator likely to cause environmental damage; 3) an inventory of the attached documents. The competent authority has to decide on the request within 30 days. The persons that have applied for measures to be taken can appeal to the Flemish Government by registered letter within 30 days of the notification. The Flemish Government has to decide on the appeal within 105 days. The appeal is not suspensive. The decision on appeal can be challenged with the Council of State.

In the Walloon Region, natural or legal persons (a) affected or likely to be affected by environmental damage or (b) having sufficient interest in environmental decision-making relating to the damage may submit to the competent authority, the Environmental Policy Board of the Walloon Public Service Agriculture, Natural Resources and Environment (Direction de la Politique Environnementale du SPW Agriculture, Ressources Naturelles et Environnement), any observations relating to any occurrence of environmental damage of which they have become aware, and are entitled to request that the competent authority take action. ENGOs are deemed to have sufficient interest provided that they have legal personality and that they have environmental protection as a statutory objective. These associations should provide proof, by producing their activity report or any other document, that they undertake genuine activities in accordance with their statutory objective. The request for action is accompanied by relevant information and data supporting the observations presented in relation to the environmental damage in question. If a request for action is formulated too vaguely or too generally, the competent authority invites the applicant as soon as possible to formulate it in more detail and helps the applicant to do so adequately. In the case of damage to the soil, the request for action only applies to pollution that generates a risk of a serious negative impact on human health. If the request for action and accompanying observations plausibly indicate the existence of environmental damage, the competent authority examines these observations and this request for action. In such cases, the competent authority gives the operator concerned the opportunity to make known their views on the request for action and accompanying observations. The competent authority shall acknowledge receipt of the request for action within ten working days of receipt. The competent authority shall inform the persons that have submitted observations of its decision to act or not and of the reasons thereof: (1) as soon as possible, and at the latest within one month of receiving the request; (2) or within two months of receipt of the request where the extent or complexity of the situation reported are such that the one-month period cannot be respected. The notification of the reasoned decision of the competent authority indicates the appeal to which it may be subject as well as the procedures for lodging this appeal. If the competent authority does not notify its decision on the request for action within the deadlines provided for, the request is deemed to be rejected. Any claimant who considers that their request for action has been improperly disregarded or wrongfully rejected, in whole or in part, or that it has been insufficiently considered or has not been processed in accordance with the Environmental Code, may appeal to the Walloon Government. Under penalty of inadmissibility, this appeal shall be brought within ten working days of receipt of the notification of the decision of the competent authority or, in the absence of a decision, within ten days of the expiry of the applicable time limits. The Walloon Government decides on the appeal after having obtained the opinions of the environment administration and of any person or body it deems useful to consult. It shall rule as soon as possible, and at the latest within 90 days of receipt of the appeal. The decision of the Walloon Government is notified to the applicant indicating the appeals which they can make and the time limits within which these appeals must be lodged. That decision can be appealed with the Council of State.

In the Brussels-Capital Region, any natural or legal person having an interest to assert that they are affected or likely to be affected by environmental damage is entitled to submit to the competent authority, the head of the Brussels Environmental Administration (leidend ambtenaar Leefmilieu Brussel /fonctionnaire dirigeant de Bruxelles Environnement), any observation related to any occurrence of environmental damage or to an imminent threat of environmental damage of which it becomes aware, and has the right to request that the competent authority take measures, with regard to the Code on inspections, prevention, reporting and sanctioning of environmental offences and on environmental liability. Any association which works for the protection of the environment in the territory of the Brussels-Capital Region is deemed to have an interest provided that:

- the association is incorporated as a non-profit association (vzw/asbl);
- the non-profit association was pre-existent on the date of occurrence of the environmental damage or the imminent threat of damage;
- the statutory object is the protection of the environment; and
- the interest at stake in their observations and/or request for action falls within the scope of the statutory object of the association as it stands at the date of the damage or of the imminent threat.

This provision applies without prejudice to the right of action provided for by the Federal Act of 12 January 1993 (see point 1.7.2). The request is accompanied by the relevant information and data supporting the observations presented in relation to the environmental damage in question. If the request and accompanying observations indicate in a plausible way the existence of environmental damage, the authority examines these observations and this request. In such a case, the authority gives the operator concerned the opportunity to make known its position on the request and accompanying observations according to the forms and deadlines fixed by the Government. The authority informs the persons who have submitted observations of its decision to act or not, indicating the reasons behind it, as soon as possible, and at the latest within one month of receiving the request. The notification of the
reasoned decision of the authority indicates the means and time limits for appeal to which it may be subject as well as the procedures for lodging this appeal.

The aforementioned persons may initiate an appeal procedure:
to the College of the Environment against decisions, acts or omissions of the competent authority; and
to the Government against the decisions of the Environment College.

A further appeal to the Council of State is possible.

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?

2) Notification of public concerned?

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)?

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)?

5) At what stage is the information provided to the public concerned (including the above parties)?

6) What are the timeframes for public involvement including access to justice?

7) How is information on access to justice provided to the parties?

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

9) Any other relevant rules?

Federal plans and programmes

Regarding SEA for federal plans and programmes that can have a significant effect on the environment of another Member State of the European Union or another State party to the Espoo Convention, the following shall be communicated to the competent authorities of those States: 1) the draft plan or programme together with the environmental impact report and any information about the cross-border effects; 2) a description of the preparation and assessment procedure applicable to the plan or programme in question. The competent authorities are informed that they can specify whether they intend to cooperate in the assessment procedure for the plan or programme within a period of 45 days from the notification. The State concerned informs the author of the plan or programme within a period of 45 days whether it wishes to submit the plan or programme to a national consultation. The author of the plan or programme and the concerned State jointly determine a reasonable period within which the consultation in the concerned state will be arranged. The concerned State that announced the arranging of a national consultation shall forward its opinion to the author of the plan or programme within that period.

Nuclear installations

Operating permits for nuclear installations are a federal competence. Following the judgment of the Court of Justice of the European Union of 29 July 2019, C411/17, Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen ASBL, the Constitutional Court (Constitutional Court, n° 34/2020, 5 March 2020, Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen ASBL) has judged that the extension in time of industrial production of electricity constitutes a 'project' within the meaning of Directive 2011/92/EU, and that an environmental impact assessment must, in principle, be carried out with respect to that project prior to the adoption of such a decision. Such a project must undergo an assessment procedure in relation to its transboundary effects in accordance with Article 7 of the EIA Directive.

Regional plans and programmes

In the Flemish Region, transboundary consultation and public participation will in the first place happen in the context of SEA. If the plan or programme can have significant effects on people or the environment in other Member States of the European Union and/or in contracting parties to the Aarhus Convention and/or in other regions, or if the competent authorities of these Member States, contracting parties and/or regions so request, the EIA/SEA Team (Team MER) shall send a copy of the fully declared notification to the competent authorities of the Member States, contracting parties and/or regions. When the copy is sent, it shall be clearly indicated that any comments about the SEA can be submitted to the administration within a period of 60 days from receipt of the copy in view of scoping. A similar notification is necessary when the draft plan or programme and the SEA documentation are submitted to public consultation. By mutual agreement, practical arrangements are made concerning the way the citizens of the concerned countries and regions can introduce their observations. Similar provisions apply in the case of EIA, although transboundary consultation on the EIA Report will be combined with the consultation on the application of an integrated permit. If the competent administration determines that the subject of the permit application can have significant effects on people and the environment in another region, another EU Member State or a contracting party to the Espoo Convention, or if the competent authority of that other region, EU Member State or contracting party to the Espoo Convention so requests, the competent administration makes the application available to the competent authority for advice. In addition, it shall be clarified whether or not the application is subject to an EIA or to consultations between the regions, the EU Member States or other contracting parties involved. That information serves as the basis for the necessary consultation according to the principle of reciprocity and equal treatment. As soon as possible, and no later than the day before the start of the public inquiry, the authority with which the file is available for inspection will inform the competent authority. The interested residents of the region concerned, the EU Member State concerned or the contracting party to the Espoo Convention concerned may participate in: 1) the public inquiry organised in the Flemish Region; 2) the public inquiry that the competent authority may organise in its own territory based on the application file received. The competent authority shall at the same time communicate its possible comments, together with the results of any public inquiry it has organised, to the competent permitting authority and to the EIA administration within a period of 50 days from the date of receiving the file. If the application relates to an establishment subject to an EIA, consultations are held with the region or the EU Member State concerned about, among other things, the potential transboundary effects of the establishment and the measures that are envisaged to limit or eliminate those effects within an agreed reasonable time. Similar provisions apply when the competent administration determines that the subject of the application is the operation of a so-called Seveso plant with a major transboundary major-accident risk.

When in the Walloon Region a plan, programme or project is subject to a SEA or EIA and the Government or the competent authority notes that it is likely to have significant effects on the environment of another region, another Member State of the European Union or another party to the Espoo Convention, or when another region, another Member State of the European Union or another State party which is likely to be significantly affected makes the request, the draft plan, draft programme or permit application, accompanied by the SEA or EIA Report and any information on the cross-border implications of the case, is sent for consultation to the competent authorities of that other region, other Member State of the European Union or party at the same time as these documents are subject to public inquiry in the Walloon Region. In addition, the following information is also transmitted:

1) notification of relevant information to the authorities competent to take the decision, of those from which relevant information can be obtained, of those to which comments or questions may be addressed, as well as details of the deadlines for transmitting comments or questions;

2) where applicable, details concerning a proposal to update a permit or the conditions attached to it;

3) an indication of the date and place where the relevant information will be made available to the public and the ways it will be made available;
In order to have standing before the administrative courts, it is not necessary to participate in the public consultation phase of the administrative procedure.

When such consultations take place, the Government and the region or Member State of the European Union concerned shall mutually agree on arrangements to ensure that the competent authorities and the public in the region or Member State of the European Union whose territory is likely to be significantly affected are informed and can send their opinion within a reasonable time. When the regions or the Member States are required to consult under this article, they shall agree from the start of negotiations on a reasonable period for carrying out the consultations.

When the competent authority, insofar as EIA and environmental permits are concerned, determines that a project could have a significant impact on the environment of another region, another Member State of the European Union or another party to the Espoo Convention, or when the concerned region, State or party to the Convention so requires, the competent authority shall arrange for the transfer to the competent authority of the concerned region or State, at the latest at the time when the public inquiries in the Brussels-Capital Region start, all available information about the project and its possible cross-border effects as well as the nature of the decision that could be taken. The competent authority grants a reasonable time to the addressee of this information to indicate whether there is a desire to participate in the decision-making procedure. In this case, the competent authority will also hand over the following as soon as possible, with the instruction to arrange the participation of the intended public:

- the relevant content of the application file in relation to the project;
- the government data from which relevant information can be obtained and on which comments can be made;
- the correct means of public participation;
- the period within which the decision must be taken.

The competent authority considers the comments made during this procedure and communicates its decision to the body that participated in the decision-making process.

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

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

**Standing of individuals and NGOs**

The standing rules are the same as those mentioned in paragraph 1.4. In general, we can say that Belgian law and jurisprudence have evolved in such a way that access to justice in environmental matters is now consistent with the requirements of the Aarhus Convention and related EU law (see paragraph 1.3).

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?

**Administrative appeals and court review**

As set out in paragraph 1.3, in administrative appeals all aspects of the administrative decision can be reviewed, while the judicial review by the administrative courts will cover both the procedural and substantive legality. There are no grounds or arguments precluded from the judicial review phase.

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

**Exhaustion of administrative review procedures**

When an administrative appeal is provided for in the legislation at stake, that avenue should be exhausted first before recourse is taken to the judicial review procedure (see paragraph 1.3).

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.?

**Public participation**

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

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

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

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[1] See also case C-529/15.
The principle of equality of arms is part of the notion of fair trial. In Belgium, the principle is interpreted in a way that is consistent with the case law of the ECtHR and the CJEU.

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

Timeliness
The main weakness of the Belgian situation concerning access to justice is that, although we have seen improvement in recent years, the courts still need still too much time to decide cases.

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
Injunctive relief is available under the conditions set out in point 1.7.2.

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

Cost rules
The rules set out in point 1.7.3 are applicable.

1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[1]

Standing of individuals and NGOs

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 standing rules are the same as those mentioned in paragraph 1.4. An important difference with EIA-related permit decisions is that, in general, for SEA-related plans and programmes there is no administrative appeal, only judicial review by the Council of State. The time limit for introducing a case is 60 days after the day of publication of the plan or programme. The main weakness of the Belgian situation concerning access to justice is that, although we have seen improvement in recent years, the Council of State still needs too much time to decide cases (see point 1.8.1).

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?

Court review
As set out in paragraph 1.3, the judicial review by the Council of State will cover both procedural and substantive legality. Judicial review of SEA is only possible together with the plan or programme concerned, as set out in point 1.8.1. There are no grounds or arguments precluded from judicial review.

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

Exhaustion of administrative review procedures
Administrative appeal procedures for plans and programmes are, in general, not provided for in the legislation. Thus, the rule to exhaust that avenue first before having recourse to the judicial review procedure is not applicable (see paragraph 1.3).

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.?

Public participation
In order to have standing before the Council of State, it is not necessary to participate in the public consultation phase of the administrative procedure.

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

Injunctive relief
Injunctive relief is available under the conditions set out in point 1.7.2.

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

Cost rules
The rules set out in point 1.7.3 are applicable.

1.3. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with the public participation requirements of Article 7 of the Aarhus Convention in respect of plans and programmes not submitted to the procedures set out in the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[2]

Standing of individuals and NGOs

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 standing rules are the same as those mentioned in paragraph 1.4. In general, for plans and programmes there is no administrative appeal provided for, only judicial review by the Council of State. The time limit is 60 days after publication of the plan or programme. In general, we can say that Belgian law and jurisprudence have evolved in such a way that access to justice in environmental matters is now consistent with the requirements of the Aarhus Convention and related EU law (see paragraph 1.1).

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?

Court review
As set out in paragraph 1.3, the judicial review by the Council of State will cover both procedural and substantive legality. Through the control of general principles of proper administration, the legality control allows to reach out to facts. There are no grounds or arguments precluded from the judicial review phase.

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

Exhaustion of administrative review procedures
Administrative appeal procedures for plans and programmes are, in general, not provided for in the legislation. Thus, the rule to exhaust that avenue first before having recourse to the judicial review procedure is not applicable (see paragraph 1.3).
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.?  

Public participation

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

Timeliness

The main weakness of the Belgian situation concerning access to justice is that, although we have seen improvement in recent years, the Council of State still needs too much time to decide cases (see point 1.8.1).

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?  

Injunctive relief

Injunctive relief is available under the conditions set out in point 1.7.2.

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

Cost rules

The rules set out in point 1.7.3 are applicable.

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

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?  

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)?  

Standing of individuals and NGOs

The standing rules are the same as those mentioned in paragraph 1.4. There is no variation in respect of the form in which the plan or programme is adopted.

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?  

Court review

As set out in paragraph 1.3, the judicial review by the Council of State will cover both procedural and substantive legality. There are no grounds or arguments precluded from the judicial review phase.

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

Exhaustion of administrative review procedures

Administrative appeal procedures for plans and programmes are, in general, not provided for in the legislation. Thus, the rule to exhaust that avenue first before having recourse to the judicial review procedure is not applicable (see paragraph 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.?  

Public participation

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

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

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

Fairness

The principle of equality of arms is part of the notion of fair trial. In Belgium, the principle is interpreted in a way that is consistent with the case law of the ECtHR and the CJEU.

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

Timeliness

The main weakness of the Belgian situation concerning access to justice is that, although we have seen improvement in recent years, the Council of State still needs too much time to decide cases (see point 1.8.1).

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

Injunctive relief is available under the conditions set out in point 1.7.2.

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

Cost rules

The rules set out in point 1.7.3 are applicable.

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

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?  

Standing of individuals and NGOs

Administrative regulations of the federal, regional, community, provincial and local governments can be challenged before the Council of State. The standing rules are the same as those mentioned in paragraph 1.4. There is no administrative appeal provided for, only judicial review by the Council of State. The time limit is 60 days after publication of the regulation in the Belgian Official Journal (Belgisch Staatsblad/Moniteur belge) or, where provincial or local regulations are concerned, after their official publication. Furthermore, Art. 159 of the Constitution states that Courts only apply general, provincial or local decisions and regulations where they are in accordance with the law. This "exception of illegality" can be raised in any court case without a specific time limit.

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?  

Court review
As set out in paragraph 1.3, the judicial review by the Council of State will cover both procedural and substantive legality. There are no grounds or arguments precluded from the judicial review phase.

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

Exhaustion of administrative review procedures

Administrative appeal procedures for regulations are not provided for in the law. Thus, the rule to exhaust that avenue first before having recourse to the judicial review procedure is not applicable (see paragraph 1.3).

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.?

Public participation

In general, there is no formal public consultation phase for regulations. Most of the time, however, some specialised advisory bodies composed of stakeholders shall be consulted. In the Flemish Region, the Flemish Government is required to publish draft regulations containing general and sectoral environmental conditions on the website of the Environment Department for a period of 30 days. The draft is available for inspection at the Department of the Environment during the same period. During that period, any person can submit their comments to that Department.

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

Injunctive relief is available under the conditions set out in point 1.7.2.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court?

Cost rules

The rules set out in point 1.7.3 are applicable.

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?

EU regulatory acts

It is not possible to bring a direct legal challenge before the Council of State concerning any EU regulatory act, because the Council is only competent to annul or suspend administrative acts and regulations issued by a Belgian administrative authority. However, if an administrative act of a Belgian administrative authority is challenged for violation of an EU act and the validity of that EU act is questioned, the Council of State is obliged to refer to the CJEU under Article 267 TFEU (compare with CJEU 19 October 201, C-281/16, Vereniging Hoekschevaards Landschap) before deciding the case.

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


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

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

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

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

- **Enforcement of administrative court decisions**

  - **Council of State**

    When the Council of State or the Council of Permit Disputes annuls a challenged administrative decision, such a judgment has retroactive effect and the administrative decision is considered never to have existed.

    At the request of one of the parties, the Council of State clarifies the grounds for its annulment judgment and the measures to be taken to remedy the illegality which led to that annulment. If the judgment entails a new decision by the concerned administration, the Council may order that this administrative decision should be taken within a specified period. It may order this in a subsequent judgment, provided that the party at whose request the annulment was pronounced has given notice of default to the administration to make a new decision, by registered letter, and that at least three months have passed since the date of the notification of the annulment judgment. If the administration has no discretionary power regarding the new decision, the judgment of the Council of State shall take the place of that decision (substitution). Where the judgment of the Council of State implies that the authority concerned refrains from taking a decision, the Council may order such an obligation to refrain from taking a decision.

    If the administration fails to comply with that obligation, the party at whose request the annulment was pronounced may request that the Council of State impose a penalty payment on this authority. The periodic penalty shall be enforced at the request of the party at whose request it was imposed and with the intervention of the Minister of the Interior. Half is allocated to the general resources of the Treasury. The other half is paid to the party at whose request the penalty payment has been imposed. Such penalty can be important. For example, in a case of illegal permits for clearing forests, the Council imposed a penalty of € 50,000 per site and breach. In another case, the penalty payment was set at € 15,000 per breach and per day.

    At the request of a defendant or intervening party, and if it considers it necessary, the Council of State shall designate those consequences of annulled administrative decisions which shall be deemed to be definitively or provisionally maintained for the period it determines. Such a measure can only be ordered for exceptional reasons that justify an infringement of the principle of legality by a decision that is specifically reasoned and after a contradictory debate. This decision may take into account the interests of third parties.

  - **Council of Permit Disputes**
The rules applicable to the Council of Permit Disputes are similar. If the Council of Permit Disputes declares the appeal to be well-founded, the Council will annul the contested permitting decision in whole or in part. The Council has a right of injunction: it can order the authority that took the annulled decision to take a new decision within a period determined by the Council. The Council can also impose certain conditions. Only in the event that the authority that should take a new decision has no discretionary power can the Council substitute its judgment for that decision. In all other cases, the Council cannot replace the authority that took the contested decision. It is then up to that authority to take a new decision respecting the Council's ruling. This new decision can be appealed again. The Council of Permit Disputes can impose penalty payments under conditions similar to those for the Council of State.

The Council can apply an "administrative loop". In the event that the Council finds an illegality in a challenged decision, it can, under certain circumstances, give the administrative authority the possibility to take a new decision, not containing the same error, that will be reviewed again by the Council. The Council of Permit Disputes can also maintain the legal consequences of an annulled permit decision under circumstances similar to those for the Council of State.

**Compensation for reparation**

Anyone requesting the annulment of a decision with the Council of State can request that compensation be awarded to them in order to rectify the damage suffered as a result of the illegality. Compensation for damages may be sought in the application for annulment during the course of the procedure or no later than 60 days after notification of the judgment finding the illegality. The Council of State has to take into account all circumstances of public and private interest. After a claim for compensation has been introduced with the Council of State, the petitioner can no longer bring civil liability claims before the ordinary courts regarding the same disadvantage. Anyone who has already brought a civil liability claim with the ordinary courts can no longer claim damages from the Council of State.

**Silence of the administration**

When an administrative authority is obliged to take a decision, upon expiry of a period of four months, counting from a reminder notified to it by an interested party, the silence of the administration is deemed to be a negative decision that can be appealed before the Council of State. This provision is without prejudice to special provisions which stipulate a different period or attach different consequences to the silence of the administrative authority, as is the case in some environmental permitting procedures (see point 1.7.1).

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1. Access to justice at Member State level


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

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**Access to justice in environmental matters - Bulgaria**

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

Last update: 08/05/2024

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1. Legal order – sources of environmental law

1.1 Legal order – sources of environmental law

Bulgaria is a country in which the basic rights and obligations of the citizens are constitutionally established, as well as the obligations of the state for protection and maintenance of the environment. According to Art. 55 of the Constitution, citizens have the right to a healthy and favourable environment in accordance with established standards and regulations. Historically, nature protection laws have existed before, but environmental protection was established in the legal system as an independent object of protection from the effects of industrialisation in the early 1970s, coinciding with the period of political enlightenment and cooperation in Europe (Helsinki Process). Environmental movements and civil protests against air pollution in Ruse in the 1980s were significant for the transition from a totalitarian to a democratic society. After the adoption of the 1991 Constitution, in connection with the preparation and EU accession of the country in 2007, the legislation was in line with the EU legal system (horizontal and sectoral), subject to its primacy and the direct effect of supranational law. The international treaties to which Bulgaria is a party are also part of the system of domestic law.

Depending on the accepted classification according to the method of normative regulation, the protection of the environment as an objective law and justice is interdisciplinary,[1] subject to a relatively lesser extent to other branches of law such as civil, criminal, commercial and constitutional law, and finds expression most often in administrative law and process.[2] The main procedural principle of access to justice is that each party has the right to be heard by the court before an act (e.g. administrative decision) takes effect which is important for its rights and interests. The court shall ensure that the parties have an equal opportunity to exercise the rights conferred on them and it applies the law equally to all pursuant to the Civil Procedure Code (CPC). Individuals and legal persons enjoy equal procedural opportunities to participate in administrative proceedings and in the judicial review of administrative acts to defend their rights and legitimate interests, as stipulated in the Administrative Procedure Code (APC). The APC stipulates the main principles of the administrative procedures in Chapter II. Among them are the principles of legality, proportionality, equality, independence and impartiality, of the active role of the authorities and the court, acting ex officio, an expression of which is the obligation of the court to point out to the parties that in some circumstances the burden to provide evidence is theirs.[3] Access to justice in environmental matters is one of the main principles of environmental protection in Bulgaria, together with other principles listed in Art. 3 of the Environmental Protection Act (EPA) such as sustainable development; public participation and transparency in the decision-making process in the field of environment; awareness of citizens about the state of the environment; the polluter pays principle. The environmental government system comprises authorities of the executive power at central level and authorities at local level. The specialised administration of competent administrative authorities with rights and obligations in the environmental field consists of the Minister of Environment and Water (MoEW), the executive director of the Executive Agency for Environment (EEA), the directors of the Regional Inspectors for Environment and Water (RIEW) and the directors of the basin directorates, plus the administration of general competence: the Council of Ministers, the mayors of the municipalities and, in towns with district division, the mayors of the districts, and the regional governors.

The Bulgarian Parliament (the National Assembly) is the main legislative body which passes, amends, supplements and repeals laws, e.g. the EPA (Art. 84, p.1 of the Constitution). The Council of Ministers adopts decrees, ordinances and resolutions pursuant to and in implementation of the laws, e.g. the
ordinances on SEA and EIA. The Council of Ministers drafts rules and regulations by decree (Art. 114 of the Constitution). In the field of environment, the Minister of Environment and Water issues rules, regulations, instructions and orders (by delegation of Art. 115 of the Constitution[4]), e.g. rulebooks like the Rules on the functions, tasks and composition of the Supreme Environmental Expert Council. An essential characteristic of the legal system is the hierarchy of normative acts and their application by the court depending on their rank according to the explicit provision of Art. 15 of the Law on Normative Acts (LNA) of 1973, still in force today. The principle of application, in the case of non-compliance of the normative act, of a higher degree is also confirmed in Art. 5 of the APC, adopted in 2006. The administrative normative by-laws according to the APC can also be directly challenged in court.

The structure of normative acts is determined according to the LNA and Decree № 833 for application of the LNA. The section “Additional provisions” at the end of the normative act also indicates the directives transposed by it and introduces requirements of other normative acts of the EU.

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

The Bulgarian Constitution provides for a right to a healthy and favourable environment corresponding to the established standards and norms (Art. 55). Protection of the environment is also a citizen’s duty. Enforcement of the right to a healthy and favourable environment is possible, together with other constitutional fundamental rights and freedoms (Chapter II) like:

the right to life (Art. 28)
the inviolability of the home (Art.33)
freedom of expression – Art. 39
the right to access to and dissemination of information – Art. 41(2)
freedom of assembly – Art. 43
freedom of association – Art. 44(1).

Citizens are guaranteed access to court to appeal administrative acts[5] (Art. 120 of the Constitution), unless provided otherwise by the law. No explicit legal exception exists in the field of environmental law. All provisions of the Constitution apply directly (Art.5(2)) and all citizens are equal before the law (Art.6(2)). As to the right to a healthy and favourable environment, it is usually applied together with other legal rules and standards of procedural or substantive nature, such as:

the obligation of the State to ensure the protection of the environment and of living nature in all its variety, and the rational use of natural resources (Art.15),
the right of citizens to file complaints, proposals and petitions with the state authorities (Art. 45),
the right of citizens to legal defence whenever their rights or legitimate interests are violated or endangered, and the right to be accompanied by a legal counsel when appearing before an agency of the State (Art. 56), and

the obligation of the judiciary to protect the rights and legitimate interests of all citizens, legal entities and the State (Art. 117 (1)).

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

The main legal provisions on the environment and access to justice in environmental matters in Bulgaria are set out in the framework Environmental Protection Act (EPA). In addition, the general legal rules for access to justice are set out in the Administrative Procedure Code (APC), the Administrative Offences and Penalties Act (AOPA) and the Civil Procedure Code, which applies subsidiarily to any matters not explicitly regulated by the APC. Other relevant sectoral environmental laws and by-laws that could provide for environmental rights to be defended include the Biological Diversity Act, the Genetically Modified Organisms Act, the Water Act, the Protected Areas Act, the Waste Management Act, the Clean Ambient Air Act, the Protection from Environmental Noise Act, the Black Sea Coast Spatial Development Act, the Agricultural Land Protection Act, the Ordinance on conditions and procedures for carrying out Environmental Assessment of Plans and Programmes, the Ordinance on the terms and procedure for carrying out an EIA, the Ordinance on prevention of major accidents involving dangerous substances and limitation of their consequences (SD Ordinance); and the Ordinance on conditions and the order for issuing of integrated permits (IED Ordinance); and the Ordinance on prevention of major accidents involving dangerous substances and limitation of their consequences (SD Ordinance).

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

The legal implementation of the requirements regarding access to justice has been in progress since the ratification of the Aarhus Convention, in force as from 2004, and EU accession, from 2007, respectively. The listed examples of court rulings are significant for the evolution of the interpretation of the issues on exercising citizens/NGOs right of access to justice.

As an achievement of general importance for the strength of the supremacy of the rule of law in nature conservation, the Supreme Administrative Court (case № 12379/2018) repealed Decision of the Council of Ministers No. 821/29.12.2017 on amendment of the management plan for Pirin National Park. The judicial review incorporates interpretation of the provisions of Bulgarian and international law, taking into account decisions of the CJEU, directives of the EU and decisions of the World Heritage Committee to the Convention concerning the Protection of the World Cultural and Natural Heritage. Of key importance is the recognition by the court of the primacy of the requirement of Art. 6.4 of the Aarhus Convention for public participation at an early stage when all options are open and an effective public hearing can be carried out. Another achievement in this case was that the many laws to which the court referred in concluding that the authorities had breached the law included Art. 6(4) of the Aarhus Convention.

The main aspects of access to justice for citizens and environmental NGOs (ENGOs) in environmental matters based on Art. 9 par. 2 of the Aarhus Convention are recognised by virtue of the binding effect of the ratification act and the successive internal law - § 1, p. 25 EPA. Recognising sufficient interest in such cases for members of the public, it broadens the principle of impairment of rights depending on direct violation, or threat of violation, of the rights, freedoms and legal interests of individuals and organisations according to Art. 147 APC. Such a broad interpretation of access to justice in environmental matters for individuals and ENGOs is consistently implemented as a precondition of standing capacity, but depending also on the interpretation of the nature of the administrative act appealed.[6] In the case of an appeal of the integrated permit for a thermal power plant, the first-instance district court denied legal standing of an ENGO registered with private interest.[7] The third chamber of the Supreme Administrative Court (SAC) (case № 7304/2015) repealed this decision of the district court, stating that the parameters of the legal interest to appeal the administrative act are defined by the subject of the act, which establishes obligations or affects rights and legal interests of the appealing citizen or organisation, and these parameters are decisive for the admissibility of the judicial review for legality of the act. However, more recent case-law of the SAC shows the opposite tendency, and the court does not grant standing to ENGOs of private interest to challenge Art. 6 of the Aarhus Convention decisions. In a lawsuit concerning an appeal of the decision of the Energy and Water Regulatory Commission (EWRC) to extend the duration of the licence for electric power generation sought to establish a practice of allowing ENGOs in litigations on the Energy Act so that they could appeal the acts of the EWRC. In that case (№ 12922/2015), the SAC denied the right of appeal to ENGOs. Other problems with procedures outside the scope of Art. 6 of the Aarhus Convention is granting of standing in other procedures for environmental permits – challenging water permits for instance.
Environmental cases are handled under the common administrative procedure – i.e. there are no specific court rules applicable to environmental matters. The second, cassation, instance has recently been stripped of the right to challenge EIA/SEA decisions on projects, plans and programmes of strategic national importance[8]. Also worth mentioning is a lawsuit based on class action related to environment, case № 6614/2017 of the Sofia City Court brought by citizens against Sofia Municipality for the lack of effective measures for achieving good quality of ambient air. The case-law of SAC is important for jurisprudence in the application of environmental law. It is not a formal source of law, but its has binding power for the law-enforcement authorities. However, the interpretative rulings of the SAC could be seen as a subsidiary source of law.[9] Legislative changes in 2017 in the Law on Access to Public Information to limit the cassation appeal of decisions issued in cases against refusal of information, including on the environment, i.e. their consideration at only one instance[10], was subject to public and institutional criticism, with a veto by the President and a request to declare them unconstitutional[11].

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?

International treaties ratified in accordance with the constitutional procedure, promulgated and having come into force with respect to the Republic of Bulgaria become part of national legislation. They have privity over any conflicting provisions of domestic legislation (Art. 5(4) of the Constitution). The parties to the administrative procedures could directly refer to the international environmental treaties ratified by the Republic of Bulgaria.

Both administrative bodies and courts apply the Aarhus Convention directly. As mentioned above, the Supreme Administrative Court (case № 12379/2018) recognised the privity of the requirement of Art. 6.4 of the Aarhus Convention for public participation at an early stage when all options are open and an effective public hearing can be carried out.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

The court system consists of the Supreme Cassation Court (SCC), the Supreme Administrative Court (SAC), appellant courts, regional courts, military courts and district (local) courts.

Justice in civil matters is provided by:

- District courts as first instance courts for disputes of relatively small economic interest (less than 12,500 EUR and up to 25,00 EUR for property right disputes).
- Regional courts acting as first instance courts for more important disputes and as appellate instance for district court decisions.
- The SCC performing the function of cassation instance for all appellate decisions (with a few exceptions).

The administrative judicial system consists of:

- 28 administrative courts that deal with appeals against administrative decisions[12]
- The SAC can act either as first instance court or as a cassation instance.
- District courts that hear appeals against administrative acts for sanctioning administrative offences (misdemeanours), incl. for not executing or violating a decree, order or other act related to the environmental legislation (Art. 32(2) of AOPA). A cassation appeal against a district court’s decision in such a case will be dealt with by a three-judge chamber of the respective administrative court.
- The Supreme Judicial Council, the Judges Chamber, is the authority that appoints, promotes and dismisses judges. There are no specialised courts or tribunals for hearing environmental cases. However, at some administrative courts judges are organised in chambers to the effect that environmental cases are decided by a limited number of judges in the respective court.

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

The 28 regional administrative courts act as first instance in all administrative cases, with the exception of those cases which fall within the jurisdiction of the Supreme Administrative Court.

The SAC hears cases such as appeals against acts of the Council of Ministers, the prime minister, the deputy prime ministers and the ministers, cassation appeals and protests against first-instance decisions of court, and motions for reversal of effective judicial acts on administrative cases.

The territorial jurisdiction is defined by the address or seat of the persons addressed by the individual administrative act. If the addresssees have different addresses/addresses but within a single court district, the case is heard by the administrative court in the district of the territorial structure of the administration of the authority which has issued the act. All other cases are heard by the administrative court in the district where the seat of the authority is found. Appeals against general administrative acts[13] are heard by the administrative court at the seat of the authority that issued the contested act. Such acts could be decisions of the municipal council for adoption of the annual budget of the municipality, or the Order of the Minister of Environment and Water for declaring a protected territory under Art. 39 of the Law on Protected Territories (PAT).[14] Legal actions for compensation shall be brought before the court at the address or seat of the appellant, including in cases where they are joined with appeals against administrative acts.

In civil liability cases (environmental liability included), the person who suffered damages could address either the court of the defendant’s seat/residence or the court of the site where the damages occurred.

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

Environmental cases are handled under the common administrative court procedure stipulated in the APC or by subsidiary application of the Civil Procedure Code – i.e. there are no specific court rules applicable to environmental matters; incl. a number of provisions e.g. alternative competence, statute of limitations on administrative sanctions (Art. 34 AOPA).

The general rule is a two-instance judicial review, except for lawsuits for EIA/SEA decisions for approval of projects, plans and programmes of strategic importance for which the first-instance decision is final.

Within the amendments of APC from 2018, the respective norms providing for a one-instance court procedure for challenging decisions transforming the status of agricultural land for construction and other non-agricultural purposes under Art. 20a, 3, 24a, 1 and 38, 1 of the Protection of Agricultural Lands Act, as well as decisions aimed – in the case of lack of the proprietor’s consent - at providing the respective rights empowering the land access of the operator for prospecting, exploring or extracting minerals according to Art. 75 of the Underground Natural Resources Act. The Constitutional court rejected the request to rule on the non-conformity of the adopted provisions of the APC as a restriction of the right to justice[15].

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.

The general rule in the APC, applicable also to environmental laws, is that administrative acts may be contested before the court in respect of the legal conformity of the acts. Administrative acts may be contested on the grounds of lack of competence; non-compliance with the established form; material breach of administrative procedure rules; conflict with provisions of substantive law; non-conformity with the purpose of the law.

In jurisdiction disputes, the question whether the case falls under the jurisdiction of an administrative court or another authority outside the court system may be raised during any stage of the proceedings, including ex officio by the court. (Art. 130(3) APC). The court also acts on its own motion when there is a question about the territorial jurisdiction of the court. (Art. 134(2) APC). The court shall constitute the parties, acting on its own motion. (Art. 154 APC). The
court may also act on its own motion in appointing experts and ordering inspection and certification. (Art. 171(2) APC). Acting on its own initiative or on a motion by a party, the court may correct any written errors, errors in calculations or other such obvious inaccuracies in the court decision. (Art. 175 (1) APC).

Within a cassation review, the SAC could act also on its own motion to assess the validity, admissibility and conformity of the court decision with the substantive law. (Art. 218(2) APC).

1.3. Organisation of justice at administrative and judicial level

1) System of the administrative procedure (ministries and/or specific state authorities)
The general rules for administrative procedures at national, regional and local level are regulated in the Administrative Procedure Code. A proceeding for the issuance of an individual administrative act shall be started at the initiative of the competent authority or at the request of an individual or an organisation and, in cases provided for in the law, by the prosecutor, the ombudsman, the superior or another state body. The special procedural rules for environmental law procedures are stipulated in the Environmental Protection Act or in the sectoral laws with relevance to environment (e.g. the Water Act). The main competent authorities issuing decisions in environmental procedures are the Minister of Environment and Water, the Directors of Regional Inspectorate of Environment and Waters and the Executive Director of the Executive Environmental Agency, the directors of the basin directorates, the mayors of the municipalities. The regional governors ensure the implementation of the state policy for environmental protection in the territory of the region and have other duties listed in Art. 15 of the EPA.

2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?
An administrative act may be contested before the court even if the possibility for administrative contestation of said act has not been exhausted, unless otherwise provided for in this APC or in a special law.

In administrative matters, two-instance court procedures are in place. Lawsuits for EIA/SEA decisions for approval of projects, plans and programmes of strategic importance for which the first-instance decision is final. See p.1.2.3. for other provisions on one-instance court procedures.

According to the data of the EU Justice Scoreboard on the indicator time needed to resolve administrative cases at all court instances, Bulgaria was second (with the shortest time) after Sweden in 2017, and first in 2018.

A complainant has the right to appeal an administrative decision before the administrative court and then the first-instance court decision before the SAC via a cassation appeal. In civil procedure, a claimant has a procedural right to address two instances, namely a trial instance and an appellate instance, and, in some cases, a third cassation instance, and, against an appellate court decision in conflict with a decision of the Court of Justice of the European Union[16]. The grounds for cassation, specified in Art. 209 of the APC, are defects of the first-instance decision concerning the requirements for validity, admissibility and correctness of the judicial act, respectively, namely it is invalid, inadmissible, or incorrect because of a breach of the material law, substantial breach of the court procedural rules or insufficiency.

The duration of the lawsuit depends on the complexity of the case, e.g. the evidence collection, however recently the SAC in particular was able to deliver a decision per court instance within 6 months or less from filing of the case. The EPA sets special timelines for the courts to hear and deliver a decision for lawsuits on the EIA/SEA decisions for projects, plans and programmes of strategic national importance. Such court cases should be heard within 6 months and a decision pronounced with 1 month after the case is completed.

In the realisation of projects which are designated as sites of national significance by an act of the Council of Ministers and are also sites of strategic importance, judicial control over the administrative decisions in the SEA and EIA procedures is carried out in one court instance proceedings (Art. 88(4) and Art. 93(10) EPA). In these cases there are short deadlines for consideration of the case by the court and pronouncement of decisions –6 months and 1 month respectively. Inasmuch as these rules represent deviation from the established principle, they limit the access to justice in its fullest possible scope guaranteed by the APC and expressed by first instance and cassation court review that aim not only to review and correct the defects of the administrative decision but also of the first-instance court decision by order of the instance control exercised by the Supreme Administrative Court, which is the highest court in the administrative court proceedings with the highest authority, experience and capacity.

3) Existence of special environmental courts, main role, competence
Environmental cases are handled under the common administrative procedure – i.e. there are no specific court rules applicable to environmental matters. Specificities of judicial procedures in environmental matters could be divided into three groups with respect to standing (p.1.4), evidence collection (p.1.5.) and scope of review (p.1.8)[17].

4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)
An administrative act may be contested before the court even if the possibility for administrative contestation of said act has not been exhausted, unless otherwise provided for in the APC or in a special law. If the person has used the possibility of administrative review and is not satisfied with the outcome, it can refer the case to the court in accordance with the rules for judicial review of administrative acts. Where the act, the tacit refusal or the tacit consent have been contested according to an administrative procedure, the time begins to run from the communication that the superior administrative authority has rendered a decision and, if the authority has not pronounced it, from the latest date on which the authority should have pronounced it (Art. 149 (3) APC).

Regarding the court instances of the judicial review, the second court instance for appeals of decisions on EIA/SEA has been removed and the cases are heard and decided with a final decision by the first-instance court. This applies to SEAs/EIAs related to investment proposals, their extensions and changes defined by the Council of Ministers as national and strategic importance, as well as decisions of the Minister of Environment and Water in the case of a joint procedure between EIA and integrated permit or for approval of safety reports for upper-tier establishments under the Seveso Directive (Art. 94, para. 1, p.9 EPA). Such court cases should be heard within 6 months and a decision pronounced with 1 month after the case is completed[18].

The procedure for challenging the assessment of compatibility with the objectives of protected areas for habitat protection (Article 31 BDA) is determined alternatively depending on the applicable environmental assessment procedure. The appropriate assessment falling within the scope of the EPA could be carried out through the SEA procedure (for plans and programmes) or through the EIA procedure (for projects) under the EPA and in compliance with special provisions of the Biological Diversity Act (BDA) and Chapter Three of the Ordinance on the terms and conditions for assessing the compatibility of plans, programmes, projects and investment proposals with the subject and purpose of protection of protected areas. Alternatively, outside these cases the appropriate assessment is carried out in a separate procedure and the final act is subject to separate judicial review[19].

5) Extraordinary ways of appeal. Rules in the environmental area. Rules for introducing preliminary references
In both administrative and civil court procedures, an extraordinary remedy for reversal of court decisions exist. The Administrative Procedure Code provides for motions for reversal of effective judicial acts in administrative cases. A right to motion for reversal vests in a party to the case to which the judicial act is adverse.[20] The Prosecutor General or the Deputy Prosecutor General heading the Supreme Cassation Prosecution Office may motion for the reversal of effective judicial acts on the grounds and within the time limits applicable to the parties in the case. An act shall be reversible:
upon discovery of new circumstances or new written evidence of material relevance to the case which could not have been known to the party upon adjudication in the case;  
upon establishment, according to the duly established court procedure, of falsity of the testimony of witnesses or of expert findings on which the act is based, or of a criminal act by the party, by the representative thereof or by a member of the court panel in connection with adjudication in the case;  
where the act is based on a document which has been pronounced forged according to the duly established judicial procedure, or on an act of a court or another State institution which was subsequently revoked;  
where another effective court decision has been rendered in respect of an identical motion, between identical parties and on identical grounds and the court decision is contrary to the decision for which the reversal is motioned;  
if, consequent to the breach of the relevant rules, the party was deprived of the possibility to participate in the administrative proceeding or was not duly represented, as well as if the party was unable to appear in person or through an authorised representative by reason of an irremovable obstacle;  
if the European Court of Human Rights has found, by judgment, any violation of the Convention for the Protection of Human Rights and Fundamental Freedoms;  
when the judgment or ruling in an administrative lawsuit is null and void (128а APC).  
According to the general rule provided in the Civil Procedure Code (CPC), applicable also to administrative lawsuits, if the interpretation of a provision of the legislation of the European Union or the interpretation and validity of an act of the bodies of the European Union is of importance for the correct settlement of the lawsuit, the Bulgarian court shall make a request for preliminary ruling to the Court of Justice of the European Union (CJEU). The request shall be made by the court before which the lawsuit is pending, ex officio or upon a request of the party. The court whose decision is subject to appeal may deny the request of the party to forward a request on causative matters for interpretation of a provision or of an act. The ruling denying such a request is not subject to appeal.  
The national court, whose decision is not subject to appeal, shall always forward a request for interpretation, except where the answer to the question arises clearly and undoubtedly from a previous decision of the CJEU or the meaning and sense of the provision or of the act are clear beyond any doubt (Art. 629 (4) CPC).  
6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?  
There are no special rules for environmental cases and out-of-court solutions regarding such conflicts. As a general rule, a judicial settlement may be reached during any stage of the proceedings under the same conditions under which the settlement may be reached in the proceedings before the administrative authority. All parties to the case shall mandatorily participate in the settlement. By the ruling confirming the settlement, the court invalidates the administrative act and dismisses the case. The ruling may be appealed only by a party which did not participate in the settlement. Should any such settlement be revoked, examination of the case shall proceed. A confirmed settlement shall have the significance of an effective decision of court.[21] (Art. 178 APC)  
7) How can other actors help (ombudsperson (if applicable), public prosecutor), accessible link to the sites?  
The role of the Ombudsperson of the Republic of Bulgaria includes facilitating conflicts in relations between the administration and affected persons in cases of wrongful conduct, but s/he cannot overturn an administrative decision. In cases provided for in law, the Ombudsperson could initiate a proceeding for the issuance of an individual administrative act. S/he could put forward suggestions and recommendations for removing the causes and conditions for breaches of rights and freedoms, incl. by initiating proposals for draft laws.  
According to Art. 150 (3) of the Bulgarian Constitution, the Ombudsperson may approach the Constitutional Court with a request to declare an unconstitutional a law which infringes human rights and freedoms.  
The Ombudsperson can ask the authorities[22], listed under Article 150 of the Constitution, to approach the Constitutional Court if s/he is of the opinion that this 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 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. The Ombudsperson has a right to motion for reversal of effective administrative acts pursuant to Art. 99-100 of the APC, as well as at the phase of their execution. The motion concerns any effective individual or general administrative act which has not been contested before the court, and it may be revoked or modified by the immediately superior administrative authority and, if the act was not subject to administrative contestation, by the authority which issued the act. The grounds for reversal are that some of the requirements for legal conformity of the act have been materially breached. The local ombudspersons, wherever such are elected, are competent with the statutes approved by the municipal councils acting under local government autonomy. A request for assistance can be submitted to the ombudsperson by individuals and NGOs working in the public interest in the field of human rights via an online form available at the [26] website.  
The Role of the Public (State) prosecutors:  
The public (state) prosecutor[23] as an institution ensures that legality is observed by leading the investigation and supervising the legality thereof; by conducting investigations; by bringing charges against suspected criminals and supporting the charges in indictable cases, incl. for environmental crimes. It can take part in administrative suits related to the environment by challenging administrative acts and/or be a controlling party in such suits on behalf of the state. The prosecutor can, in cases provided for by the law, initiate proceedings for the issuing of an individual administrative act.  
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)?  
The Bulgarian legislation grants standing to interested persons (ENGOs and physical persons) to bring to court both measures of a general nature such as protected areas management plans and normative administrative acts – secondary legislation issued by the executive authorities. §1, p. 24 of the Additional Provisions of the Environmental Protection Act states that “public” is defined as one or more natural or legal persons, and associations, organisations or groups thereof established in accordance with national legislation. §1, p. 25 of the EPA further defines “the public concerned” as the public referred to in §1, p. 24 who are affected or likely to be affected by, or which has an interest in, the procedures for approval of plans, programmes and development proposals, and in the decision-making process on the granting or updating of permits according to the respective environmental procedure or in the conditions set in the permits, including non-governmental organisations promoting environmental protection which are established in accordance with national legislation[24].  
The national courts interpret differently “the public concerned” pursuant to Art. 2, p.5 of the Aarhus Convention, transposed by §§ 24 and 25 of the Additional Provisions of the Environmental Protection Act. At the moment, the prevailing case-law on the matter is that only ENGOs registered with public interest have a right of appeal in environmental cases. Conversely, other judges[25] have held that the right of appeal applies to all ENGOs, whether registered with private or public interest[26]. To grant standing to the interested public within the scope of Art. 9(2) of the Aarhus Convention, the court carries out an admissibility test based on two groups of criteria, namely arising from the special composition of the provision in connection with the legal definition of par. 1, items 24 and 25 of the Additional Provisions of the EPA regarding the legal personality and legal interest of the complainant, as well as the suitability of the challenged act as a subject of appeal. In order to assess the material relevance of the act for resolving issues of environmental protection, the court shall examine the relevance to the activities included in Annex I to the Convention and the national legislation under item 20 of Annex I; as well as, on a general
basis according to Art. 159, item 1 of the APC, the content of the administrative act as an internal or intermediate act, which is not subject to appeal as it has no dispositional consequences in relation to the legal sphere of citizens and legal entities but is aimed only at hierarchically subordinated structures or the preparation of another final act. For example, standing was granted to an ENGO to challenge an act on coordination of an investment project, a negative screening decision not to carry out appropriate assessment under Art. 31(19) of the BDA (for a Natura 2000 protected area), but the court did not grant the right to legal review of a municipal programme for improving the quality of the ambient air under Art. 27 of the Clean Ambient Air Act due to the qualification for lack of authoritative order representing an individual administrative act. Despite examples of contradictory court practice, it is evolving with reference to the achievements in implementing Directive 2003/35/EU, as well as the Compliance Committee to the Aarhus Convention.

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?
No, there are not. Only regarding the court instances of the judicial review, the second court instance for appeals of decisions on EIA/SEA has been removed and the cases are heard and decided with a final decision by the first-instance court. This applies to SEAs/EIAs related to investment proposals, their extensions and changes defined by the Council of Ministers as projects of national and strategic importance, as well as in cases of integration of EIA procedure with at least one of the procedures for granting of integrated permits or approval of safety reports for upper-tier establishments under the Seveso Directive (Art. 94, para.1, p. 9 EPA). Such court cases should be heard within 6 months and a decision pronounced with 1 month after the case is completed. The different sectoral laws[27] for the APC in order to provide the procedure that is applicable for appealing administrative acts under the specific authorisation. The uniform laws[28] for assessing legal conformity of the act are consistent with the diversity of the corresponding requirements, both substantive and procedural, and the nature as an individual or general administrative act of the specific authorisation. Such explicit referring rules are inter alia Art. 31 of the BDA for the decision on appropriate assessment of plans, programmes and development proposals, or modifications or extensions thereof; Art. 71, 77 of the Water Act for the permit or the decision on refusal of the authority competent for water use-related permissions; Art. 77 of the Waste Management Act for the issued permit, the decision on amending and/or supplementing, the refusal to issue, amend and/or supplement the permit, its withdrawal, as well as the decision to revoke a designation of a waste treatment site.[28]

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.)
See p.1 above on the standing rules for NGOs and individuals: §1, p. 24 and 25 of the Additional Provisions of the Environmental Protection Act. The Bulgarian courts have ruled on some occasions on the admissibility of an appeal by ENGOs based on their self-identification and registration with public or private interest. In the case of the appeal of the integrated permit of a thermal power plant[29], the first-instance administrative court denied the legal standing of ENGOs registered with private interest. The Supreme Administrative Court repealed the decision of the district court by stating that the parameters of the legal interest to appeal the administrative act are defined by the subject of the act which establishes obligations or affects the rights and legal interests of the appealing citizen or organisation, and these parameters are decisive for admissibility of the legal review of legality of the act. However, more recent case-law of the SAC shows the opposite tendency, and the court does not grant standing to ENGOs with private interest. In the case of the appeal of the decision of the Energy and Water Regulatory Commission (EWRC) to extend the duration of the licence for electric power generation, it was sought to establish a practice of allowing ENGOs in litigations on the Energy Act so that they could appeal acts of the EWRC. In this case, the court denied the right of appeal to the ENGOs.

The right to standing is recognised as a public subjective right of concerned citizens and organizations to contest the administrative act depending on their legal interest, i.e. in a procedure to defend rights, freedoms or legitimate interests that have been breached or threatened by the act, or to oppose obligations that have been imposed. The concerned persons with standing are defined through rights or legitimate interests, which may be personal or environmentally related. The second alternative, in conformity with Art. 9, par. 2 of the Aarhus Convention and Art. 147 of the APC, has been accepted in court practice as a criterion for considering, along with other relevant ones[30], whether to grant standing to the ENGO in challenging SEA/EIA/assessment/integrated permit decisions[31],[32]. More specifically, the question of whether the general development plan[33] is an act within the category of environmentally significant decisions in the relevant context has been prevalently resolved by denying the standing capacity of the ENGO, in addition to the decisive argument of the exclusion of said act from court control by virtue of Art. 215, (6) SDA.[34]

4) What are the rules for translation and interpretation if foreign parties are involved?
Persons who have no command of the Bulgarian language may use their native language or another language which they specify. In such cases, an interpreter shall be appointed. Any documents presented in a foreign language must be accompanied by an accurate translation into the Bulgarian language. If the competent authority is unable itself to verify the accuracy of the translation, the said authority shall appoint a translator for the account of the party concerned, unless a law or an international treaty provides otherwise. The costs of translation shall be borne by the person who has no command of the Bulgarian language if the administrative proceeding was initiated at the request thereof, unless a law or an international treaty provides otherwise (Art. 14(4) APC).

1.5. Evidence and experts in the procedure

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?
The judicial authorities cannot initiate a case ex officio – this applies to both administrative and civil matters. However, if somebody else starts a procedure, and especially if the procedure is an administrative one, courts can proceed ex officio in a number of situations. In administrative procedures, courts can initiate collection of evidence. As to evidence collection, courts usually prefer to hear expert opinions, and witnesses are allowed to give evidence in court. The scope of review of administrative decisions and of first-instance decisions is not limited by what parties have claimed. In civil procedure law, courts are given less prerogatives to act ex officio.
The administrative court is obliged to carry out a full review of the legality of the contested administrative act without being constrained by the grounds for review put forward with the complaint. The procedural activity of the court to establish the facts relevant to the case follows the principles and specific requirements of the APC (Art. 39 and Art. 171). Mainly, the court considers the evidence collected in the administrative procedure before the competent administrative authority (the administrative file); however, having in mind the burden of proof, the parties to the case are free to establish the facts and circumstances to their benefit. The administrative authority and the persons for whom the contested administrative act is favourable must establish the existence of grounds of fact specified in the act and the fulfilment of the legal requirements for its issuance. Where a refusal to issue an administrative act is contested, the contestant must establish that the conditions for the issuance of the act have existed. The court should instruct the parties about the distribution of the burden of proof. In line with the ex officio principle in the proceedings, the court shall indicate to the parties that for some circumstances relevant for resolving the case, they do not provide evidence (Art. 9(3) APC), and on its own initiative can appoint court experts and order inspection and certification. The court may interrogate as witnesses persons who have given evidence before an administrative authority and expert witnesses only if it finds it necessary to hear them immediately. In the detailed regulation of the process of presenting evidence, the general rules of the Civil Procedure Code (CPC) apply. Such rules are the assessment by the court of all the evidence in the case and of the arguments of the parties based on the court’s internal conviction (Art. 12 CPC) and the law, the rules about the use of written evidence, about witness statements and the opinions of the experts presented to the court.
2) Can one introduce new evidence?
The parties can, on their own initiative, make evidence claims to clarify facts and circumstances that will be beneficial for them in the proceedings, as long as they are admissible means for collecting evidence pursuant to the Civil Procedure Code and the stage of the court procedure. The court delivers a ruling on the evidence claim made after giving the parties the opportunity to make a statement. The court hearing of the case in administrative cases has as its purpose not so much to collect new evidence but to review the legality of the decision/administrative act of the administrative authority. In this regard, new evidence to prove legally valid facts and circumstances that have occurred even before the issuing of the decision/act are admissible (Art. 171 (2), 142 (2) APC). When an administrative decision is challenged before court, a party can request evidence collection of facts. There is no limitation on the facts that can be established – irrespective of whether these facts occurred before or after the decision was taken. The facts should be relevant to the subject of the court review. If the issue is not submitted to the discretion of the administrative body, after declaring null or revoking the administrative act the court decides the case on its merits (Art. 173(1) APC).

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts.
One or more experts appointed by the court could be involved to provide expert opinion in the procedure. Their involvement could be initiated by the parties or on the initiative of the court if, to ascertain facts, special knowledge is required that the court does not possess. The request for admission of an expert opinion specifies in which field special knowledge is required, the subject and task of the expertise, the materials that are provided to the expert(s), name, education and specialty of the expert(s). Expert opinion about legal questions is not admissible, as this would violate the competence of the court. Approval of lists of experts qualified in accordance with defined criteria for the territory of the respective court district is regulated by the Judiciary System Act and an Orinance of the Minister of Justice. The lists are promulgated in the State Gazette and are publicly accessible, incl. at the website of the Ministry of Justice. If necessary, the court can appoint an expert listed in another court district or not listed in any list.

3.1) Is the expert opinion binding on judges, is there a level of discretion?
The expert’s opinion is evidence and the court is not bound to accept the expert’s conclusion presented with the opinion, but considers it together with all other evidence on the case. The case-law practice has accepted that an expert opinion presented in another court case cannot be used.

3.2) Rules for experts being called upon by the court
An expert may be appointed ex officio from the list of approved experts for the respective court if, to clarify certain issues arising in the case, special knowledge in the field of science, art, crafts etc. needs to be obtained. The expert should be independent and each of the parties may request removal of the expert if there are grounds for presuming non-independence. The expert is obliged to immediately inform the court of all circumstances which may be grounds for removal. They are obliged to take a stand on the allegations in the request for its removal (Art 198 CPC). The remuneration of experts is determined by the court in view of the work performed and the expenses incurred.

The conclusions of the expert opinion of the expert(s) appointed by the court is admissible as evidence regardless of whether this has been at the initiative of the parties or the court.

3.3) Rules for experts called upon by the parties
At the request of the party, an expert in a particular field of expertise may be appointed from the list of approved experts for the respective court. If necessary, an expert who is not included in the respective list may also be appointed as an expert. The expert is appointed by the court, but each party can object to the appointment if there are doubts about their independence. The conclusions of the expert opinion of the expert(s) appointed by the court is admissible as evidence if it is made at the initiative of the parties. However, expert opinion obtained privately by the parties outside the court proceedings is not admissible evidence.

3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?
When the court allows expert opinion and assigns experts appointed at the request of the parties or ex-officio, it determines an initial deposit, as well as the proportions of it to be paid by each party, and the timing for payment. Upon accepting expert opinion, the court rules on the final deposit to be paid in and the remaining amounts to be paid by the parties. If the timing for payment is not complied with, with the decision on the case the court adjudicates on the parties to pay it in. Expert fees are paid out from the sum deposited by the party to the proceedings or from the budget of the authority which has appointed the expert(s). The amount of the fee (hourly fee of 3% of the minimal wage at the time of appointment), the manner of calculating the time needed for the expertise, as well as the additional costs related to completion of the assigned task by the expert(s) are regulated by a regulation of the Minister of Justice pursuant to Art. 403 (1) of the Judiciary System Act (Order No 2/20.06.2015 on the registration, qualification and remuneration of court experts).

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
There is no specialisation of environmental lawyers or special qualification required to represent clients in environmental cases in the administrative courts. The general competence requirements apply - to be admitted to the bar and to be a member of the Bar Association or a judicial consultant to the authorities/party to the case. Over the years, some lawyers have established reputation and experience as environmental lawyers, mostly defending cases of citizens and ENGOs against decisions on EIA, SEA or other authorisation of developments or approval of strategic documents.

1.1 Existence or not of pro bono assistance
There is no structured approach to the provision of pro bono assistance, and there appears to be an overall lack of awareness of pro bono services both among practitioners and among individuals who need such services according to an analysis which states that there are four areas of pro bono legal assistance: NGOs offering pro bono services; pro bono law clinics at higher education institutions; private practitioners offering pro bono services as part of their general practice; and practitioners offering free legal representation to friends and family. Most pro bono services are provided on an ad-hoc basis. The law firms could decide to allocate part of the time of their lawyers for pro bono legal services, however that is not regulated by the law but based on their good practice.

2.1 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.)?
The pro bono assistance is not structured or regulated by the law and is mostly ad hoc. If pro bono assistance is offered by NGOs, law firms, individual practitioners or law clinics (see above), they have their own rules of procedure for providing the assistance.

1.3 Who should be addressed by the applicant for pro bono assistance?
If pro bono assistance is offered by NGOs, law firms, individual practitioners or law clinics, they will have their own rules for application for assistance. The National Legal Aid Bureau, the bar associations or the national legal aid hotline. The National Register of Legal Aid contains a list of attorneys providing legal services to clients. Any attorney who wants to be on the list must file an application, approved by the local Bar Association Council, to be entered in the register. The register is published on the internet. The NLAB is exclusively competent for the decision on applications for legal assistance in the pre-trial stage.
2) Expert registries or publicly available websites of bars or registries that include the contact details of experts
3) Register of bar associations

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible
Some of the active ENGOs include:

3) WWF Bulgaria
3) Wildlife Society Balkani
3) Association of Parks in Bulgaria
3) Za Zemiata, with a special programme on Access to Justice
3) For the Nature Coalition (not registered as a legal entity)
4) List of International NGOs, who are active in the Member State
3) Greenpeace (not formally registered as a legal entity)
3) WWF Bulgaria
3) Friends of the Earth and CEE Bankwatch Network

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 administrative review appeal or protest (by the prosecutor) against an administrative (environmental) decision can be lodged in writing through the agency of the administrative authority whose act is contested within 14 days after communication of the act to the persons and organisations concerned. The administrative appeal is a procedural opportunity for challenging both legality and expediency, i.e. application of discretion by the administrative authority, of an act.

A tacit refusal may be contested within 1 month after expiry of the time limit within which the administrative authority was obligated to pronounce. Where the persons concerned have not been notified of the initiation of the proceedings, the time limit for contesting shall be 2 months from expiry of the time limit for ruling (Art. 84(2) APC).
The procedure set out in the APC is also applicable for appealing decisions of the competent body with regard to the plans, programmes and development proposals with the subject and purpose of preservation of the respective protected zone. An amendment of Art. 31, (19, 20) of the BDA from 2017 provides for a one-instance final court decision on appeals of acts related to sites designated as sites of strategic national importance by an act of the Council of Ministers.

2) Time limit to deliver decision by an administrative organ
The general rule is that the administrative act (decision) is issued within 14 days after the date of initiation of the proceedings. Administrative acts which declare or state already existing rights or obligations are issued within 7 days after the date of initiation of the proceedings if the act is of significance for recognising, exercising or extinguishing rights and obligations. The same time limit of 7 days also applies to acts related to issuing of documents of significance for recognising, exercising or extinguishing rights and obligations as well as refusal to issue such documents. However, this time limit of 7 days can be extended to 14 days if the issuance of an act includes an expert examination or where the personal participation of the person concerned is required for the performance of the expert examination.

Any case files which may be reviewed on the basis of evidence presented together with the request or proposal to initiate proceedings, or presented by another administrative authority which has them available, or on the basis of well-known facts, officially known facts or legal presumptions, shall be resolved without delay and no later than seven days (Art.57(4) APC). Information which another authority concerned has available on paper shall be provided within 3 days upon request, and the time limit for pronouncement shall start from the date of receipt of the information. Automatic notification within the meaning of the Electronic Governance Act is made immediately.

Where it is necessary to collect evidence on material circumstances or to allow other individuals and organisations to defend themselves, the act shall be issued within 1 month after initiation of the proceedings. Where the authority is collective, the question of the issuance of the act shall be addressed not later than at the first meeting after the expiry of the time limits referred to above. When another authority has to be approached for consent or opinion, the time limit for the issuance of the act shall be presumed to have been extended accordingly, but this extension may not exceed 14 days. In all cases of extension of the time limit, the administrative authority shall notify the applicant immediately.

The above-mentioned time limits do not include the preparatory activities in the procedures for issuing of the administrative act, e.g. in the case of environmental assessments (e.g. preparing the EIA or SEA report, carrying out public consultation/hearings). There are special time limits for issuing administrative decisions pursuant to the EPA. For example, the motivated screening SEA decision is issued within 30 days after the submitting of a request by the developer of the plan or programme, depending on the specific characteristics and their complexity. The competent authority issues an EIA decision within 45 days after the public hearing, accounting for its results.

3) Is it possible to challenge the first level administrative decision directly before court?
An administrative act may be contested before the court even if the possibility for administrative challenge of the administrative act has not been exhausted, unless otherwise provided for in the APC or in a special law.

4) Is there a deadline set for the national court to deliver its judgment?
There is no stipulated deadline for the national courts to hear a case. The general rule according to the Civil Procedure Act (Art. 13) and the APC (Art. 127 (1)) is that the court hears and rules on the case within a reasonable time limit. The APC stipulates a limit of 1 month after the hearing at which the examination of the case is completed for the court to render a decision. However, as mentioned in 1.7.3., the EPA stipulates special timelines for the courts to hear and deliver a decision in lawsuits on EIA/SEA decisions for projects, plans and programmes of strategic national importance or in the case of joint procedures where the Minister of Environment and Water issues an EIA decision and integrated permit/safety report (under the Seveso Directive). Such court cases should be heard within 6 months and a decision pronounced with 1 month after the case is completed.

5) Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)
Within administrative procedures
The administrative authority affords the parties an opportunity to express an opinion on the evidence collected within the administrative procedure, as well as on the requests submitted, setting a time limit of 7 days.
The ruling whereby anticipatory enforcement is admitted or refused shall be appealable through the agency of the administrative authority before the court within 3 days after communication, regardless of whether the administrative act has been contested.
The administrative act, or the refusal to issue an act, shall be communicated following the procedure of notification of the APC within 3 days after its issuance to all persons concerned, including those who did not participate in the proceedings.
A tacit refusal may be contested within 1 month after expiry of the time limit within which the administrative authority is obligated to pronounce. Where the persons concerned have not been notified about the start of the proceedings, the time limit for contestation is 2 months after expiry of the time for pronouncing the act. The conditions and procedure for certifying and contesting the tacit consent shall be regulated in special laws.

An appeal or protest within the administrative appeal procedure shall be lodged in writing through the agency of the administrative authority whose act is contested within 14 days after communication of the act to the persons and organisations concerned.

If an appeal or protest does not satisfy the formal requirements for content and required annexes, a notification is dispatched to the submitters on resolving the non-conformities within 7 days after receipt of the communication. Where the submitter's address is not given, notification shall be effected by means of the posting of a notice at the place designated for this purpose in the building of the administrative authority within 7 days.

In cases where the appeal was submitted after expiry of the time limit, the appellant may request resumption of the time limit within 7 days after communication of the act on termination of the proceedings if non-compliance with the said time limit is due to special unforeseen circumstances.

Within 7 days or, where the administrative authority is collective, within 14 days after receipt of the appeal or protest, the first-instance administrative authority may review the matter and withdraw, on its own initiative, the contested act, revoke or amend the act, or issue the relevant act, if it has refused to issue the act, and notify the parties concerned of this.

Within 2 weeks after receipt of the case file, where single-person, or within 1 month, where collective, the superior authority competent to consider the appeal or protest shall render a reasoned decision.

**Within the judicial procedures**

Administrative acts shall be contestable within 14 days after communication thereof. A tacit refusal or tacit consent is contestable within 1 month after expiry of the time limit within which the administrative authority is obligated to pronounce the act.

Where the act or tacit refusal has been contested according to an administrative review procedure, the relevant time limit begins to run from the communication that the superior administrative authority has rendered a decision and, if the authority has not pronounced the act, from the latest date on which it should have pronounced the act.

Where a prosecutor has not participated in the administrative proceedings, the prosecutor may contest the act within 1 month after its issuance. There is no time limit for the contestability of administrative acts by a motion to declare nullity.

Within 14 days after receipt of the transcript of the appeal/protest, each of the parties may present a written response and provide evidence.

The ruling on the motion of anticipatory enforcement can be challenged within 3 days after communication thereof.

The minutes of a court public hearing are published on the website of the court within 14 days after the hearing.

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

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

The principle is that an appeal challenging an administrative decision has suspensive effect unless an anticipatory enforcement has been allowed by the administrative authority or by law. After its introduction in 1991, the principle of suspensive effect of the appeal of an individual administrative act has been eroded by the institute of anticipatory enforcement. Pursuant to the special provisions for such enforcement in a number of laws for the acts regulated by them and according to the powers under Art. 60 of the APC, the deciding administrative authority can admit, with a reasoned decision, anticipatory enforcement of the act (the decision being part of the act or a special order). The reasons could be protecting the life or health of individuals, protecting particularly important state or public interests, preventing a risk of the frustration or material impediment of the enforcement of the act, or where delay in enforcement may lead to a significant or difficult to repair damage.

The administrative act shall not be enforced prior to expiry of the time limits for its contestation or, where an appeal or protest has been lodged, until resolution of the dispute by the relevant authority. This rule shall not apply if all parties concerned request in writing an anticipatory enforcement of the act or if an anticipatory enforcement of the act is admitted by a law or by an order under Article 60 of the APC. The superior administrative authority may stay the anticipatory enforcement, allowed by order, upon the request of the contestant if this is required in the public interest or would inflict an irreparable detriment on the person concerned. In this case, the suspensive effect of the appeal will be restored.

Allowing and staying the anticipatory enforcement are defined by the criteria in Art. 60(1) and Art 90 (3) of the APC, the main criterion being significant or irreparable damages following delay in enforcing the act or irreparable damages from its anticipatory enforcement.

The defence against preliminary enforcement may be provided by means of appeal in a separate legal control procedure independently from appealing the administrative act itself. The order by which the preliminary execution is admitted or refused may be appealed through the administrative body before the court within 3 days after its announcement, regardless of whether the administrative act has been appealed. It shall not stop the admitted preliminary execution, but the court may stop it till its final decision. The ruling of the court is still subject to appeal according to Art. 60, (8) of the APC. Otherwise, the preliminary execution may be stopped within the main procedure under the conditions of Art. 166 of the APC, i.e. if it may cause to the appellant significant or hard-to-repair damage. The execution may be stopped only on the grounds of new circumstances.

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

Suspension of enforcement of the administrative act, where it includes an order for anticipatory enforcement, or admission of anticipatory enforcement are both injunctive relief measures envisaged in the administrative process explicitly regulated in the APC. The provision of Art. 60 of the APC regulates the possibility for inclusion in the administrative act or in a separate act issued after its issuance of an order for its anticipatory enforcement without explicit indication of the administrative phase (Art. 60, para. 3; Art. 90, para. 2, p. 2 APC).

In order to allow anticipatory enforcement, the administrative body should duly assess and reason its decision based on the following criteria: the life or health of individuals, protecting particularly important state or public interests, preventing a risk of the frustration or material impediment of enforcement of the act, or where delay in enforcement may lead to a significant or difficult to repair damage, or at the request of some of the parties in protection of a particularly important interest thereof. In the latter case, the administrative authority requires an appropriate guarantee. All parties concerned can also request in writing an anticipatory enforcement of the act. On the request of the appellant, the higher administrative body can stay the preliminary execution admitted by an order (not by a law provision) if it not been necessitated by public interest or will cause irreparable damage to the person concerned (Art. 90 APC).
The initial request for admission of anticipatory enforcement, whether in the course of the administrative procedure or after the act is issued, is not conditional on compliance with a certain procedural time limit. Art. 60(4) of the APC explicitly provides that a repeat request for anticipatory enforcement by a party can be made solely on the basis of new circumstances.

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

The principle of suspensive effect of the appeal applies except in cases of anticipatory enforcement of the act. See 1.7.2. for anticipatory enforcement granted by the administrative authority and the reasoning (criteria) for such a decision. Beside cases of immediate enforcement provided in special laws[36], the enforcement is unconditional, including when the preliminary enforcement of the administrative act is allowed by law, which explicitly excludes the judicial review on this issue (Art. 166, para. 4 APC).

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

Pursuant to Art. 166, para 1 of the APC filing a complaint or protest with the court has suspensive effect (suspends the execution of the act). However, the administrative authority that issues the act can order the anticipatory enforcement of it, where this is required to ensure the life or health of individuals, to protect particularly important state or public interests, to prevent a risk of the frustration or material impediment of the enforcement of the act, or where delay in enforcement may lead to a significant or irreparable detriment, or at the request of some of the parties in protection of their particularly important interest.

In the latter case, the administrative authority shall require a relevant guarantee.

On the other hand, the court may also allow anticipatory enforcement of the act under the conditions of Art. 167 of the APC. At any stage of the proceedings, the court, at a request of a party, may admit anticipatory enforcement of the administrative act under the same terms under which the enforcement would be admitted by the administrative authority. When such enforcement could inflict significant or difficult to repair damage, the court may admit it subject to the condition of payment of a security deposit at an amount set by the court. A second motion for such enforcement may be submitted to the court solely on the basis of new circumstances.

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?

When the administrative authority has granted by order anticipatory enforcement of the act (Art. 60(1) APC), the court may stay it at the request of the appealing party or of a statutorily constituted person affected by the administrative act. The reason for the suspension is the possibility of significant or difficult to repair damage (Art. 166(2) APC). The party must present evidence of the occurrence of property damage or damage from the violation of non-material rights, as well as its possible extent.

Suspension of the enforcement of acts for which the law has allowed anticipatory enforcement is admissible at any stage of the proceedings up to entry into effect of the decision. Acting on a motion by the contestant, the court may stay the anticipatory enforcement admitted by an effective order of the authority which has issued the act. The enforcement may be stayed solely on the basis of new circumstances and insofar as the legal review of the administrative act is not explicitly excluded from the special law.

Financial guarantee is paid in the contrary case – when the court, at a request of a party, admits anticipatory enforcement of the administrative act. When such enforcement could inflict significant or irreparable damage, the court may admit it subject to the condition of payment of a security deposit at an amount set by the court. (Art. 167 APC)

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.

The APC promotes as a principle access to justice, including no financial barriers (Art. 12), and stipulates that no stamp duties are collected and no costs are paid for any proceedings, except in the special cases provided for in the APC or in another law, as well as in the cases of judicial appeal against administrative acts and the bringing of a legal action under the APC.

In the Tariff for State Taxes, the tax for filing a cassation appeal against an administrative act by NGOs or individuals is 10 BGN (about 5 EUR[37]). However, the 2019 amendments to the APC significantly increased the tax for the cassation appeal from 5 BGN to 70 BGN for individuals, sole traders, state and municipal authorities and other persons with public functions or offering public services, and 370 BGN for organisations. The tax is not paid for the filing of a protest by the prosecutor or by individuals for whom it is acknowledged by the court or another authority (e.g. the chairman of the Supreme Administrative Court[38]) that they do not possess the means to pay. When a material interest could be defined in the administrative court proceedings, the state tax is proportional and amounts to 0.8% of the material interest (value for) the party, but not more than 1,700 BGN, and in the event that the interest in the case is above 10,000,000 BNG the tax is 4,500 BGN.[39] Another part of the costs in judicial proceedings is the attorney’s fees, the minimum for which is defined in Ordinance Nr 1 on the Minimum Amounts of Attorneys’ Fees (e.g. for procedural representation, defence and assistance in administrative cases without a specific material interest, except for the special cases in para. 2, no less than 500 BGN, (Art.8(3)).

Where the court revokes the appealed administrative act or refusal to issue an administrative act, the stamp duties, court costs and fee for one lawyer, if the appellant has retained a lawyer, are reimbursed from the budget of the authority which issued the revoked act or refusal. The appellant is entitled to the same awarded costs upon dismissal of the case by reason of a withdrawal of the contested administrative act.

Where the court rejects the contestation or the appellant withdraws the appeal, the party for which the administrative act is favourable is entitled to be awarded costs. The appellant shall pay all costs incurred in litigation, including the minimum fee for one lawyer, fixed according to the ordinance to the Bar Act on minimum lawyers’ fees, if the other party has hired a lawyer, or, if the administrative authority has been represented by its staff legal adviser, remuneration is awarded in the amount determined by the court (Art. 78(8) CPC).

Where the court allows expertise and assigns experts appointed at the request of the parties or ex officio, it determines an initial deposit, as well as the proportions to be paid by each party, and the timing for payment. Upon accepting the expert opinion, the court rules on the final deposit to be paid in and the remaining amounts to be paid by the parties.

The expert fees are paid out from the deposit or from the budget of the authority which has appointed the experts. The amount of the fee, the manner of payment among the parties, and the timing for payment. Upon accepting the expert opinion, the court rules on the final deposit to be paid in and the remaining amounts to be paid by the parties.

The amount of the fee, the manner of calculating the time needed for the expertise, as well as the additional costs related to completion of the assigned task by the experts are regulated by an Ordinance of the Minister of Justice pursuant to Art. 403 (1) of the Judiciary System Act (Ordinance № 2/29.06.2015 on the registration, qualification and remuneration of court experts).

The fee for claims by the affected parties 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.

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

During any stage of the proceedings up to entry into effect of the ruling, acting on a motion by the contestant, the court may stay the anticipatory enforcement admitted by the authority under Article 60(1) if the enforcement could inflict a significant or difficult to repair damage on the contestant. The enforcement may be stayed solely on the basis of new circumstances. The motion referred to in paragraph (2) shall be examined in camera. The court shall immediately render a ruling. No deposit is required in the case of staying the enforcement (Art. 166 APC).
Conversely, at any stage of the proceedings the court, at the request of a party, may admit anticipatory enforcement of the administrative act under the same terms under which the enforcement would be admitted by the administrative authority. When such an enforcement could inflict significant or irreparable damage, the court may admit it subject to the condition of payment of a security deposit at an amount set by the court (Art. 167(1-2) APC) (see 1.7.2.5 and 1.7.2.6).

3) Is there legal aid available for natural persons?

Pro bono assistance is regulated by the Legal Aid Act (in force from 01.01.2006 with amendments), which aim is to guarantee equal access to justice for all persons in criminal, civil and administrative cases before all court instances by ensuring and providing effective legal aid. Legal aid funds are provided from the state budget. Legal aid is organised by the National Legal Aid Bureau (NLAB) and by the bar association councils. The aid is provided for consultations for reaching an out-of-the court agreement before the start of the judicial proceedings or for submitting a case to the court, for drafting documents necessary for submitting a case and representation in court. The aid is provided e.g. to persons and families who are eligible for receiving social aid monthly allowances. The legal aid system covers cases where a party to an administrative case does not possess the financial means to pay the lawyer’s fee, wants to have one, and it is in interest of justice. Legal aid is provided in cases where, based on evidence issued by the competent authorities, the court or the chairperson of the NLAB decides that the party lacks the means to pay the lawyer’s fee. The court or the chairman decides on that taking into consideration the income of the person or of his/her family, his/her material assets declared, the family, health and employment status, and age. In the case of representation in the court, the court rules on the need of the party to obtain legal aid. In cases of legal aid for consultations or for drafting of documents for submission of a case, the decision is taken by the chairperson of the NLAB.

The national legal aid hotline is another means for providing legal aid to individuals under more relaxed conditions than the general rules. The hotline is administrated by the NLAB and aid is provided by lawyers listed at the NLAB.

The types of legal aid are:
- consultation with a view to reaching an agreement before commencement of the court proceedings or for filing a case, including consultation;
- preparation of documents for filing a case;
- procedural representation;
- representation upon detention.

For pp. 1 and 2, the legal aid is free of charge and is provided to those who qualify for it [40].

The legal aid system covers cases of p. 3 for court presentation where a party to an administrative case does not possess the financial means to pay the lawyer’s fee, wants to have one, and it is in interest of justice. Legal aid is provided only to individuals and not to NGOs or other persons in cases where, based on evidence issued by the competent authorities, the court or the chairperson of the National Legal Aid Bureau (NLAB) decides that the party lacks the means to pay the lawyer’s fee. The court or the chairman decides on a case-by-case basis taking into consideration the income of the person or of his/her family, his/her material assets declared, the family, health and employment status, and age. In the case of representation in the court, the court rules on the need of the party to obtain legal aid. In cases of legal aid for consultations or for drafting of documents for submission of a case, the decision is taken by the chairperson of the NLAB.

Link to the National Legal Aid Bureau website.
National legal aid hotline: (+359) 0700 18 250

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?

No, there is no state support and legal aid for associations, legal persons, or NGOs with or without legal personality. There is no access to a legal aid lawyer within the legal aid scheme. Legal aid is provided only to individuals who lack the means to pay the lawyer’s fee. However, some environmental projects, albeit rarely, provide opportunities for NGOs or informal local groups to obtain legal aid to challenge administrative decisions on approval of plans and projects with adverse environmental impacts. For example, the Biodiversity Foundation Bulgaria runs a charity programme – the Emergency Fund for Biodiversity – aimed at covering the costs for responding to hot nature protection problems and paying for lawyers, court experts, etc.

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

No, not strictly for legal aid but some EU-funded programmes or the recent Active Citizens Fund of the EEA grant programme in Bulgaria support provision of legal aid, incl. in the thematic outcome “Increased civic engagement in environmental protection/climate change”.

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

The ’loser party pays’ principle applies according to Art. 143 of the APC (Liability for Costs). Where the court revokes the appealed administrative act or refusal to issue an administrative act, the stamp duties, court costs and fee for one lawyer, if the appellant has retained a lawyer, are reimbursed from the budget of the authority which issued the revoked act or refusal. The appellant is entitled to the same awarded costs upon dismissal of the case by reason of a withdrawal of the contested administrative act. Where the court rejects the contestation or the appellant withdraws the appeal, the party to which the administrative act is favourable shall be entitled to be awarded costs. When the court rejects the contestation or the appellant withdraws the appeal, the party to which the administrative act is favourable is entitled to be awarded costs. The appellant shall pay all costs incurred in litigation, including the minimum fee for one lawyer, fixed according to the ordinance to the Bar Act on minimum lawyers’ fees, if the other party has retained a lawyer. The only grounds for a possible reduction of the lawyer’s fee is provided in the CPC, applicable also in administrative litigation. The CPC states that the court can reduce the lawyer’s fee to be paid if the amount does not correspond to the legal and factual complexity of the case, but not to less than the minimum amount determined according to Art. 36 of the Bar Act. Otherwise, no state duties and no court costs are paid on any administrative proceedings under the APC, as well as in cases of judicial appeal against administrative acts and upon bringing a legal action, unless provided for otherwise in another law.

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?

The tax for cassation appeal is not paid for filing of a protest by the prosecutor or by individuals for whom it is acknowledged by the court or another authority (e.g. the chairman of the Supreme Administrative Court) that they do not possess the means to pay.

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?

There is a link to the website of the Ministry of Environment and Water (MoEW) with general information about the Aarhus Convention and some guidance related to its provisions. Other forms of dissemination are provided mostly by NGOs on their websites or on the special project websites.

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

Mostly, any interested person can get information about access to justice from the administrative decisions or court decisions, which state the authority before which the act can be appealed and the time limit for appeal (see also 1.7.4.3. and 1.7.4.4).

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?
The Environmental Protection Act stipulates in Art. 3 that one of the principles of environmental protection is access to justice on environmental matters. The general rules of the APC apply (see 1.7.4.4). For the EIA procedure, the EPA requires that the EIA decision shall contain the authority and the deadline within which it can be appealed (Art. 99(3), item 9 EPA). The same requirement is stipulated in the SEA Ordinance referring both to the screening decision (whether to carry out an SEA) and to the final SEA decision (Art. 14(2) and Art. 26(2)). The Ordinance on appropriate assessment (according to Art. 6.3 of the Habitats Directive) also has provisions about access to justice (the authority and the timeframe for appeal) for the screening decision and the final decision (Art. 20 (3) and 28(2-3)).

In EIA procedures, within 7 days after issuing the decision on the EIA, the competent body or an official authorised by that body announces the EIA decision through the central mass media, on its website and/or in another appropriate way.

For IED installations, Art. 127 of the EPA states that decisions for granting, refusal, modification, updating or revocation of an integrated permit shall be announced by the competent authority through the mass media within 14 days after the date of issue, at the same time sending it to the states affected by which body and in what timeframe an appeal can be submitted, the respective timeframe for appeal shall be extended to 2 months.

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

The administrative authority issues or refuses to issue the act by means of a reasoned decision. Where the administrative act is issued in writing, the act also states the authority before which the act can be appealed and the timeframe for appeal (Art. 59 (2), p.7 APC). The same applies to the decision. It states whether the court decision is subject to appeal, to which court and within what period. (Art. 172(1), p.8 APC).

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

The proceedings under APC (administrative and judicial) are conducted in the Bulgarian language (Art.14). Persons who have no command of the Bulgarian language may use their native language or another language which they specify. In such cases, an interpreter is appointed. Any documents presented in a foreign language must be accompanied by an accurate translation into the Bulgarian language. If the competent authority is unable itself to verify the accuracy of the translation, the said authority shall appoint a translator for the account of the party concerned, unless a law or international treaty provides otherwise.

The costs of translation shall be borne by the person who has no command of the Bulgarian language if the administrative proceeding was initiated at his/her request, unless a law or international treaty provides otherwise.

1.8. Special procedural rules


Country-specific EIA rules related to access to justice

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

EIA screening is regulated by Art. 93 of the EPA and Chapter II of the EIA Ordinance. The Minister of Environment and Water or the Director of the RIEW is the EIA competent authority, depending on the characteristics of the project (e.g. the minister for EIA in projects with transboundary impacts). They rule on the need for EIA (screening decision) within 1 month of submission of the request by the developer of the proposal by publicly announcing the reasons for their decision. The screening decisions of the competent authorities are subject to appeal (administrative and/or judicial review) under the APC (within 14 days after the notification). The appeal can be submitted by interested parties who can prove they are directly affected by the proposal. It is established case-law that legal entities, including environmental non-governmental organisations, that meet the criteria of national law, namely registered under the relevant procedure[45], have standing in the judicial proceedings before a court (see also § 1, pp. 24-25 of the Additional Provisions of the APC).

A special provision for access to justice on the screening decision is where decisions of the first-instance court of appeal against decisions of the Minister of Environment and Water on investment proposals, their extensions or amendments which are defined as sites of national significance by an act of the Council of Ministers and which are sites of strategic importance are final. In this case, the court considers the complaints and pronounces a decision within 6 months from their submission. The court shall announce its decision within 1 month of the session in which the case was closed.

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

The EIA scoping phase is defined in Art. 95 of the EPA and Chapter III of the EIA Ordinance.

The developer of the investment proposal informs the competent authority in writing by announcing its proposal on its website, if there is one, and through the mass media or other appropriate means. The competent authority announces the proposal on its website and notifies the mayor of the affected municipality, district and town hall in writing. The mayor of the respective municipality, district and town hall announces the investment proposal on their website, if there is one, or in a publicly accessible place.

The developer has to proceed on the basis of approved terms of reference for the scope and content of the EIA for the investment proposals listed in Annex No. 1 to EPA or for those proposals for which a screening decision for those listed in Annex No. 2 to carry out an EIA has been made. It consults the EIA competent authorities, other specialised departments and affected public with regard to the scope of the EIA. There is no administrative act issued at this point to be challenged, hence no access to justice at the scoping EIA stage.

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

Screening decisions of the competent authorities are subject to appeal under the APC (within 14 days after the notification). The appeal can be submitted by interested parties who can prove they are directly affected by the proposal. It is established case-law that legal entities, including ENGOs, that meet the criteria of national law, namely registered under the relevant procedure, have standing in the judicial proceedings (see also 1.8.1.1). The scoping decision cannot be challenged, but interested parties, incl. the public and ENGOs are consulted (see 1.8.1.2).

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

An appeal to challenge the final authorisation within the EIA/appropriate assessment procedure pursuant to the EPA or BDA can be submitted by interested parties who can prove they are directly affected by the proposal. It is established case-law that legal entities, including ENGOs, that meet the criteria of national law, namely registered under the relevant procedure, have standing in the judicial proceedings before a court (see also § 1, pp. 24-25 of the Additional Provisions of the EPA).

The participation in the EIA of foreign NGOs or citizens and their standing in court procedures is not regulated by the EPA. As a general principle, the APC applies to any foreigners who reside in the Republic of Bulgaria, insofar as the Constitution and laws do not require Bulgarian citizenship. The procedure for...
EIAs of investment proposals for construction, activities and technologies in the territory of the Republic of Bulgaria expected to have significant environmental impact on the territory of other states (transboundary EIA) is regulated by Art. 98(1) of the EPA. The Minister of Environment and Water notifies the affected states at the earliest possible stage of the investment proposal, but not later than the date of notifying the domestic population. Upon consenting for participation in the EIA procedure, the minister provides the affected state with a description of the investment proposal and information about possible cross-border environmental impacts, as well as information about the character of the decision expected to be taken. This might be one avenue by which NGOs in the affected countries can submit objections or comments, if their respective state provides for such opportunity. However, there is no national case-law identifying how this would apply to granting of standing and appealing the EIA decision.\[46\]

However, the access to justice regarding the final authorisation in terms of development consent, e.g. construction permit, is limited to interested persons according to the SDA, excluding the application of the presumption of interest for ENGOs that the EPA grants them\[47\]. The appeal is against the administrative acts which, depending on the type and size of the construction, are a necessary condition for permitting the construction, together with the environmental authorizations, under the EPA and the BDA\[48\]. The issued construction permit, or refusal to issue such a permit, is notified to interested persons under the conditions and by order of the APC. Interested persons in cases of new construction, or extension or upgrading of an existing construction: the assignor, the owners and holders of limited real rights in the land property, the person who has the right to build on another's property by virtue of a special law, and, in the case of constructions in neighbourhoods and properties under Art. 22(1) SDA, the assignor and owner of the land. The individual administrative acts under SDA, refusals for their issuance and administrative acts by which they are revoked or left in effect, may be appealed to the relevant administrative court at the location of the real estate. Acts and refusals of the Minister of Regional Development and Public Works, the Minister of Defence and the Minister of the Interior are appealed to the Supreme Administrative Court. The prosecutor may file protests regarding the legality of acts subject to appeal (ENGOs and concerned citizens sending a signal to the prosecutor could be an indirect way for them to access justice by "delegating" to the prosecutor).

Complaints and protests must be filed through the authorities whose act is being appealed or protested within 14 days of its notification and, when the act is notified by promulgulation in the State Gazette, within 30 days of its promulgation. Complaints and protests against acts approving a detailed development plan or issuing a permit for construction of a site of national importance or a municipal site of primary importance must be submitted through the body that issued the act within 14 days from the promulgation of the act in the State Gazette (Art. 215 SDA). In the proceedings for amendment of a permit for use of a water body, the right to challenge on the grounds of § 1, items 24 and 25 of the EPA is generally recognised, but the organisation is not allowed due to the nature of the act - only for extension not affecting the parameters of the permit for use of a water body. For the issuance of the administrative act, in this case the proceedings under Art. 62a of the Act on Waters for disclosure of the requested change to the public and to holders of already issued water-use permits, are not applicable and therefore no right of appeal arises \[49\].

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

The general principles of the judicial control set out in the APC also apply to EIA decisions. Judicial review is carried out for the legality of the grounds under Art. 146 APC: lack of competence; non-compliance with the established form; significant violation of administrative production rules; contradiction with substantive provisions; inconsistency with the purpose of the law.

Administrative acts are also equated with the administrative services under Art. 21, para. 3 of the APC. Acts constituting tacit refusal or tacit consent within the meaning of Art. 58 of the APC could also be subject to control. For the courts acting on their own motion, the general principles apply, see 1.2.4.

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

The screening decision and the EIA final decision completing the full procedure can be challenged. Within 7 days after issuing the EIA decision, the competent authority delivers the decision to the developer and announces the decision through the central mass media, on its website and/or in another appropriate way. The competent authority ensures access to the contents of the EIA decision, including its appendices, through its website and following the provisions of the Access to Public Information Act. Interested persons can appeal the decision on EIA pursuant to the APC within 14 days after the announcement of the decision. For screening decisions, see 1.8.1.1.

7) 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).

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?

The procedural standing, and in particular the legal standing (interest) of the appellant, is not made conditional on his/her participation with objections or comments in the public hearing.

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

The principles on which the proceedings provided for in the Administrative Procedure Code are based are set out in Chapter Two "Basic Principles", including Art. 8 of the APC. All parties concerned with the outcome of the proceedings under the APC enjoy equal procedural opportunities to participate in the proceedings for the defence of rights and legitimate interests. Within the limits of operational autonomy, similar cases should be treated equally under equal conditions. The court instructs the parties that they do not provide evidence of certain circumstances relevant to adjudication in the case (Art.9 APC). Where collection of further evidence, other than such contained in the case file, is necessary for clarification of the legal dispute, the rapporteur judge instructs the relevant party on the need to collect such evidence (Art. 163 APC). The court is obligated to cooperate with the parties to rectify any errors in form and any ambiguities in the statements of the parties and to instruct them that for certain circumstances relevant to the case they do not provide evidence (Art.171 APC).

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

The principle of speed and procedural economy is essential for the administrative and judicial phases. Art. 11 of the APC provides that procedural actions shall be performed within the time limits established by the law, and within the shortest time necessary according to the specific circumstances and the purpose of the procedural action or administrative act.

Non-consultation by the administrative body within the term according to Art. 58 of the APC equates to tacit refusal, and, in cases provided for by a special law, tacit consent, which is appealable. A tacit refusal or tacit consent may be challenged within 1 month of expiry of the period within which the administrative authority is required to rule.

Administrative acts may be challenged within the prescribed time limits after their notification. In addition to disciplinary responsibility, officials responsible for failure to comply with the time frame shall also bear administrative penalties under Chapter Eighteen of APC.

The one-instance and fast (6-month) legal review of investment proposals, their extensions or amendments of projects of national significance and strategic importance, though limiting access to justice, can be partially effective in the case of a favourable court ruling for the complainant, providing timeliness and a quicker result for preventing the implementation of plans and programmes with adverse environmental impacts (see 1.8.1.1).
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?

No specific requirements for injunctive relief other than those mentioned in 1.7.2 have been laid down for challenging decisions concerning EIA. For example, at any stage of the proceedings up to entry into effect of the court decision acting on a motion by the contestant, the court may impose injunctive relief by staying the anticipatory enforcement admitted by the authority which has issued the act under Article 60(1) of the APC if the enforcement could inflict a significant or difficult to repair damage on the contestant. The enforcement may be stayed solely on the basis of new circumstances.

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

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

In the national legal order, Art.120 of the Constitution has adopted the concept of a general clause of court control over the legality of administrative acts. Access to justice on the violation of the control and control of pollution is regulated further by the APC and the special provisions of the EPA – Chapter seven “Prevention and restriction of industrial pollution”, Section II “Integrated permits”. The conditions and order for issuing integrated permits are regulated with an Ordinance of the Council of Ministers (Art. 119(1) EPA) (IP Ordinance).

The decision for granting, refusal, modification, updating or revocation of an integrated permit (IP) is announced by the competent authority for permits through the mass media within 14 days after the date of issue, at the same time sending it to the states affected by operation of the installation in case of cross-border transfer. During this timeframe, the applicant shall also be notified in writing. Interested persons can appeal the decision pursuant the APC within 14 days after its announcement (Art.127 EPA).

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?

The special grounds (special clause) for appeal are provided in Art. 127 of the EPA following the principal legal logic and provisions for appealing individual administrative acts. It states that the decisions for granting, refusal, modification, updating or revocation of an integrated permit shall be announced by the competent authority through the mass media within 14 days after the date of issue, at the same time sending it to the states affected by operation of the installation in the case of cross-border transfer, and it can be challenged pursuant to the APC within 14 days after notification.

For challenges of decisions in a joint procedure (IED and EIA) for which the Minister of Environment and Water is a competent authority, the provisions of Art. 99 of the EPA apply – within 7 days after decreeing of the decision on EIA, the competent body or an official authorised by it announces the EIA decision through the central mass media, on its website and/or in another appropriate way.

The decisions of the executive director of the EEA are subject to administrative review before the superior administrative authority, which is the Minister of Environment and Water, as well as to legal review before the administrative court without the administrative review option being exhausted.

The right to appeal is enjoyed by interested persons as well as the public concerned as per § 1, pp. 24 and 25 of the EPA, which defines “public” and “public concerned”, and procedural standing is granted to affected individuals and legal persons and their organisations incorporated in line with the national legislation, incl. ENGOs incorporated in line with the national legislation.

Concerning foreign individuals, the general principle stipulated in the APC is that it applies only to foreigners who reside in the Republic of Bulgaria or who are participants in an administrative proceeding before a Bulgarian authority outside the Republic of Bulgaria, insofar as the Constitution and laws do not require Bulgarian citizenship. However, following the requirements of the Aarhus Convention, to which Bulgaria is a party (Article 3(9)[50], there should be no discrimination and no person should be excluded from the definition on the grounds of nationality, domicile, citizenship or seat.

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

There is no express screening procedure defined in the EPA or in the Ordinance on integrated permits (IP), thus no access to justice at this stage.[51]

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

There is no strict scoping phase in the procedure beside the assessment of the formal requirements for the permit application.

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

The decision for granting, refusal, modification, updating or revocation of an integrated permit shall be announced by the competent authority through the mass media within 14 days after the date of issue. The notifications are published on the website of the EAA and in the public register containing data about the results of the issuance, refusal to issue, revocation, review, amendment and updating of IPs. Interested parties can appeal the decision in conformity with the APC within 14 days after its announcement.

6) Can the public challenge the final authorisation?

The decisions of the executive director concerning integrated permits can be appealed by interested persons (e.g. ENGOs with public interest or individuals) within 14 days after its announcement (Art.127 EPA).

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 general principles of the judicial control set out in the APC also apply to IED decisions. Judicial review is carried out for the legality of the grounds under Art. 146 APC: lack of competence; non-compliance with the established form; significant violation of administrative production rules; contradiction with substantive provisions; inconsistency with the purpose of the law.

Chapter fifteen of the APC, “Protection against Unjustified Actions and Inactions of the Administration”, provides for procedures for litigation. For the courts acting on their own motion, the general principles apply, see 1.2.4.

8) At what stage are these challengeable?

IED decisions for granting, refusal, modification, updating or revocation of an integrated permit are announced by the competent authority through the mass media within 14 days after the date of issue, at the same time sending it to the states affected by operation of the installation in the case of cross-border impacts and transfer of emissions. The permit applicant is also notified in writing. Interested persons can appeal the decision by the order of the APC within 14 days after being notified (Art.127(2) EPA).

Under the prerequisites of Article 256 of the APC, inaction on an obligation directly arising from a normative act can be challenged indefinitely. In this case, the provisions for challenging individual administrative acts shall be applied accordingly. Failure to perform factual actions which the administrative authority is obliged to perform by virtue of the law are subject to challenge within 14 days from the submission of a request to the authority for its execution. In its decision, the court orders the administrative authority to take the action, setting a time limit, or rejects the request.

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

An administrative appeal 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).

The administrative appeal is an opportunity, not a condition, for challenging the legality or expediency, i.e. application of the discretion by the administrative authority, of an act.

Administrative litigation is not one of the procedural preconditions for judicial appeal, i.e. the possibility of judicial appeal is not conditional on a prior appeal before the higher administrative authority (Art. 148 and Art. 149(1,3) of the APC).
10) In order to have standing before the national courts it is 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?

The procedural standing, and in particular the legal standing (interest), of the challenger is not made conditional on his/her participation with objections or comments in the public hearing.

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

The principles on which the proceedings provided for in the Administrative Procedure Code are based are set out in Chapter Two, "Basic Principles", including Art. 8 of the APC, which can be traced to the relevant procedural institutes:

All parties concerned with the outcome of the proceedings under the APC shall enjoy equal procedural opportunities to participate in the proceedings for the defence of rights and legitimate interests. Within the limits of operational autonomy, similar cases shall be treated equally under equal conditions (see also 1.8.1.9).

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

The principle of speed and procedural economy is essential for the administrative and judicial phases. Art. 11 of the APC provides that procedural actions shall be performed within the time limits established by the law, and within the shortest time necessary according to the specific circumstances and the purpose of the procedural action or of the administrative act.

Non-pronouncement by the administrative body within the timeframe according to Art. 58 of the APC equates to tacit refusal and, in the cases provided for by a special law, tacit consent, which is appealable. A tacit refusal or tacit consent may be challenged within 1 month of expiry of the period within which the administrative authority is required to rule.

Administrative acts may be challenged within the prescribed time limits after their notification. In addition to disciplinary responsibility, officials responsible for failure to comply with the timeframe shall also bear administrative penalties under Chapter Eighteen of the APC.

The IP and EIA decisions are obligatory for the issuing of permission for construction. The IP decision can be challenged by interested parties within 14 days after its announcement (see also 1.8.2.5).

An exception is made for facilities and equipment in respect of which an EIA procedure is completed with a decision confirming the implementation of the BAT in compliance with Art. 99a of the EPA. If the procedure is according to the EIA rules, there is a special time limit for decisions on decisions related to the implementation of projects designated as nationally significant and strategically important by an act of the Council of Ministers. In this case, the court proceedings are to be concluded within 6 months from the filing of the appeal and the court must announce the decision within 1 month after the hearing at which the case has been concluded.

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?

No specific requirements for injunctive relief other than those mentioned in 1.7.2 have been laid down for challenging decisions concerning integrated permits. For example, at any stage of the proceedings up to entry into effect of the court decision acting on a motion by the contestant, the court may impose injunctive relief by staying the anticipatory enforcement admitted by the authority which has issued the act under Article 60(1) of the APC if the enforcement could inflict a significant or difficult to repair damage on the contestant. The enforcement may be stayed solely on the basis of new circumstances.

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

In the context of implementation of the Aarhus Convention in Bulgaria, public awareness measures on information provision and public involvement in decision-making are more visible, for example through the EEA website. The MoEW website provides general information about the Aarhus Convention and some guidelines related to its provisions. Other forms of dissemination are provided mostly by NGOs on their websites or on the special project websites, or as a result of European projects, for example: [53] https://e-justice.europa.eu/content_access_to_justice_in_environmental_matters-300-bg-bg.do?clang=en. See also 1.7.4.

1.8.3. Environmental liability

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?

The Act on liability for prevention and remedying of environmental damage (ELA) provides for several opportunities for judicial review of the competent authorities' decisions. The most important is if authorities refuse to apply remedial measures. Any natural or legal person who has been affected, or may be affected, by environmental damage, or has sufficient interest in the taking of a decision for removing environmental damages, or claims that their right has been violated, may request that a competent authority initiate a procedure to determine and apply remedial measures. ENGOs are not required to prove such circumstances and their interest/standing is presumed by the law.

If the competent authority issues a decision (an order) for refusal of applying remedial measures in which they indicate the grounds for it and publish it on their website, interested parties, incl. ENGOs, can appeal the refusal under the APC (Art.48(5)). The usual 14-day time limit after notification of the decision applies.

When the applied preventive measures are not enough for prevention of an imminent threat from environmental damages, the competent authority may suggest to the Minister of Environment and Water a proposal for applying preventive measures within 3 days from drawing up of the written statement about the damages. Within 10 days from receiving a proposal, the Minister issues an order for applying preventive measures, which shall be published on the website of the MoEW. The order can be appealed under the APC. The appeal does not stop its enforcement (Art.23(3-4) ELD). There is no established case-law on such cases, but it could be presumed that ENGOs will be granted standing in the judicial proceedings.

The draft order concerning remedial measures which the operator is obliged to implement is made public on the website of the competent authority within 3 days after it is drawn up. The publication also contains an invitation to the public to submit their recommendations and opinions. The draft order is posted in a public place on the administration’s premises. Recommendations and opinions may be submitted in writing within 14 days from publication of the draft order. Within 7 days from expiry of the time for comments, the competent authority issues an order for applying the remedial measures and makes it public on its website. The order is subject to appeal under the APC within 14 days. (Art. 29 ELA)

In the case of factual complexity in determining the remedial measures and/or in the event that additional analyses are needed, the competent authority issues an order for the measures based on a report for remedial measures drawn up by the operator. The draft order is made public on its website with an invitation to the public to produce their recommendation and opinions within 14 days. The order for remedial measures is issued within 30 days from expiry of the 14-day timeframe for comments. Within 3 days from its issue, the order is published on the authority’s website. It is subject to appeal under the APC within 14 days. (Art. 30-32 ELA)

In the same vein, when the operator (person causing the damage) is unknown and 1) the measures can be determined without additional analysis or 2) when, because of factual complexity in determining the remedial measures additional analysis is needed, the order for remedial measures is subject to appeal under the APC within 14 days. (Art.33-34 ELA).
The order for remedial measures, when an unknown operator has been established, shall be published on the MoEW website and is subject to appeal under the APC. (Art. 36 ELA)

2) In what deadline does one need to introduce appeals?
The general 14-day time limit for appeal following the notification of the decision applies. A tacit refusal or tacit consent shall be contestable within 1 month after expiry of the time limit within which the administrative authority was obligated to pronounce. (Art. 149 (1-2) APC). See also 1.8.3.1.

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?
The person that submits a request for action in an application and provides the following:
- address for correspondence;
- place, territorial scope and type of environmental damages caused;
- data on the operator which has caused the environmental damages, if known;
- actual or presumed reasons for the occurrence of the environmental damages;
- violated right of the applicant or sufficient interest in the taking of a decision to eliminate environmental damages;
- visible and/or presumed consequences of the environmental damages;
- recommendations for the undertaking of respective remedial measures, if the person has such;
- other circumstances and facts supporting the information and the observations in connection with the environmental damages caused.

4) Are there specific requirements regarding ‘plausibility’ for showing that environmental damage occurred, and if yes, which ones?
The competent authority considers the request within 7 days from receipt of the application. If the information provided is not complete, it returns the application with an indication of what additional information is to be provided by the applicant. The applicant shall provide the additional information within 7 days of receiving the instruction. If the applicant does not provide the additional information within the timeframe, the competent authority does not consider the request.

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)?
If the competent authority issues a decision (an order) for refusal to apply remedial measures, it is published on its website and interested parties, incl. ENGOs, are informed about it.
Within 10 days from receiving a proposal for applying preventive measures, the Minister issues an order for such measures, which shall be published on the MoEW website.
In the case of factual complexity in determining the remedial measures and/or in the event that additional analyses are needed, the competent authority issues an order for the measures. The draft order is made public on its website with an invitation to the public to provide their recommendations and opinions within 14 days.
The draft order about remedial measures which the operator is obliged to implement is made public on the website of the competent authority within 3 days after it is drawn up. The publication also contains an invitation to the public to submit their recommendations and opinions. The draft order is posted in a public place on the administration’s premises. Recommendations and opinions may be submitted in writing within 14 days from publication of the draft order. Within 7 days from expiry of the time for comments, the competent authority issues an order for applying the remedial measures and makes it public on its website.
The orders for remedial measures when an unknown operator has been established shall be published on the MoEW website.

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?
The law does not provide for specific extension of entitlement to citizens or NGOs to request actions in cases of imminent threat of damage. The initiative lies with the operator, where it is known, or otherwise with the competent authority. However, citizens or NGOs can give signals and inform the competent authority about the imminent threat. In the case of an imminent threat of environmental damages where the operator is not known, the competent authority, within 3 days after receiving the information, shall perform an on-site check of the facts and circumstances related to the imminent threat of environmental damages and draw up a written statement. (Art. 21(1) ELA)

7) Which are the competent authorities designated by the MS?
The Minister of Environment and Water (with competences defined in Art. 7 of the ELA, e.g. issues orders for the application of preventive and remedial measures in the cases provided by law; holds consultations with the public and operators in determining remedial measures; applies coercive administrative measures and imposes the administrative penalties provided for in the law);
The directors of the Regional Inspectorsate on Environment and Water (RIEW) (with competences defined in Art. 8, e.g. carries out inspections for establishment of the operator and ascertainment of the immediate threat or the environmental damages caused; considers requests of representatives of the public for undertaking preventive and remedial measures; holds consultations with the public and with operators on determining remedial measures);
The directors of the Basin Directorates for Water Management (with competences defined in Art. 9, e.g. undertakes actions in the event of an immediate threat or in the event that environmental damages have been caused within the scope of the region for basin water management);
The directors of the national parks (with competences defined in Art. 10, e.g. undertakes actions in the case of an immediate threat of environmental damages or in the event that environmental damages have been caused in the territory of the national park).

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?
No. An administrative act may be contested before the court even if the possibility for administrative appeal 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.

1.8.4. 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 the event of transboundary effects of projects or plans or programmes, there are procedures for transboundary consultations with the affected states in line with the obligations under the relevant international Convention and EU Directives. § 1, p. 23 of the Additional Provisions of the EPA defines interested states in cross-border context as these states, which are source of negative impacts on environment, and the states, which might be affected by these impacts.

Parties to the Convention for environmental impact assessment in cross-border context.

SEA: The developer of the plans and programmes sends a copy of the plans and programmes (PP) and of the SEA report to each state that could be affected by application of the PP subject to SEA and organises consultations with the state(s) which could probably be affected. The results of the consultations should be reflected in the SEA report and are taken into account in the statement of the Minister of Environment and Water or the director of the respective RIEW. Access to the SEA decision is ensured to affected and interested parties and each state likely to be affected by application of the PP. (Art. 87 (1-2), 88(2) EPA)
Regarding investment proposals for construction, activities and technologies in the territory of the Republic of Bulgaria that are expected to have significant impact on the environment in the territory of other state or states, the Minister of Environment and Water shall notify the affected states at the earliest possible stage of the investment proposal, but not later than the date of notifying the domestic population; upon consenting for participation in the EIA procedure, the minister provides the affected state with a description of the investment proposal and information about possible cross-border environmental impacts, as well as information about the character of the decision expected to be taken. (Art. 98 (1) EPA)

For Seveso III undertakings/facilities of high risk potential (upper-tier establishments), if there is a danger of occurrence of a large accident with transboundary effects, the Minister of Environment and Water notifies potentially affected states and provides information in compliance with the requirements of the Convention on the Transboundary Effects of Industrial Accidents. (Art. 111(2) and 116 (4) EPA)

IED installations: Within 14 days from conclusion of the checks for compliance of the contents and form of the application for an integrated permit with the requirements of the integrated permit (IP) ordinance, the competent authority initiates a procedure for granting the IP, announces and grants the interested parties equal access to the application for a month, including the states affected by the operation of the installation in the case of transboundary impacts (122a (5) EPA). The decision for granting, refusal, modification, updating or revocation of an IP is announced by the competent authority through the mass media within 14 days after the date of issue, at the same time sending it to the states affected by operation of the installation in the case of cross-border transfer.

ELD: In the case of an imminent threat of environmental damages or in the event that environmental damages have been caused by activities performed in the territory of the Republic of Bulgaria which affect or may affect another state, the Minister of Environment and Water shall immediately notify the affected state or the EU Member States by providing information about the damages and information about the procedures according to the law. Upon request by the competent authorities of the other state or the EU Member States, the minister provides additional information. (Art. 49, 52 of ELA)

2) Notion of public concerned?
The EPA, in its additional provisions, defines “public” as one or more natural persons or corporate bodies and their associations, organisations and groups, created in compliance with the national legislation. Further, “affected public” is members of the public who are affected, or are likely to be affected, or who have an interest in the procedures for approval of plans, programmes or investment proposals and in the taking of decisions for the issuing or updating of permissions by order of this Act or the conditions in the permission, including ENGOs established in compliance with the national legislation. However, both definitions concerning legal persons are to be interpreted as those established in compliance with national (Bulgarian) legislation. Concerning individuals, the general principle stipulated in the APC is that it applies only to foreigners who reside in the Republic of Bulgaria or who are participants in an administrative proceeding before a Bulgarian authority outside the Republic of Bulgaria, insofar as the Constitution and laws do not require Bulgarian citizenship. However, following the requirements of the Aarhus Convention, to which Bulgaria is a party (Article 3(9)[57], there should be no discrimination and no person should be excluded from the definition on the grounds of nationality, domicile, citizenship or seat[58]. The principle set out in the Constitution of the Republic of Bulgaria is that international treaties which have been ratified in accordance with the constitutional procedure, promulgated and have come into force with respect to the Republic of Bulgaria shall be part of the legislation of the State. They shall have primacy over any conflicting provisions of the domestic legislation. However, no case-law has been identified to reflect the position of the Bulgarian courts.

See also 1.4.1.

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)?

See 1.8.4.2. The national law does not provide special rules on: standing of NGOs of another state. However, the Aarhus Convention, which is part of the national legislation and, according to Art. 5(4) of the Constitution, shall have primacy over any conflicting provision of the domestic legislation, states in Art. 2 (5) that “the public concerned” is members of the public affected, or likely to be affected, by the environmental decision-making or having an interest in it. The term should be seen in the light of the non-discrimination provision in Art. 3(9), which means that the obligation to inform the public concerned includes also, where appropriate, the public across national borders.[59]

In its findings on communication ACCC/C/2004/03 (Ukraine), the Compliance Committee to the Aarhus Convention observed that “foreign or international non-governmental environmental organizations that have similarly expressed an interest in or concern about the procedure would generally fall under these definitions as well.” It should be applied at least for participation in the decision-making process.[80]

Also, it should be noted that some of the international ENGOs have their branches registered in Bulgaria as legal entities with all procedural rights. Only individuals are granted legal aid according to Bulgarian law. Mostly foreigners seeking asylum are granted legal aid. There is no provision for such aid in environmental cases.

Once foreign NGOs are granted standing by the court, they have procedural rights to also request injunctive relief and interim measures. The Ordinance on the Terms and Conditions for EIA, Chapter Eight, provides for a procedural sequence of the transboundary consultations where Bulgaria is a country of origin or the country concerned. According to Art. 23 of the EIA Ordinance, the Ordinance is subsidiary “unless an international agreement between the Republic of Bulgaria and the State or States concerned provides otherwise.” The main subject of it are the requirements for exchange of information and public discussion, as well as inclusion of the requirements of the affected party in the EIA decision, but without justice – it would mean recognition of the extraterritorial effect of the court decision. However, we could not draw a clear conclusion on what this would mean in practice for foreign citizens and NGOs without case-law identified that would reflect the position of the Bulgarian courts.

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)?

No national rules on granting standing to foreigners are to be found in the general principle stipulated in the APC that it applies only to foreigners who reside in the Republic of Bulgaria or who are participants in an administrative proceeding before a Bulgarian authority outside the Republic of Bulgaria, insofar as the Constitution and the laws do not require Bulgarian citizenship. Following the requirements of the Aarhus Convention (Article 3(9))[81], there should be no discrimination and no person should be excluded from the definition on the grounds of nationality, domicile, citizenship or seat. Foreigners could be considered as “the public concerned” affected, or likely to be affected, by the environmental decision-making or having an interest in it. Persons who are non-citizens therefore have rights and interests under the Convention. For example, in cases where the area potentially affected by a proposed activity crosses an international border, members of the public in the neighbouring country will be members of the “public concerned” for the purposes of Art. 6 of the Convention.

Only individuals are granted legal aid according to Bulgarian law. Mostly these are foreigners seeking asylum. There are no provisions for such aid in environmental cases.

Once foreign citizens are granted standing by the court, they have procedural rights to also request injunctive relief and interim measures.

See also 1.8.4.2. and 1.8.4.3.

5) At what stage is the information provided to the public concerned (including the above parties)?
Following the procedures for transboundary consultations under the international conventions and EU Directives, foreign persons (individuals and NGOs) should be informed by the competent authority of their respective country, and following the procedures for access to information in that country depending on the procedure in question. For example, if Bulgaria is the affected country in the case of notification about expected significant impact on the environment in the territory of Bulgaria as a result of proposed activity in the territory of another state, the Minister of Environment and Water shall ensure public access to the information provided about EIA and the timely sending of all statements about the information before the taking of decisions by the competent authority of the other state.

See also 1.8.4.1. for different procedures.

6) What are the timeframes for public involvement including access to justice?

See 1.8.4.1. for different procedures, however it depends on the transboundary consultations. For example, in EIA procedures in the territory of the Republic of Bulgaria expected to have significant impact on the environment in the territory of another state or other states, the Minister of Environment and Water notifies the affected states at the earliest possible stage of the investment proposal, but not later than the date of notifying the domestic population.

7) How is information on access to justice provided to the parties?

See 1.8.4.1. for different procedures, however it depends on the transboundary consultations. For example, in EIA procedures in the territory of the Republic of Bulgaria expected to have significant impact on the environment in the territory of another state or other states, the Minister of Environment and Water notifies the affected states at the earliest possible stage of the investment proposal, but not later than the date of notifying the domestic population. However, there are no specific rules on providing information on access to justice[62]. For example, within the SEA procedure public access (via the competent authority’s website, SEA online register) to the SEA decision and to the negative screening decision is ensured to the public, the affected and interested parties, and each state for that is likely to be affected by the application of the plan or programme (Art. 88(2) EPA). However, no relevant case-law has been identified to reflect the position of the Bulgarian courts on granting standing to foreign ENGOs and citizens in environmental cases.

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

The general rules of the APC apply. Persons who have no command of the Bulgarian language may use their native language or another language which they specify. In such cases, an interpreter shall be appointed. Any documents presented in a foreign language must be accompanied by an accurate translation into the Bulgarian language. If the competent authority is unable itself to verify the accuracy of the translation, the said authority shall appoint a translator for the account of the party concerned, unless a law or an international treaty provides otherwise. The costs of translation shall be borne by the person who has no command of the Bulgarian language if the administrative proceeding was initiated at the request thereof, unless a law or an international treaty provides otherwise. (Art 14 APC)

See also 1.4.4.

9) Any other relevant rules?

The Bulgarian Constitution stipulates that foreigners who reside in the Republic of Bulgaria shall have all the rights and obligations under this Constitution, with the exception of the rights and obligations for which the Constitution and laws require Bulgarian citizenship (Art. 26(2)). The Act on Access to Public Information states that every citizen of the Republic of Bulgaria has the right to access to public information under the conditions and by the order determined in this law, unless another law provides for a special procedure for searching, receiving and distributing such information. (Art.4)

In the Republic of Bulgaria, foreigners and stateless persons shall enjoy the right to access to public information. The right shall be used by all legal entities. The Environmental Protection Act as special law in terms of access to information states in Art. 17 that everyone has the right to access available environmental information without the need to prove a specific interest, hence there is no restriction on such access.

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[1] Environmental protection is carried out via legal mechanisms in all main branches of law – civil law, administrative law (with a framework Environmental Protection Act, many sectoral laws and the APC), administrative penal law (administrative offences punishable under the sectoral laws and the procedure provided in the Law on Administrative Offences and Penalties) and penal law (the Penal Code).

[2] In administrative law, access to justice is strongly influenced by the Aarhus Convention and the EU legal order, which means broader possibilities for AJ in procedures which are considered Art.6 of the Aarhus Convention’s procedures by the EU Acquis Communautaire.

[3] It should be mentioned that the CPC and the APC are relatively new pieces of legislation (2006-2008) and the jurisprudence in their realm is in a process of establishment.


[5] For example, orders on the designation of Natura 2000 protected areas are not subject to appeal (Article 12(7) of the Biodiversity Act), pending a ruling by the Constitutional Court in constitutional case No 14/2020.

[6] Ruling № 466/ 14.01.2014 adm. case. № 15788/2013 Supreme Administrative Court with analysis on the appealability of the administrative act as such in the scope of Art. 6(1) a) and b) of the Aarhus Convention.

[7] According to the Bulgarian law on non-for-profit entities, there is a division by registration for NGOs in public and private interest – see below p.1.4.

[8] Defined as sites of national importance by an act of the Council of Ministers and are sites of strategic importance (Art.99(9) EPA)


[10] The problem with the removal of the second instance in court cases for access to information on environmental matters, which has, as a result, a kind of "local justice" in such cases where sometimes the number of judges in a regional administrative court is very small (between 2 and 5).


[12] District courts are first instance courts for contesting most acts issued under the Act on the Ownership and Use of Agricultural Land; in this case, the Administrative Court is the cassation instance. (Paragraph 19 of the Transitional and Final Provisions of the Code of Administrative Procedure). District courts are first instance courts when appealing against an order imposing an administrative penalty (a fine) (Article 58e of the Administrative Infringements and Penalties Act (ZANN)).

[13] The general administrative acts are the administrative acts of a single legal effect whereby rights or obligations are created or rights, freedoms or legitimate interests of an indefinite number of persons are affected, as well as the referrals to issue such acts. (Art.65 APC)

[14] An administrative act, which is deemed not to be subject to appeal under Article 39 (Designation) and Article 42 (Changes) of the Protected Territories Act (ZZT); A refusal can, however, be appealed (Decision No 4144 of 04.04.2017 in administrative case No 12973/2016, of the 5-member chamber of the Supreme Administrative Court).


[16] Other grounds for third cassation instance appeal are court decisions on a substantive or procedural issue: decided in contradiction of the obligatory practice of the Supreme Court of Cassation and the Supreme Court in interpretative decisions and decrees, as well as in contradiction of the practice of the Supreme Court of Cassation; decided in contradiction with acts of the Constitutional Court of the Republic of Bulgaria or of the Court of Justice of the European Union; of importance for the exact application of the law, as well as for the development of the law. (Art.280(1) CPC)
instructions concerning procedural irregularities (Article 142b).

The examination will be carried out by the court whose decision is being appealed and encompasses orders waiving payment of a state fee, competition, shall be subject to immediate execution. (Art.66(1) Competition protection Act)

Standing in the two latter categories is granted on the basis of assessment of "interest". The fact that standing when challenging protected areas management plans is not limited to those "others" fall planning measures of a general nature, such as protected areas management plans, and also normative administrative acts. Standing in the two latter categories is on the basis of assessment of "interest". The fact that standing when challenging protected areas management plans is not limited to those "others" fall planning measures of a general nature, such as protected areas management plans, and also normative administrative acts.

The determination shall be made by the statutes, the constituting act or amendments in them.

Not-for-profit organisations (NGOs) freely determine their goals and can identify themselves as organisations carrying out activities for public or private benefit. The determination shall be made by the statutes, the constituting act or amendments in them.

Following art. 146 of the APC, they are lack of competence; non-compliance with the established form; material breach of administrative procedure rules; conflict with provisions of substantive law; non-conformity with the purpose of the law.

The lack of legal standing of the public concerned poses problems when a negative environmental impact assessment (EIA) decision is contested, an agreement concluded with the contracting authority or a decision by a regional inspectorate for environment and water (RIEW) directly annulled by the court. (Order No 323/17.09.2020 of the Veliko Tarnovo Administrative Court in administrative case No 528/2020).

The Constitutional Court shall act 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. A challenge to competence may also be filed by a municipal council (in the case of competence disputes between the National Assembly, the President and the Council of Ministers, and between the bodies of local self-government and the central executive branch of government) and by the Supreme Bar Council (for declaring as unconstitutional an Act which violates the rights and freedoms of citizens).

See Art. 120 and 127 of the Constitution on the powers of the court and the prosecutor within the judicial system to control and to observe the legality of administrative acts.

In this regard, two categories of cases permitting decisions can be outlined (under Art. 9(2) of the Aarhus Convention and others). In the category of "others" fall planning measures of a general nature, such as protected areas management plans, and also normative administrative acts. Standing in the two latter categories is on the basis of assessment of "interest". The fact that standing when challenging protected areas management plans is not limited to those "others" fall planning measures of a general nature, such as protected areas management plans, and also normative administrative acts.

The same right is granted to a person who was not a party to the main proceedings (Art. 245-249 APC - Cancellation at the request of a third party). The possibility for a party to the proceedings to reverse a final decision was used at least in a couple of cases by investors who found support in the SAC.

[16] ECLI:BG:AP71:2015:20150709030.001 confirms the public concerned is a legal, not an expert, issue;

ECLI:BG:AP300:2015:2015090154.001 (criteria to reject an action on cancellation of an ENGO;

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See art. 103 and 104 of the Territorial Development Act

The provision has been declared unconstitutional by the Constitutional Court at the request of the Supreme Bar Council, case № 2/2020. Decision № 14 /2020 (State Gazette No. 92/2020).

In this example, up to 40 hours' attorney work annually. [http://madaralaw.com/en/Pro-bono.c109]

By virtue of Art. 22, Item 1 of the APC, the procedure for issuing individual administrative acts under the APC shall not apply to administrative acts which, under a special law, are issued and executed immediately. The effect of the acts that are immediately enforced may be exempted not only from the conditions for the expiry of the time-limit for the appeal and the hindering (suspensive) effect of the appeal or the protest for their challenge, but also from the requirement to notify the addressees of the act. Their enforcement is unconditional under the preconditions laid down by the legislator in the relevant special law, most often in connection with acts imposing coercive administrative measures. For example, the decisions of the commission, which with concentration between enterprises is prohibited or termination of the violation is ruled, including by imposing of behavioural and/or structural measures for restoration of the competition, shall be subject to immediate execution. (Art.66(1) Competition protection Act)

1 SGN is approximately 0.5 EUR and the exchange rate is fixed by law.

Amendments to the Code of Administrative Procedure (SG No 15/2021) re-organised the way in which the regularity of cassation appeals is examined (Article 213a). The examination will be carried out by the court whose decision is being appealed and encompasses orders waiving payment of a state fee, suspending enforcement (Article 166) or authorising provisional enforcement (Article 167). The court of first instance may dismiss the appeal or close the case by means of an order on the grounds referred to in Article 215 and Article 213a(3) of the Code of Administrative Procedure. The amended Article 229(1) (1) does not allow private appeals against the dismissal orders referred to in Article 213a(7), i.e. orders dismissing appeals against referral and dismissal decisions issued for failure to comply, within the time limit, with an instruction to correct an irregularity, at the relevant stage of the process at which the irregularity is established (when the regularity of the cassation appeal is examined by the court of first instance (Article 213a(1), second sentence or (2), on the basis of Article 215); when the first instance examination is checked by the President of the Court of Cassation, his or her deputies or the president of the division (Article 213a(6)); and, lastly, by the court in the course of the cassation proceedings (Article 213a(6)(2), second scenario), as well as on appeals against a refusal to waive state fees. The amendment also confers a new power on the court, which may now, of its own motion, monitor regularity and issue instructions concerning procedural irregularities (Article 142b).

In this example, up to 40 hours' attorney work annually. [http://madaralaw.com/en/Pro-bono.c109]

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The admissibility of complaint in regard to the nature of the administrative act is grounds on its own separate from the legal personality of the ENGO and the legal interest.

Ruling № 6343 from 15.05.2018, case № 5051/2018 , 5-member composition, SAC

Not-for-profit legal entities (NGOs) freely determine their goals and can identify themselves as organisations carrying out activities for public or private benefit. The identification shall be made by the statutes, the constituting act or amendments in them. The rules for NGOs for public benefit are detailed in Chapter III of the Act on not-for-profit legal entities (http://bcnl.org/en/legislation/law-for-the-non-profit-corporate-bodies-legal-entities.html)

It should be mentioned that the Aarhus Convention Compliance Committee (ACCC) findings emphasise that such a right should be granted even for members of the public of a country whose authorities did not take steps to conduct a transboundary EIA procedure (see ACCC findings in C-71 and C-91).

In its findings in the C-58 case, the ACCC states that: “By not ensuring that all members of the public concerned having sufficient interest, in particular environmental organizations, have access to review procedures to challenge the final decisions permitting activities listed in annex I to the Convention, (paras. 79–81), the Party concerned (Bulgaria) fails to comply with article 9, paragraph 2, in conjunction with article 9, paragraph 4, of the Convention.

To the issued permit for construction is annexed a EIA decision or a decision for assessment of the need for EIA, as well as a decision for approval of a safety report for construction or reconstruction of an enterprise and/or facility, or parts thereof, with high risk potential (Art. 149 (6) SDA).

Ruling № 9488/28.06.2011In case № 5702/2011, III division SAC

“Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.”

The administrative procedural actions of the administrative authority concerning the issuance of the act shall not be subject to separate appeal, unless otherwise provided for in this Code or in a special law. (Art. 64 APC)

See also case C-529/15.

The well-known facts, the facts for which the law formulates a presumption, as well as the facts which are known to the body ex officio shall not be subject to proving. (Art.37 (2) APC). It is not necessary to prove facts for which there is presumption established by law. Rebuttal of such presumption is permitted in all cases, except when prohibited by law. (Art.154(2) CPC)

The ELA refers here to the competent authorities as listed in 1.8.3.7, namely: the directors of the Regional Inspectorates on Environment and Water (RIEW); the directors of the Basin Directorates for Water Management; the directors of the national parks. The same applies when referring to competent authorities in this section.

Measures to control, capture, remedying of the polluters and/or other factors, caused the ecological damages, in view to restriction or preventing of further ecological damages, negative impacts over human health and further affecting services from the natural resources.

Measures to control, capture, remedy the polluters and/or other factors that caused the environmental damages with a view to restricting or preventing further environmental damages, negative impacts on human health and services from natural resources.

“Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.”

Persons who are non-citizens therefore have rights and interests under the Convention. For example, in cases where the area potentially affected by a proposed activity crosses an international border, members of the public in the neighbouring country will be members of the “public concerned” for the purposes of article 6. Moreover, in its findings on communication ACCC/C/2004/03 (Ukraine), the Committee observed that “foreign or international non-governmental environmental organizations that have similarly expressed an interest in or concern about the procedure would generally fall under these definitions as well.”


Ibid.

Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision-making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities.

Upon consenting to participate in the EIA procedure, the ministry provides the affected country with a description of the investment proposal and information on possible transboundary environmental impact, as well as information on the nature of the decision that is to be taken. (Art. 98(1) EPA)

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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?

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,
The court monitors ex officio the validity, admissibility and conformity of the administrative decision with substantive law. Contradictions of substantive provisions; significant violation of administrative production rules; non-compliance with the established form; 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.

As a general principle applicable to procedures under the laws listed above, within the administrative review both the appropriateness and legality of the conditions of Art. 147 of the APC, i.e. for having legal standing as an owner of a (potentially) violated or infringed right.

Environmental laws are concerned, they can have legal standing, provided the other requirements of the Convention are also complied with 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. 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 of the Convention. 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 costs 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 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 screening or final 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 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[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 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[6] 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 1.8.1.8 and 2.1.1. and 2.3.2.

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. 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[6] 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 1.8.1.8 and 2.1.1. and 2.3.2.

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

No. 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. 146 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[9]

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 No 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 concessionaries 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.

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[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)
Access to justice in environmental matters - Czechia

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

Remedies against the silence of the administration (the administrative passivity)

Non-pronouncement of the administrative authority in due time is considered as a tacit refusal to issue the act and can be challenged by the persons concerned (ENGOs are presumed to be concerned persons for administrative acts in the environmental field). Where the proceeding has been instituted before a specific authority and said authority is supposed to make a proposal to another authority for the issuance of the act, a tacit refusal shall occur regardless of whether the authority issuing the act was approached with a proposal. Where a tacit refusal is reversed by an administrative or legal review procedure, the express refusal which follows prior to the decision on reversal is likewise considered reversed.

Within the administrative review, the tacit refusal may be challenged by the persons concerned within 1 month from expiry of the timeframe in which the administrative body was obliged to issue the act. Where the persons concerned have not been notified of the initiation of the proceedings, the time limit for contesting shall be 2 months from expiry of the time limit for ruling. (Art.84(2) APC)

Within the legal review before the court, a tacit refusal or a tacit consent is contestable within 1 month after the expiry of the time limit for the administrative authority to pronounce its decision. Where the act, tacit refusal or tacit consent have been contested according to an administrative procedure, the time limit begins to run from the communication that the superior administrative authority has rendered a decision and, if said authority has not pronounced, from the latest date on which said authority should have pronounced. Where a prosecutor has not participated in the administrative proceeding, said prosecutor may contest the act within 1 month after issue. There is no time limit for challenging administrative acts by a motion to declare their nullity. (Art. 149 APC)

Where a tacit refusal or tacit consent has been revoked, an express refusal or express consent succeeding prior to the court decision on revocation shall likewise be considered to be revoked. (Art. 172 (3) APC)

Any official who fails to fulfill the requirements for cooperating with and providing information to the public incurs liability to administrative penalties according to the procedure established by the APC, without this affecting the validity of the administrative act. (Art.28(3) APC)

Penalties for de-facto contempt of court, e.g. when the decision of the court is not followed and respected

Any official who fails to meet an obligation arising from an effective judicial act, outside the cases covered under Section V (Enforcement of administrative decisions and decisions of the court) of the APC, is liable to a fine of BGN 200 to BGN 2,000. Any repeat violation of the same nature is punishable by a fine of BGN 500 for each week of non-performance, unless this is due to objective impossibility. Sanctions for other violations of the APC are imposed on any person (e.g. obliged to act or conform to certain obligations) who fails to meet another administrative procedure obligation and shall pay a penalty of BGN 150 to BGN 1,500, unless subject to a severer sanction. (Art. 304-305 APC)

Upon culpable non-performance, the enforcement authority shall impose a fine of BGN 50 up to BGN 1,200 per week on the officials performing the functions of a state body until the obligation to perform a specific action is fulfilled. If the obligated authority is collective, no fines shall be imposed on the members thereof who voted in favour of performance of the obligation. The same fines are imposed upon any non-performance of the obligation to refrain from action. (Art. 304-305 APC)

Other relevant rules and administrative/court practice

The Parliament is obliged to address the consequences of declaring a law as non-constitutional. In the meantime, the courts should directly apply the Constitution and the legal principles while deciding on cases, according to a ruling of the Constitutional Court on Case №5/2019. No legal vacuum in the legislation is possible. The National Assembly must regulate the legal consequences of the application of the unconstitutional law. In line with this ruling and new case law of the Constitutional Court (CC), the Supreme Court of Cassation (SCC) delivered Decision № 716 of April 2020 with the same conclusions, preceding the decision of the Constitutional Court, on the claim for compensation under the Law on the Liability of the State and the Municipalities for Damages. The claim was for damages suffered by inaction in addressing the consequences of unconstitutional amendment to the State Budget Act in the Act on Energy from Renewable Sources (AERS). According to the conclusion of the court expertise for the trial period relevant for the case (01.01.2014 to 09.08.2014) from the plaintiff were withheld 20% fees fee for production of electricity from wind and solar energy under Art. 35a AERS (declared unconstitutional by CC, Case No. 13/2014). After repeal of this provision by the Constitutional Court, § 6, item 2 and item 3 of the Law on the State Budget of the Republic of Bulgaria for 2014, the consequences were not addressed. The SCC ruled that the state should pay compensation of BGN 564,986.04 to the operator of a photovoltaic power plant that suffered from the inaction of the National Assembly. The awarded amount was a sum of the due indemnity, part of the interest on it and the incurred court costs of the three court instances. The court reasoned that the indemnity was due to the wrongful conduct of the Parliament, which firstly adopted a law declared as non-constitutional and secondly was inactive in addressing the consequences – in other words, it confirmed liability of the state in the event of failure to replace unconstitutional laws.

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Access to justice in environmental matters - Czechia

To find out more about access to justice in environmental matters in Czech Republic, please take a look at:

1. Access to justice at Member State level

[Access to justice in environmental matters - Czechia]

[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


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

[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.
A list of the most important laws is given below. These include the rights of environmental NGOs, which are also relevant in this respect. The exercise of the right to a favourable environment depends on the laws implementing these provisions. This list includes the right to a favourable environment and the right to information about the environment. Whereas the right to information about the environment is implemented by one comprehensive Act (Act No. 123/1998 Coll., on the Right to Access to Environmental Information), the right to a favourable environment is implemented by multiple legal acts.

Access to administrative courts is, in principle, based on the doctrine of impairment of subjective rights of the applicant. The right to a favourable environment is considered as "naturally" belonging only to individuals (natural persons). However, according to the recent jurisprudence of the Constitutional and Supreme Administrative court (see section 1.1, point 4), NGOs are entitled to protect the substantive rights of their members, i.e. to act on behalf of their members and bring actions against decisions or other acts or omissions which may have affected the right of their members to a favourable environment.

The Code of Administrative Justice includes special legal regulation of the court procedure for cases when the impairment of one's rights was allegedly caused by an administrative decision, a measure of a general nature, an omission (inaction) by the administrative body or other unlawful interference with one's rights. It also grants special standing to protect the public interest to designated authorities – the Supreme Public Prosecutor and the Public Defender of Rights.

The public bodies responsible for the protection of the environment are in particular the Ministry of the Environment, which has general responsibility for promoting the environmental laws and serves as general supervisory and monitoring body in this area, and other ministries, namely the Ministry of Agriculture and the Ministry of Health, which are entrusted with competence in individual areas of environmental protection. There are also some special administrative authorities subordinate to the ministries with specific competence for the protection of the environment, for example, the Czech Environmental Inspectorate, The Nature and Landscape Protection Agency or Regional Health Stations. For more details see section 1.3. 1) below.

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

Article 7 of the Czech Constitution states that the state shall concern itself with the prudent use of its natural resources and the protection of its natural wealth. The Constitutional Court referred to this rather general provision e.g. in its Decision of 15 March 2016, Pt. US 30/15, in which it stated that legal protection of specific sectors of the environment is a pivotal measure in realising the above-mentioned general constitutional principle.

As mentioned above, the Charter enshrines a right to live in a favourable environment and right to timely and complete information about the environment in Article 35. Further, it prescribes in the same Article that in exercising his or her rights, no one may endanger or cause damage to the environment, natural resources, biodiversity and cultural monuments “beyond the limits set by law”. The Charter also grants the related right to protection of health in Article 31. However, the exercise of the right to a favourable environment depends on the laws implementing these provisions as according to Article 41 of the Charter, and this right can be claimed only within the scope of such laws.

The Constitution and Charter guarantee protection of rights, including the right to a favourable environment, in both judicial and other proceedings, including administrative proceedings.

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

Article 27 defines the parties to administrative procedure.

Act No. 100/2001 Coll., on the Environmental Impact Assessment and amending some related laws (the EIA Act) (Zákon č. 100/2001 Sb., o posuzování vlivů na životní prostředí a o změně některých souvisejících zákonů (zákon o posuzování vlivů na životní prostředí))

Act No. 76/2002 Coll., on Integrated Prevention and Pollution Control, on Integrated Pollution Register and on amendments to certain acts (Act on Integrated Prevention) (Zákon č. 76/2002 Sb., o integrované prevenci a o omezování znečištění, o integrovaném registru znečišťování a o změně některých zákonů (zákon o integrované prevenci))

Act No. 183/2006 Coll. on town and country planning and the Building Code (Building Act) (Zákon č. 183/2006 Sb., o územním plánování a stavebním řádu (stavební zákon)).

Supreme Administrative Court


Act No. 254/2001 Coll., on waters and amendment to some acts (the Water Protection Act) (Zákon č. 254/2001 Sb., o vodách a o změně některých zákonů (vodní zákon)).


Article 7 provides for the right of appeal against the decision in the screening and scoping procedure determining that a project or change to a project shall not be assessed under this Act, and to bring an action against such a decision and to challenge the substantive and/or procedural legality of the decision;

Article 7 defines the parties in the integrated authorisation proceedings.

Article 5 provides for the right of participation by environmental NGOs in administrative procedures conducted under this Act which could affect nature and landscape protection.


Act of the Constitutional Court of 30 May 2014, no. I. ÚS 59/14

The Constitutional Court stated that natural persons who are members of a civic association whose objective is, according to its charter, the protection of nature and landscape, can exercise their right to a favourable environment, listed in Article 35 of the Charter of Rights and Freedoms, via this civic association.
association. Therefore the Court granted the environmental NGO the right to bring an action against the land use plan as a measure of a general nature on behalf of its members, and also laid down the conditions for standing (subject of activity, local relationship, duration). Further, it stated that where it is possible to interpret national standards in several ways, the interpretation that meets the requirements of the Aarhus Convention shall prevail.

Judgement of the Supreme Administrative Court of 25 June 2015, No. 1 As 13/2015-295
The court confirmed that it is possible that substantive rights of associations can be violated. However, it also stated that it is not possible to generalise the presumption that the rights of the association may be affected by all projects. It is always necessary to assess each case individually.

Judgement of the Supreme Administrative Court of 16 May 2015 No. 2 As 2/2013-120
According to the court, the main criterion for adjudication of the standing of an association is the presence of a sufficiently strong relationship between the claimant and the affected area.

Judgement of the Supreme Administrative Court, No. 3 As 126/2016-38
The court ruled that it is not possible a priori to exclude an ad hoc established association from judicial protection in environmental cases.

Judgement of the Supreme Administrative Court of 2 May 2019, No. 7 As 308/2018 - 31
The court confirmed that, where the applicant is explicitly excluded by law from the scope of the parties to the administrative proceedings and therefore cannot file an administrative appeal, his or her standing to appeal the final decision in court is not influenced by that fact. Therefore the applicant may bring an action even though he/she was not party to the proceedings, provided that his or her rights might have been affected by the decision.

Judgement of the Supreme Administrative Court of 27 March 2010, No. 2 As 12/2006-111
The court stated that neither natural nor legal persons can derive their rights directly from the Aarhus Convention, as the Aarhus Convention is not “self-executing”.

Judgement of the Supreme Administrative Court of 28 August 2007, No. 1 As 13/2007-63
According to the court, it is in compliance with Article 9 of the Aarhus Convention if the EIA statement is subject to judicial review only together with the final decision (development consent). However, in such cases, lawsuits filed by NGOs should normally be granted suspensive effect.

Judgement of the Supreme Administrative Court of 30 July 2019, No. III. ÚS 2041/19
The court confirmed that proceedings concerning the removal of an illegal building are initiated solely ex officio. Therefore, nobody has a right to initiate such proceedings of his or her motion nor a right for judicial protection against the failure of an authority to start such proceedings.

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?
According to Article 10 of the Czech Constitution, international agreements approved by the Parliament and binding on the Czech Republic shall constitute a part of the Czech legal order and shall be applied prior to national laws. The national agreement thereby gains the effect of national law.

The jurisprudence of the Czech courts concluded that, for direct application of the international agreements, the agreement must be “self-executing”. These requirements are usually met by agreements whose parties did not exclude direct application of the agreement, where the rules are “unconditional”, “sufficiently specific” and “grant specific rights” to private persons (judgment of the Supreme Court of 12 February 2007, No. 11 Tcu 7/2007).

In most of their decisions, the Czech courts came to the conclusion that the provisions of the Aarhus Convention are not “directly applicable”, as they are not “sufficiently specific” (following decisions of the Constitutional Court of 19 November 2008, No. Pl. ÚS 14/07, of 30. June 2008, No. IV. ÚS 154/08, of 17 March 2009, No. IV. ÚS 2239/07, of 30 May 2014, No. I. ÚS 59/14). On the other hand, in most of their decisions, the courts emphasised that the Aarhus Convention is an important interpretation source and national laws must be interpreted consistently with the international obligations arising out of the Convention.

1.2. Jurisdiction of the courts

1) Number of levels in the court system
The structure of civil and criminal courts consists of 4 levels in the Czech Republic. It contains the district courts, the regional courts (including the Municipal Court of Prague), the high courts and the Supreme Court.

The structure of administrative courts consists of 2 levels in the Czech Republic. It contains the regional courts (including the Municipal Court of Prague) and the Supreme Administrative Court.

The Constitutional Court has a specific position and powers in the protection of Constitutional and fundamental rights (see next point).

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)?
The civil courts protect private rights and decide on civil matters in the procedure regulated by the Civil Procedure Code. The criminal courts decide on the guilt and punishment for criminal offences defined by the Criminal Code, in the procedure regulated by the Criminal Procedure Code. The prosecutor has an exclusive right to start the procedure in the criminal court. Civil jurisdiction rests with the district, regional and upper courts and by the Supreme Court.

The administrative courts protect individual public rights in the procedure regulated by the Code of Administrative Justice. They review the decisions of the administrative authorities, including decisions on administrative offences (torts). Administrative jurisdiction rests with specialised senates of the regional courts and the Supreme Administrative Court.

The Supreme Administrative Court conducts proceedings on competence actions (Article 97 et seq. of the Code of Administrative Justice). A competence dispute arises either between a state administration authority and a self-government body or between self-government bodies (for example between a municipal authority and a regional authority), over who should make a decision on a particular matter. In practice, negative conflicts of competence are more common (both parties to the dispute consider that the matter does not fall within their jurisdiction), but there are also cases of the opposite (for example a party discovers that both the state administration body and self-government decided on its (identical) case). The Supreme Administrative Court is also entrusted with disputes between central state administration bodies (for example a dispute over who should issue a decision between two ministries). Since these “inter-ministerial disputes” regularly involve the assessment of very complicated and legally demanding issues with a very broad practical impact, the legislature has also ordered the Supreme Administrative Court to resolve such disputes in jurisdiction proceedings.

The Special Chamber (court), established under Act No. 131/2002 Coll., on decision making on certain conflicts of jurisdiction, decides on positive and negative conflicts of jurisdiction to which the court is a party (or both parties). The subject of the decision is disputes about the power to issue decisions which arise between courts on the one hand and administrative authorities on the other, and disputes between civil and administrative courts. The essence of the decision of the Special Chamber is to determine which of the parties to the dispute is competent to give a ruling on a particular matter.
The Constitutional Court is responsible for the protection of constitutionality, including protection of fundamental rights and freedoms granted by the Constitution and the Charter. The Constitutional Court has jurisdiction to annul laws if they conflict with the constitutional order. It also decides on constitutional complaints against final decisions of public authorities in all branches of law which are alleged to infringe fundamental rights and basic freedoms.

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

At the judicial level, there are no organs specialising in environmental protection. The ordinary civil and criminal courts deal with disputes and crimes related to the environment. The decisions of the administrative authorities, including those which relate to the environment, are reviewed in the first instance by the departments of the regional courts, specialising in administrative matters. The judgments of administrative courts can be reviewed, on the basis of a cassation complaint, by the Supreme Administrative Court, which is a specialised judicial authority in administrative matters. From the legal (legislative) point of view, there are no specificities of judicial procedures in environmental matters, except for the participatory and standing rights of the environmental organisations, which are described in detail in section 1.4. From the factual point of view, a significant proportion of lawsuits filed by these organisations represent a specificity of the administrative judicial procedures in environmental matters. It is usually difficult to bear the burden of proof in civil judicial procedures, in which the plaintiff is asking the court to protect his or her rights infringed by interventions affecting the environment, as it is difficult to prove interference with the right to a favourable environment. It is similar for criminal offences related to damaging the environment. No laymen participate in the decision-making by administrative or civil courts in environmental matters. Theoretically, lay judges would decide on environmental crimes in cases where the regional court had jurisdiction as a first instance court. However, proceedings on environmental crimes are usually decided at first instance by regional courts and therefore laymen judges are not involved.

There are also no "expert judges" in the Czech legal system, except for their general specialisation on criminal, civil and administrative law. In practice, some judges, especially members of the Supreme Administrative Court, are known for their specific knowledge of environmental law.

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

Upon an administrative appeal (administrative lawsuit) and within the scope of the arguments for such an appeal, the courts can and must review both the substantive and procedural legality of the development consents and other administrative decisions. They are entitled, at the suggestion of the parties, to review or amend the evidence considered in the administrative procedure. Together with the final decision which is the subject of the lawsuit, they shall also review the substantive and procedural legality of the acts which the final decision is based on and which are not subject to independent review (for example, the EIA statement – see section 1.4, point 2) for more details).

There are no judicial procedures concerning environmental matters which the courts could start of their own motion. The courts can act solely on the basis of the lawsuit or other appropriate motion, never on their own initiative. The civil judicial procedure can be initiated by the court of its own motion on the occasions and in the cases expressly defined by law. The courts can start "motu proprio" procedures concerning e.g. care for children, detention of a person in a medical facility, the legal capacity of a person, declaration of a person to be dead, inheritance, existence or non-existence of marriage, etc.

1.3. Organisation of justice at administrative and judicial level

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

The system of administrative procedure in the Czech Republic is generally regulated by the Code of Administrative Procedure and specific acts in various areas of public administration, including environmental protection and its specific branches. As a general principle, the administrative procedure has two levels. The municipal authorities act most often as first instance administrative organs and the regional authorities as the appeal bodies. In some types of procedure, regional authorities act as the first instance and the relevant ministries as the appeal bodies. There are also some special administrative authorities with specific competence. In the area of environmental protection, the most important special administrative authorities are the Czech Environmental Inspectorate, the Nature and Landscape Protection Agency and Regional Health Stations.

The general responsibility for environmental laws and policies lies with the Ministry of the Environment, which also has a general supervisory and monitoring role in this area. However, other ministries also have competence in the field of environmental protection (Ministry of Regional Development in spatial planning, Ministry of Agriculture in water protection, Ministry of Health in protection against noise).

As for the rules regulating the possibility of public participation in environmental matters: in the individual administrative procedures either the general definition of the party according to the Code of Administrative Procedure (based on the principle of "affected legal interests") applies, or there is a specific definition of parties (e.g. the affected landowners in procedures according to the Building Code) which takes precedence over the general provisions.

There are a number of special provisions regulating specific administrative procedures including special regulation of parties to the process. In the area of environmental protection those are the EIA Act, the IPPC Act, the Nature Protection Act, the Water Protection Act and others (see section 1.1, point 3), and section 1.4, point 3), for more details).

In some kinds of procedure, namely concerning plans and programmes (adopted in the form of so-called measures of a general nature), anyone can usually participate in the procedure with the right to present their comments, while the persons specifically affected in their rights (usually affected property owners) can raise objections. An administrative appeal is not available in such cases. However, the affected persons, including the NGOs, can challenge the measures of a general nature in court. (see section 1.4 for more details).

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

As a general principle of Czech administrative law, it is possible to file an appeal against administrative decisions to a superior administrative body. The appeal to a superior administrative body must be exhausted before the administrative decision can be further appealed before the court. Where there is no possibility of administrative appeal, it is possible to bring an action directly to the court. Similarly, the administrative remedies have to be exhausted before taking a case to an administrative court also in case of omissions (illegal inaction) by the administrative authorities or in case of other "illegal interventions" by the administrative authorities.

Pursuant to Article 65 paragraph 1 of the Code of Administrative Justice (see section 1.1, point 3), anyone who claims that their rights have been infringed directly by a decision of an administrative authority or due to the violation of their rights in the preceding proceedings can bring an action against such a decision. Moreover, according to paragraph 2 of the same article, the action can be also brought by a person who had the status of a party to the proceedings before the administrative authority who is not entitled to do so under paragraph 1, if that party claims that his or her rights have been prejudiced by the actions of the administrative authority in a manner that could have resulted in an illegal decision.

The final ruling of the administrative court is usually issued 1–2 years after the action was filed, except for cases where the law prescribes that the ruling must be issued within a specific time limit (e.g. review of measures of a general nature, including land use plans, or permits for highways, where the courts must decide within 3 months of receiving the lawsuit). The ruling of the first instance (regional) court can be further reviewed on the basis of a cassation complaint by the Supreme Administrative Court. The procedure before the Supreme Administrative Court usually lasts for 6–9 months.
The measures of a general nature (including land use plans, river basin management plans and other plans and programmes related to the environment) can be appealed directly before the administrative courts on the basis of Article 101a of the Code of Administrative Justice by any person claiming that his or her rights were infringed by the measure of a general nature.

The administrative courts generally only have the power to cancel the administrative decisions (power of cassation). There are however exceptions to this rule. When reviewing decisions imposing administrative penalties (fines), the courts may, next to cancelling the decision, also moderate the penalty. If the court is cancelling a decision on refusal to provide information, it can also order the administrative authority to disclose the information. This rule, however, does not apply to environmental information.

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

There are No special environmental courts (see also section 1.2, point 3) above). The regional courts (administrative departments) are the forum to challenge all administrative decisions, including development consents and other decisions related to the environment (with the possibility to file a cassation complaint against their decision to the Supreme Administrative Court).

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

As described under point 2) of this section, it is possible to file an appeal against administrative decisions, including environmental ones, to a superior administrative body. There is no administrative appeal against “measures of a general nature” (plans and programmes).

The final (usually second instance) decision of an administrative authority can be challenged before the administrative court by a person who claims that their rights have been infringed directly by a decision of an administrative authority or due to violation of their rights in the preceding proceedings. A person who claims that his or her rights have been infringed by a measure of a general nature may bring an action directly to the administrative court.

The administrative courts shall review both the substantive and procedural legality of administrative decisions subject to an administrative lawsuit. Infringement of the procedural provisions for the administrative procedure is a reason for cancelling the contested decision, if it is likely that it could cause the substantive illegality of the decision in question. The decision of the court shall be based on the facts as they were at the time when the administrative decision was issued. The courts usually decide on the basis of the materials gathered in the administrative procedure. They are, however, entitled, if the parties to the court procedure suggest this, to review the correctness of such materials, and repeat or amend the evidence considered in the administrative procedure. The court shall review ex officio whether the administrative authorities might have misused or exceeded the scope of their discretionary powers. The decisions of administrative courts can be reviewed, on the basis of a cassation complaint, by the Supreme Administrative Court. The cassation complaint is an extraordinary remedy, as it does not postpone the legal force of the first instance decision. However, due to the frequency of using this remedy and taking into account that the Supreme Administrative Court can change the contested decision, the cassation complaint has in practice the character of an ordinary remedy (appeal), as it is the only way to review the first instance decision in the administrative judiciary.

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

At the level of the administrative review, the legality of both the individual decisions (development consents) and the measures of a general nature (plans and programmes) can be reviewed in the extraordinary ex officio review procedure under Article 94 (individual decisions) and Article 174 (measures of a general nature) of the Code of Administrative Procedure. The procedure is carried out by an authority superior to the administrative body which issued the final decision subject to review. Anyone can indicate to the superior authority that such proceedings should be started. However, there is no legal entitlement for private subjects to initiate the review proceedings if the superior administrative authority does not find any grounds for their initiation. Any person can ask the Supreme Public Prosecutor or the Public Defender of Rights to file a public interest lawsuit against an individual administrative decision. It is however left to the discretion of these institutions whether to do so.

Cases where a person is entitled to bring an action against an administrative decision, even though he or she was not entitled to be a party to the administrative proceedings, can also be considered as extraordinary. This could be a case for a person who is affected by the decision approving the operation of a source of noise exceeding the legal limits (“noise exception”). Such a person can bring an action before the administrative court without having to exhaust the administrative appeal process. The same situation exists with respect to permits issued under the Nuclear Act.

Czech courts have the possibility and, in the procedure before the Supreme Court, the Supreme Administrative Court and the Constitutional Court, the obligation to ask the Court of Justice of the European Union under Article 267 of the Treaty on the Functioning of the European Union to rule on the interpretation or validity of European law when it is decisive for their decision (introduce a preliminary reference). The article states that if such a question arises in proceedings before a court of a Member State whose decision cannot be challenged under national law, that court must refer the matter to the Court of Justice of the European Union. The only exceptions are situations where the interpretation of European Union law does not create problems in its context (acte clair) or where the uncertainty of interpretation has already been overcome by the case-law of the Court (acte éclairé). The parties in the case can ask the courts to introduce the preliminary reference, but they cannot enforce this request. Only where the Supreme Court or the Supreme Administrative Court do not introduce the preliminary reference, even though the conditions of Article 267 TFEU are met, can they challenge this in the constitutional complaint. According to the Czech procedural laws (e.g. Article 48 paragraph 1 point b) of the Code of Administrative Justice), introducing a preliminary reference constitutes a reason for suspension of a court proceedings.

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

Mediation or other out of court solutions is not used in the environmental matters.

Mediation is regulated by Act. No. 202/2012 Coll., on Mediation, which lays down rules for mediators. Every mediator has to undergo professional training, pass an exam and then be registered in the list of mediators run by Ministry of Justice. The Ministry of Justice supervises mediators; however mediators who are in the bar (lawyers) are supervised by the Czech Bar Association. Information about mediation can be found on the website of the Czech Bar Association.

Mediation is mostly used in civil cases, especially in family disputes. Nobody can force the other party to take a part in mediation, but in some cases, the mediation can be initiated by the court – the court can inform the parties about mediation, call upon the parties to try mediation or even order a first meeting with the mediator. Then the parties must voluntarily decide to try mediation or not. While they have agreed on mediation, the parties make a contract. The mediator is entitled to a fee and appropriate expenses paid by the parties, usually in equal shares. Ideally, the mediation should result in the conclusion of a mediation agreement which can be later approved by the court or by notarial deed, so the parties obtain the enforceable title. However, mediation is practically never used in environmental matters.

There are some special procedures within the administrative and judicial proceedings. Apart from participation in administrative procedures and challenging the decisions at administrative courts, there are several other remedies which may be used by both the parties to administrative procedures and general public, namely submissions to competent authorities to initiate ex officio review procedures, including submissions to take measures against inaction (omission) by subordinated authorities, extraordinary administrative remedies (i.e. administrative review of decisions in force, new procedure (retrial)),
submissions to the Public Defender of Rights, criminal notification to police or public prosecution, and submissions to the Supreme Public Prosecutor and ombudsman to file a public interest lawsuit. However, there is no legal duty for the competent authorities to initiate proceedings on the basis of the above submissions. It is up to them to decide whether to start the procedure or not while the applicant has only the right to be informed about the follow-up to his submission.

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

There is the **Public Defender of Rights** in the Czech Republic who deals with all cases where administrative bodies act or fail to act in breach of the law, principles of the democratic rule of law or principles of good administration. This also covers environmental cases.

The Public Defender of Rights may initiate its inquiry *ex officio*. Anybody may approach the Public Defender of Rights with a submission (specific conditions are set forth to when the Public Defender of Rights may decide not to deal with the submission, e.g. the violation is older than 1 year). However, even if the ombudsman concludes that the administrative authority has broken the law, he/she may only advise the authority to take corrective measures, not order it to do so. If this is not respected, the Public Defender of Rights may contact a superior authority or government and inform the general public.

The Public Defender of Rights can conduct independent inquiries but cannot substitute for the activities of state administration bodies and may not cancel or change their decisions. However, if an error is found, it may require the authorities or institutions to remedy the situation.

The Public Defender of Rights cannot interfere with the decision-making activities of the courts.

Both the Public Defender of Rights and the Supreme Public Prosecutor are entitled to file a "lawsuit in the public interest" against any administrative decision according to Article 66 of the Code of Administrative Justice (see section 1.1, point 3), if they "find" (the Supreme Public Prosecutor) or "prove" (the ombudsman) that an important public interest is at stake. The Supreme Public Prosecutor does not have any other specific competence in the field of administrative decisions, including environmental decisions.

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)?

The prevailing concept for standing in the administrative courts is based on the "impairment of rights" theory. As already described above in section 1.3, point 2), the general standing provision for the administrative courts, Article 65 of the Code of Administrative Procedure, states that standing to appeal against administrative decisions is granted to persons who assert that their rights have been infringed by the decision which "creates, changes, nullifies or authoritatively determines their rights or duties" and other parties to administrative proceedings issuing the administrative decision, who assert that their rights have been infringed in these proceedings and that this could cause illegality of the decision (standing of the environmental organisations is derived from this provision).

Under the previous case law, environmental NGOs could only claim infringement of their procedural rights before the administrative courts, but not the substantive legality of the administrative decisions. This approach was further supported by the Constitutional Court, which repeatedly ruled that legal entities, including environmental NGOs, cannot claim a right for a favourable environment, as this can "self-evidently" belong only to individuals. The courts therefore dealt with the material objections of NGOs only in exceptional cases.

In this respect, the decision of the Constitutional Court of 30 May 2014, No. I. U. 59/14 (see section 1.1, point 4) above) represented a change in the case law of the Czech courts. The Constitutional Court stated that NGOs are entitled to protect the substantive rights of their members, i.e. to act on behalf of their members and bring action against decisions or other acts or omissions which may have affected the right of their members to a favourable environment. The court based this conclusion on the consideration that it is not possible for natural persons, as holders of the right to a favourable environment, to lose the opportunity to claim this right, on the sole ground that they associate in an NGO. The court also relied on the provisions of the Aarhus Convention. It concluded that, although the Aarhus Convention is not self-executing in the Czech legal system, it had to be considered as an interpretative source.

Therefore, where it is possible to interpret national standards in several ways, the interpretation that meets the requirements of the Aarhus Convention will prevail.

On this basis, the Constitutional Court concluded that it was necessary to grant environmental NGOs access to the courts and to allow them to propose the annulment of the land use plan. At the same time, the Constitutional Court explicitly defined the criteria for the standing of environmental NGOs to ask for the review of the land use plans in the court:

- the NGO must claim that the illegality of a measure of a general nature affects its legal sphere,
- the NGO must have environmental protection as the subject of its activity according to its bylaws,
- the NGO must have a factual relationship to the locality regulated by the land use plan (registered office, residence of members, etc.),
- establishment of the NGO, i.e. the time in which it has been in operation; however, the establishment of an ad hoc association is not excluded either.

This decision of the Constitutional Court specifically dealt with the standing of the environmental NGOs to appeal against land use plans before administrative courts. By the judgment of the Supreme Administrative Court of 25 June 2015, No. 1 As 13/2015-295 (see section 1.1, point 4) above) and following case law, the above principles were applied to the standing of the NGOs in environmental matters in general. Moreover, the amendment to the EIA Act of 2015 stated explicitly, for administrative procedures subsequent to an EIA, that the environmental NGOs can challenge both the substantive and procedural legality of the decisions issued in these procedures and they should be deemed to have rights capable of being impaired by the decisions.

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

The sectoral legislation includes special regulation of administrative proceedings themselves, including the possibility of participation, but not of access to justice. The conditions of access to the court are, with regard to all decisions, regulated by the general regulation contained in the Code of Administrative Justice. The only Act containing a special provision on judicial review is the EIA Act.

If the competent authority concludes that a project subject to the screening (an “Annex II” project, in the sense of the EIA Directive) shall not be subject to EIA, it shall issue a decision to this effect. The environmental NGOs, subject to the requirement for either 3 years of legal existence or 200 people supporting the action, can file an administrative appeal against such a decision and subsequently bring an action before the administrative court.

The final “EIA statement” cannot be reviewed by courts independently (directly). As the Supreme Administrative Court ruled in its judgement of 28 August 2007, no. 1 As 13/2007-63 (see section 1.1, point 4) above), it shall be subject to judicial review only together with (or within the scope of) the permit for which the EIA statement serves e.g. the land use permit. In the administrative procedures in which such permits are issued, NGOs meeting the same requirements as described above for appeal against the screening decision can apply for the status of a party and consequently file an administrative appeal against the final decision (permit) and then an appeal to the court.

The environmental NGOs (without having to meet any specific conditions, except having the protection of the environment or other public interests as a main goal in their by-laws) can also apply for the status of a party to the proceedings according to the IPPC Act, the Nature Protection Act or the Water Protection Act (see section 1.1, point 3) above). Final decisions issued according to these acts can be challenged by the environmental NGOs if they participate in the administrative procedure with the status of a party.
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.)

In the administrative procedures, the basic rule for granting the status of party to the proceedings is based on the concept of one’s “rights or duties being possibly directly affected” by the decision. According to Article 27 of the Code of Administrative Procedure, the parties to the proceedings are persons whose rights or duties can be directly affected by the administrative decision. However, this general regulation shall apply only if the specific administrative procedure is not regulated by a special law which would take precedence over the general regulation. Most administrative proceedings are further regulated in special legislation which lays down special definitions for the parties to the proceeding which take precedence over general legislation. There are a large number of special laws governing the individual decision-making processes relevant to the protection of the environment. The most important ones are listed below.

a) Act no. 183/2006 Coll., Building Act

The Building Act sets its own definitions of parties of the administrative proceedings for issuing land use permits, building permits and other permits under the act. The definitions are generally based on the principle that only the individuals and legal entities whose property rights or other rights in rem can be directly affected by the permit, including the applicant, in some cases the environmental NGOs and in land use processing the affected municipalities, have status of party of the proceedings and may exercise the rights associated with that status.

b) Act No. 100/2001 Coll. on the Environmental Impact Assessment

In the EIA process, anyone can make comments at specified stages. The result of the EIA process is the issuance of a binding EIA opinion as a necessary document for the subsequent administrative procedures in which the project is approved. The EIA Act lays down conditions under which designated subjects may become parties to the subsequent development consent proceedings. The status of party to the subsequent proceedings is granted only to environmental NGOs or NGOs concerned with public health which were established at least three years before the date of publication of the announcement of the subsequent proceedings or whose participation is supported by at least 200 persons.

c) Act No. 76/2002 Coll., on Integrated Prevention and Pollution Control

The Act grants the status of party to proceedings concerning integrated operation permits for installations falling under the scope of this act, which implements Directive 2010/75/EU on industrial emissions, to the operator and owner of the regulated facility, the affected region and municipality and environmental NGOs that register within 8 days of the date of publication of the notice. Employers' organisations and chambers of commerce can get the status of party under similar conditions as environmental NGOs.


The Act sets out the conditions under which environmental NGOs can become participants in proceedings under this Act. The NGOs are entitled to be informed of all administrative proceedings in which the interests of nature and landscape protection may be affected. Subsequently, if the NGO notifies its participation in the procedure under this act within eight days of the date of the notification, it has the status of a party to the proceedings. The act further grants the status of party to such proceedings to affected municipalities.

e) Act No. 254/2001 Coll., the Water Protection Act

The Act grants to environmental NGOs the status of party to the proceedings under this act (with exceptions) under similar conditions to the Act on Nature and Landscape Protection. The act further grants the status of party to municipalities in proceedings in which decisions which may affect water conditions or the environment are made.

f) Special definitions of the parties to administrative proceedings related to the environment are contained in a number of other special laws, such as Act no. 44/1988 Coll. Mining Act, Act no. 61/1988 Coll. Act on Mining activities, Act No. 258/2000 Coll. Public Health Protection Act, or Act no.263/2016 Coll., Nuclear Act. With regard to the proceedings under the last two of these acts, the status of party is granted only to the applicant. This is the case, for example, for proceedings to grant “noise exceptions” – decisions which authorise an operator of a source of noise which exceeds the maximum limits to continue with the operations for a limited period of time (with the possibility of repeated prolongation).

There is no special provision concerning the participation of foreign NGOs in environmental administrative procedures. They may be granted the status of party to the proceedings under the same rules as the Czech ones. Some acts, on the other hand, provide for a special obligation to cooperate with municipalities (Act on Nature and Landscape Protection).

The standing rules at the judicial level are described above in section 1.3, point 2) and point 1). Individuals have standing to appeal against administrative decisions if they can assert that their rights, including the right to a favourable environment, have been infringed by the decision which “creates, changes, nullifies or authoritatively determines their rights or duties” or that their rights have been infringed in the proceedings and this could render the decision illegal. According to the recent jurisprudence of the Constitutional and Supreme Administrative Courts in 2014 (decision of the Constitutional Court of 30 May 2014, No. I. ÚS 59/14, and the judgment of the Supreme Administrative Court of 25 June 2015, No. 1 As 13/2015-295), environmental NGOs are entitled to bring an action against an administrative decision which may infringe the right to a favourable environment. Their standing, however, is not based on the recognition of NGOs' right to a favourable environment, but on their right to protect the substantive rights of their members and act on behalf of them. The case-law subsequently defined further conditions for standing. The conditions include requirement that the objections brought by the NGO should relate to the subject of the NGO's activity; period of operation of the NGO; close local relationship of the NGO to the subject of administrative proceedings. Any assessment of the fulfilment of the individual requirements always depends on the individual assessment by the court in a specific case, as to whether the interests defended by the NGO may be affected.

Fulfilment of the condition that the case relates to the subject of activity of the NGO is usually evaluated on the basis of the goals and activities specified in the statutes (bylaws) of the NGO. The courts usually base their conclusions on the rebuttable presumption that an NGO carries out all the activities listed in its statutes. For example, in the judgement of 29 January 2018, no. 64 A 4/2017-205, the Regional Court in Brno acknowledged the legal standing of an NGO, whose goal according to its statutes was the protection of nature and the environment, to bring an action against a land use plan defining a road corridor in a certain area. In the judgement of 28 March 2018, no. 2 As 149/2017-164, the Supreme Administrative Court acknowledged legal standing of an NGO to bring an action against a decision on imposing measures to compensate for the impacts of road construction on a Site of Community Importance, although the project was 60 km away from the seat of the NGO. The reason was again that the subject of activity of the NGO, according to its status, was the protection of nature, landscape and environment in specially protected areas. Courts are thus usually satisfied with the activities set out in the statutes and it is up to the respondent to prove that the NGO is not in fact engaged in these activities.

The period of operation of the NGO and its degree of establishment in the area may be inferred by the courts from the facts known to them from other proceedings. This is especially the case for NGOs that participate in these proceedings repeatedly and are known for their environmental activities (for example the judgement of the Supreme Administrative Court of 24 May 2016, no. 4 As 217/2015-197). However, the establishment of ad hoc association is not excluded either.
The local relationship of the NGO is assessed with respect to the whole subject of the proceedings, i.e. not necessarily with regard to individual objections brought in the proceedings by the NGO (judgement of the Supreme Administrative Court of 28 February 2020, no. 6 As 104/2019-70). A local relationship usually exists if the NGO is active in the area where the permitted activity is to take place. Wider standing may be granted if the effects of the project extend beyond the boundaries of the area or if the NGO carries out its activities on the territory of the whole republic for a long time. For example, in the judgement of 28 February 2020, no. 6 As 104/2019-70 the Supreme Administrative Court upheld the locus standi of an environmental NGO which has, for a long time and in serious manner, developed activities in connection with nature and landscape protection throughout the Czech Republic, against a building permit for new thermal power plant units located in an area other than that of the NGO’s registered office.

The general conditions discussed above arising from the Code of Administrative Justice and related case law are supplemented by a special regulations contained in the EIA Act with regard to the proceedings subsequent to the EIA process. Article 9d paragraph 1 of the EIA Act (see section 1.1, point 3) above) states explicitly that the environmental NGOs can challenge both the substantive and procedural legality of the decisions issued in these procedures under the same criteria which they have to fulfil to become parties to these proceedings (i.e. they must exist as a legal entity at least three years before the date of publication of the announcement of the subsequent proceedings or must be supported by at least 200 persons).

In processes concerning the adoption of various plans and programmes related to the environment, the legislation usually also provides every person with the right to submit comments. When the plan or programme is issued in the form of a measure of a general nature, it can be appealed before the administrative courts on the basis of Article 101a of the Code of Administrative Justice by any person claiming that his or her rights were infringed by the measure of a general nature issued by the administrative authority. According to the case-law of the administrative courts, an appeal against the land-use plan, as the most typical measure of a general nature, can be submitted by an owner of a property located in the territory regulated by the respective plan whose property is directly affected by the proposed plan, as well as by the owner of a neighbouring property that could be affected by a certain activity, the effects of which will also have a significant impact on his land (e.g. by emissions, noise, etc.) or which will lead to a significant decrease in the value of his property. On the other hand, a tenant does not have standing. For standing of environmental NGOs, the above-described principles, established by the decision of the Constitutional Court of 30 May 2014, No. I. US 59/14, apply.

As described above in the section 1.1., the Code of Administrative Justice also contains special legal regulation of the court procedure for cases where the interference with rights was caused by omission (inaction) by the administrative body or other unlawful interference (for example consent from an administrative authority to the placement of a project, which does not require a development consent in the form of an administrative decision). In both cases, the standing is based on direct interference with subjective rights of a person who is affected by the inaction or other unlawful interference.

The Code of Administrative Justice stipulates that a person who has exhausted the administrative measures for protection against illegal omission (inaction) by an administrative authority which infringes his or her rights can ask the court to order the administrative authority “to issue a decision on the merits of the matter”. There is, however, a significant “gap” in this respect. According to the case law of the Czech courts, no person has standing to sue the administrative authority in the situation where it refuses to initiate the procedure ex officio, even though it has a legal duty to do so (for example, when there is a project built or operated without the necessary permits). The courts repeatedly dismissed lawsuits from affected neighbours in such cases (see e.g. Decision of the Constitutional Court of 30 July 2019, no. III. US 2041/19 in section 1.1, point 4) above). The issue is actually under review by the extended senate of the Supreme Administrative Court in case 6 As 108/2019. It is possible that the extended senate could change the existing jurisprudence.

There is also no specific regulation concerning the standing of the environmental organisations to sue administrative authorities in case of illegal omissions or other unlawful interferences.

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

According to Article 36 of the Code of Administrative Justice the parties have equal position in the proceedings. The court is obliged to provide them with the same opportunities to exercise their rights and to provide them with instructions on their procedural rights and obligations to the extent necessary for them not to suffer harm in the proceedings. A similar principle applies in administrative procedures where administrative authorities are obliged to act impartially and treat the parties equally. These clauses also relate to language and country of origin and may be considered as general anti-discrimination clauses. In court procedures, all parties are entitled to be heard in their mother tongue. Anyone who does not speak Czech may ask for an interpreter (translator); this right is guaranteed directly by the Charter of Fundamental Rights and Freedoms.

It is the state which bears the cost of translation in court procedures, contrary to administrative procedures where the party who does not speak the language has to bear the cost of translation itself. The exception is EIA/SEA procedures for projects or plans with transboundary aspects where notification and documentation must also be submitted in the official language of the State concerned (see Article 13 and 14a of the EIA Act).

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 the administrative procedure, the administrative body is responsible for collecting all necessary evidence needed for sufficient clarification of the relevant facts (Article 50 of the Code of Administrative Procedure). However, in the administrative review procedure, the parties can propose new evidence only if they could not do so earlier in the process (Article 82 of the Code of Administrative Procedure).

In the judicial review procedure, the court can decide which of the proposed evidence to consider and act on. According to law (Article 52 of the Code of Administrative Procedure), the court does not have to act on unnecessary and/or irrelevant proposals. In this case, in the decision on the merits, the court has to explain why the evidence was not considered. If not, this can result in so called “overlooked evidence” which means that the decision is unreviewable and also unconstitutional (Decision of the Constitutional Court of 16 February 1995, No. III. US 61/94).

Evidence is evaluated by the court in line with the principle of independent assessment of all evidence. The court is not bound by any regulation as to what evidence should be given priority or assigned greater plausibility etc.; it is up to the court to carefully evaluate all the evidence. In its decision on the merits, the court has to thoroughly explain what evidence the decision is based on, what evidence was taken into account, which items were given priority, and why.

If not, the decision is likely to be cancelled by the superior court.

The court can of its own motion request new evidence that was not introduced by any of the parties, particularly if the need for the evidence comes from the content of the administrative file. Any other evidence can be adduced if the court considers it necessary, if it would lead to relevant findings, and provided the equality among the parties is not infringed.

2) Can one introduce new evidence?

In civil cases one can introduce new evidence after the procedure has started, but only up to a specific moment (the end of the preparatory procedure, if it was performed, or the end of first hearing). In administrative judicial procedure, there is no limited period of time for introducing new evidence, up to the end of the court proceedings. However, in the case of action against administrative decisions, all the claims must be formulated in a two month period that is reserved for bringing an action.

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts.
In the procedure, the parties and also the court can ask for expert opinions. The expert can be appointed by the court or hired by the party. The rules for experts and their performance are prescribed in Act. No. 36/1967 Coll., on experts and interpreters and executive regulation No. 37/1967 Coll. From 1 January 2021, the new Act. No. 254/2019 Coll., on experts, expert offices and expert institutions will come into force. According to this new act, anyone who meets the established criteria (now including at least a master’s level education) is entitled to be registered as an expert. The new act also introduces a possibility for experts to act together as an agency of experts and an obligation for experts to have liability insurance.

Anyone can find the experts in the list provided by the Ministry of Justice on its [website](http://potrebujipravnika.cz). There is a facility to choose the expert according to his/her specialisation and place of residence. The database is accessible free of charge.

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

The expert opinion is not formally binding on the judge, but it is considered as one of the pieces of evidence, so the principle of independent assessment of evidence applies. The principle of free evaluation of evidence, however, applies exclusively to the evaluation of the veracity or credibility of the evidence. This includes, for example, expert reports. On the other hand, the principle does not apply to the evaluation of the weight of any piece of evidence in terms of its relevance to clarifying the facts of the case. Weight evaluation is a matter of legal assessment rather than a free evaluation of evidence in terms of veracity. Similarly, free evaluation is not applicable to the evaluation of the legality of the manner in which evidence was obtained.

The court should assess whether there are enough grounds for the conclusions of the expert opinion and whether all of the questions were answered, and also assess the expert opinion in relation to other pieces of evidence presented in the case. The expert should state how he came to his findings and conclusions ([judgment of the Supreme Court of 21 October 2009, no. 21 Cdo 1810/2009](http://potrebujipravnika.cz)). If there is any doubt about the quality of the expert opinion, the court can ask another expert to review the preceding expert opinion. The judge must decide on the credibility of the expert’s opinion and on its value as proof. If necessary, the judge can ask for a counter-examination. If there are two conflicting expert opinions, the judge will ask for a review opinion from a third expert. Disagreement of the party with the conclusions of the expert opinion cannot be the only reason for reviewing the expert opinion.

3.2) Rules for experts being called upon by the court

The court usually calls upon the experts at the suggestion of the parties, however it can also call on the expert of its own motion. The parties should always be given an opportunity to express their view on the choice of the expert and the questions that he/she was asked to answer. If there is any reason for exclusion of the expert (mainly bias, see Article 11 of Act. No. 36/1967 Coll., on Experts and Interpreters), the expert opinion cannot be used as evidence (see [judgment of the Supreme Court of 17 July 2014, no. 21 Cdo 2616/2013](http://potrebujipravnika.cz)).

3.3) Rules for experts called upon by the parties

The expert opinion introduced by the parties should have the same importance and plausibility as the expert opinion requested by the court, provided that the expert opinion meets all requirements prescribed by law and includes a declaration by the expert that he or she is aware of the results of intentionally false expert opinion. Any party can choose an expert from the official lists of experts, ask him to give his expert opinion, pay for his services and present this expert opinion before the court as evidence.

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

The expert is entitled to a fee for giving the expert opinion. If the expert was appointed by the court, the rules for the fee are given by law (Regulation No. 37/1967 Coll., the regulation of Ministry of Justice applying the Act on Experts and Interpreters). Where the expert was called upon by a party, the fee conforms to the contract between the expert and the party. If the parties to a contract do not agree otherwise, the fee also covers appropriate expenses.

The expert called upon by the court must account for the fee and the appropriate expenses together with the expert opinion, based on the hourly fee (see section 1.7.3, point 1) for more details). The court than sets the exact amount of the fee no later than in two months from provision of the expert opinion. If the expert opinion is of poor quality or late, the court can reduce the fee by up to half or, in case of seriously poor-quality, refuse to award the fee.

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

Unlike in criminal cases, a party to court proceedings in civil cases has to be represented by an attorney only in review proceedings before the Supreme Court (Article 241 of the Code of Civil Procedure), and in administrative court cases only in the cassation procedure before the Supreme Administrative Court (Article 105 of the Code of Administrative Justice). In both cases, the requirement for representation applies only to the claimant. However, if the claimant has a legal education, the obligation will not apply. The same applies in the case of a legal entity represented by a member or employee with a legal education.

The register of attorneys is run by Czech Bar Association on its [website](http://potrebujipravnika.cz). Anyone can search for a lawyer by his/her name, legal specialisation (environmental law is under no. 49), place of residence, language, registration number etc. When choosing an attorney, all the data needed is displayed, including phone number, e-mail address, contact at law firm etc.

1.1 Existence or not of pro bono assistance

The pro bono lawyer can be appointed by the court or by the Czech Bar Association or arranged by some NGOs. There is no complex system of pro bono services, although drafts of an Act on Pro Bono Assistance have been discussed repeatedly in recent years.

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.)?

The court will appoint the attorney pro-bono in a civil or administrative case if the party files an application, the lawyer is necessary to protect the interests of the party, and the court considers it appropriate given the lack of financial resources of the party. The attorney’s fee and appropriate expenses for representation are then paid by the state.

The Czech Bar Association provides pro bono legal services for those who do not fulfill the conditions for appointment of representative by and are not capable of obtaining the service at their own expense. The services are provided in the form of indicative legal consultation of legal counsel including representation. The application forms for pro bono legal service provided by the Czech Bar Association are available [here](http://potrebujipravnika.cz).

Pro bono service is also arranged by some NGOs. The Pro Bono Alliance mediates the pro bono service among the NGOs (and their clients) and lawyers.


1.3 Who should be addressed by the applicant for pro bono assistance?

As follows from the previous answer, the applicant can address the courts, the Czech Bar Association or some NGOs for pro bono assistance.

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

[ List of experts](http://potrebujiprobona.cz) provided by Ministry of Justice.

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

[Hnutí DUHA](http://www.hnutiduha.cz)

[Rekonstrukce státu](http://www.rekonstrukcestatu.cz)

[Děti Země](http://www.detizem.cz)
2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?

Paragraph 2 Code of Administrative Procedure, which means if it is necessary for protection of the public interest or if there is a threat of serious harm to the rights of some of the parties.

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

The ex officio review proceeding can be started within a time limit of one year from the day when the decision came into force.

2) Time limit to deliver decision by an administrative organ

Generally, the administrative authorities are obliged to deliver the decision within a period of 30 days, with the option to extend it up to 60 days (Article 71 of the Code of Administrative Procedure).

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

As a general principle of Czech administrative law, a party to the proceeding can file an administrative appeal against administrative decisions to a superior administrative body. The appeal to a superior administrative body must be exhausted before the administrative decision can be further appealed before the court. Non-exhaustion of proper remedies is a ground for dismissing the action before the court. However, if there is no possibility of administrative appeal, because of an explicit regulation by law (see section 1.1, point 2 for more details), it is possible to bring an action directly to the court.

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

Generally, there are no specific deadlines for the courts to issue their judgments. Proceedings in the civil and administrative courts (on one level) may last from a few months to several years. However, the Charter of Fundamental Rights, in Article 38 paragraph 2, provides everyone with the right to have his case dealt with without undue delay.

According to Article 56 of the Code of Administrative Justice, the court hears and decides cases in the order in which they occur; this does not apply if there are serious grounds for prior hearing and decision-making on the case. The Code of Administrative Justice further defines types of proceedings to be decided as a matter of priority. These include, actions for failure to act and actions against unlawful interference.

A specific deadline to deliver the final court decision is set forth only in cases of the so-called “measures of a general nature” such as land use plans or special acts on some aspects of development of traffic infrastructure projects where the Code of Administrative Justice (Article 101d paragraph 2) prescribes a deadline of 90 days. The same time limit for the court decision is set in Article 7 paragraph 10 of the EIA Act and also applies to decisions on administrative lawsuits concerning some large infrastructure projects (Act No. 416/2009 Coll. Article 2, paragraph 2). Interim decisions on a suspensive effect of the lawsuit or injunctive relief must be delivered within a period of 30 days in administrative cases and 7 days in civil cases.

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

The parties to the administrative procedure must challenge the decision before the courts within 2 months of the time when the final administrative decision was delivered (which is the decision of the superior body on the administrative appeal). In cases concerning some large infrastructure projects, the deadline is 1 month. The lawsuit against “measures of a general nature” such as land use plans must be filed within 1 year from the time they became effective.

In civil cases, one can introduce new evidence only until a specific moment (the end of the preparatory procedure, if there was one, or the end of the first hearing), in administrative judicial procedure there is no limited period of time for introducing new evidence, up to the end of the court proceedings. However, in the case of action against administrative decisions, all claims must be formulated in the two month period that is reserved for bringing an action.

Another deadline is set for “persons concerned” by a lawsuit (usually the parties to the original administrative procedure), who must indicate, within the time limit set by the court, whether they wish to participate in the court proceedings. For the time limit applicable during the procedure, it should be noted that the court must notify the parties at least ten days before the hearing that it is to be held (a shorter time limit may be set by court if the court has to decide within a period of days).

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 Code of Administrative Procedure, in Article 83, provides a general fifteen-day time limit to challenge administrative decision by an administrative appeal, which can be filed by a party to the administrative procedure.

The superior administrative body can also initiate a review procedure ex officio. This proceeding can be initiated by anyone, but without a legal right to start the proceedings. The ex officio review proceeding can be started within a time limit of one year from the day when the decision came into force.

2) Time limit to deliver decision by an administrative organ

Generally, the administrative authorities are obliged to deliver the decision within a period of 30 days, with the option to extend it up to 60 days (Article 71 of the Code of Administrative Procedure).

If the administrative authority does not comply with this time limit, it is possible to submit a request to the superior body to take measures against inaction (omission) by the subordinate authority. Afterwards, it is possible to file a lawsuit and request the court to order the administrative authority to issue a decision on the merits of the matter (see section 1.4, point 3 for more details).

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

As a general principle of Czech administrative law, a party to the proceeding can file an administrative appeal against administrative decisions to a superior administrative body. The appeal to a superior administrative body must be exhausted before the administrative decision can be further appealed before the court. Non-exhaustion of proper remedies is a ground for dismissing the action before the court. However, if there is no possibility of administrative appeal, because of an explicit regulation by law (see section 1.1, point 2 for more details), it is possible to bring an action directly to the court.

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

Generally, there are no specific deadlines for the courts to issue their judgments. Proceedings in the civil and administrative courts (on one level) may last from a few months to several years. However, the Charter of Fundamental Rights, in Article 38 paragraph 2, provides everyone with the right to have his case dealt with without undue delay.

According to Article 56 of the Code of Administrative Justice, the court hears and decides cases in the order in which they occur; this does not apply if there are serious grounds for prior hearing and decision-making on the case. The Code of Administrative Justice further defines types of proceedings to be decided as a matter of priority. These include, actions for failure to act and actions against unlawful interference.

A specific deadline to deliver the final court decision is set forth only in cases of the so-called “measures of a general nature” such as land use plans or special acts on some aspects of development of traffic infrastructure projects where the Code of Administrative Justice (Article 101d paragraph 2) prescribes a deadline of 90 days. The same time limit for the court decision is set in Article 7 paragraph 10 of the EIA Act and also applies to decisions on administrative lawsuits concerning some large infrastructure projects (Act No. 416/2009 Coll. Article 2, paragraph 2). Interim decisions on a suspensive effect of the lawsuit or injunctive relief must be delivered within a period of 30 days in administrative cases and 7 days in civil cases.

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

The parties to the administrative procedure must challenge the decision before the courts within 2 months of the time when the final administrative decision was delivered (which is the decision of the superior body on the administrative appeal). In cases concerning some large infrastructure projects, the deadline is 1 month. The lawsuit against “measures of a general nature” such as land use plans must be filed within 1 year from the time they became effective.

In civil cases, one can introduce new evidence only until a specific moment (the end of the preparatory procedure, if there was one, or the end of the first hearing), in administrative judicial procedure there is no limited period of time for introducing new evidence, up to the end of the court proceedings. However, in the case of action against administrative decisions, all claims must be formulated in the two month period that is reserved for bringing an action.

Another deadline is set for “persons concerned” by a lawsuit (usually the parties to the original administrative procedure), who must indicate, within the time limit set by the court, whether they wish to participate in the court proceedings. For the time limit applicable during the procedure, it should be noted that the court must notify the parties at least ten days before the hearing that it is to be held (a shorter time limit may be set by court if the court has to decide within a period of days).

1.7.2. Interim and precautionary measures, enforcement of judgments

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

An appeal to a superior administrative body has a suspensive effect. Only in rare cases, and generally not in environmental matters, will the appeal not have a suspensive effect and may be preliminarily executed. The administrative body is able to void the suspensive effect in cases referred to in Article 85 paragraph 2 Code of Administrative Procedure, which means if it is necessary for protection of the public interest or if there is a threat of serious harm to the rights of some of the parties.

2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?
The administrative body can order injunctive relief at the request of a party or ex officio, before the end of the appeal proceedings, if the conditions of the parties need to be adjusted provisionally or if there is a fear that enforcement of a final decision will not be possible (Article 61 Code of Administrative 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?

As stated in the previous point, it is possible for the party to request injunctive relief also during the appeal procedure. There is no deadline for such a request, up to the end of the procedure.

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

The administrative decision of the first stage administrative body cannot be executed if an administrative appeal is launched, pending the decision of the superior authority, unless the suspensive effect of the administrative appeal is made void (see point 1 above). If an appeal is brought to court, the administrative decision can be executed unless the court grants a suspensive effect to the lawsuit or issues a preliminary injunction (see the next point).

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

The submission of a lawsuit against a decision of an administrative authority generally does not have a suspensive effect. Once the decision is approved by the superior administrative body, it may be executed regardless the lawsuit filed against it. Only if the court grants a suspensive effect to the lawsuit or issues a preliminary injunction will execution of the decision be impossible.

The court may, in accordance with Article 73 paragraph 2 of the Code of Administrative Justice, at the request of the claimant, grant a suspensive effect to the lawsuit under the following conditions executing the decision would cause the applicant “incomparably more serious” harm than that which could be caused to other persons by granting the injunctive relief, and at the same time, issuing injunctive relief would not be contrary to an important public interest.

Specific conditions for granting a suspensive effect apply in case of lawsuits against final decisions (development consent) for a projects which are subject to EIA according to Article 9d paragraph 2 EIA Act (see section 1.8.1 for more details).

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?

Apart from granting a suspensive effect to the lawsuit, the administrative courts may further issue a preliminary injunction on the grounds of Article 38 of the Code of Administrative Justice where there is a need for an interim arrangement of the relationship between the parties. There must be a threat of a “serious harm”, but it does not have to be the claimant personally who is under this threat. The court may order the parties to the dispute, or even a third person, to perform, abstain from something or endure something.

Nevertheless, it is very rare for the administrative courts to issue preliminary injunctions (granting suspensive effect is more usual). In civil cases this happens much more often. In civil court procedures, the court may, at the request of a party, impose injunctive relief if it is necessary to provisionally amend the conditions of the parties, or if there is a risk that enforcement of the (subsequent) court decision could be threatened (Article 74 of the Code of Administrative Justice). The court may apply injunctive relief to forbid the handling of things, laws or particular transactions.

In administrative cases, there is no separate time-limit in which the request for a suspensive effect or preliminary injunction has to be filed. In civil cases, it is possible to ask for the preliminary injunction first and file the lawsuit some time afterwards.

There is no possibility for the court to order deferral in administrative cases; this is possible only in civil proceedings.

In administrative matters, it is not possible to appeal (to file a cassation complaint) to the Supreme Administrative Court against the interim decisions, including decisions on suspensive effect or preliminary injunction. The court may reconsider its decision on suspensive effect or preliminary injunction at any time and it is hence possible to file a request for such reconsideration. In civil cases, it is always possible to appeal the decision on the preliminary injunction to the superior court; however, the appeal does not have a suspensive effect.

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.

Generally, no fees are charged for participation in administrative procedures in environmental matters; only the judicial stage is charged. There are costs connected directly with the applicant’s actions towards the courts, namely:

- a fee to start the judicial procedure
- a fee for an appeal or cassation complaint,
- a fee for a request for suspensive effect or injunctive relief.

All these fees must be paid by the applicant/appellant. Further, there are costs for persons other than the court such as experts (cost of expert opinions), interpreters, witnesses etc. and the costs of the parties to the procedure themselves.

The court fees for individual kinds of administrative lawsuits are based on a flat rate regardless of the value of the case; see regulation in Act No. 549/1991 Coll. A fee for a lawsuit to review an administrative decision is CZK 3,000 (approx. EUR 125). Fee for a lawsuit against a land use plan is 5000 CZK (approx. EUR 200). Fee for a cassation complaint is CZK 5,000 (approx. EUR 200).

If a remedy is requested in the civil court action (such as claims for damages connected to environmental pollution or devastation), the system for calculating the fees is generally based on the value of the case. This principle applies when the claim is pecuniary; there are specific rules for calculating fees in disputes involving non-pecuniary claims. The fee for an appeal in civil cases is the same as for the lawsuit in the same case.

Costs of expert opinions (noise or pollution studies, etc.) may vary; the cost can normally be from EUR 100 to 4,500. However, the vast majority of administrative cases are decided on the basis of the administrative files, and possibly other official documents. On the other hand, in the civil cases it is necessary to bring enough evidence to support the lawsuit, so expert opinions are often necessary. For example, in cases in which the plaintiff asks the court to order the owners of the road to take measures to reduce the noise caused by traffic in excess of the noise limits, the costs of the expertise (assessment) may vary between EUR 1,900 and 4,200. Theoretically, in some other cases such as cases dealing with chemical pollution of the land, the costs for the expertise may be much higher.

The fees of attorneys may also vary widely. Typically, there is the hourly fee which is agreed with the client and may range from EUR 50 to 200. However, there are also other possibilities of determining fees such as a fee for the full representation, or a fee based on the tariff for attorneys.

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

The fee for a request for injunctive relief in the administrative cases is CZK 1,000 (around EUR 40). No deposit to cover any compensation is required.

In contrast, in the civil matters anyone requesting a court to order injunctive relief is obliged to pay a deposit of CZK 10,000 (approx. EUR 360) to cover any compensation for damage or other loss which could be caused by the injunctive relief; a fee of CZK 1,000 (approx. EUR 40) is obligatory as well.

3) Is there legal aid available for natural persons?
Concerning other possibilities of financial assistance, it is possible for a party to a judicial dispute to ask the court to appoint him or her a legal representative and at the same time to exempt that party from the duty to pay the legal costs (fully or partially). The conditions are the same as for a waiver of the court fees, i.e. the financial situation of the applicant.

Further, it is also possible to ask the Czech Bar Association to appoint an attorney to provide free legal aid – the pro bono lawyer (normally only for one or a few actions, not for full representation).

This system of the Czech Bar may theoretically be used already at the stage of administrative procedures. It follows that it is not possible for a party to choose his/her own attorney and then ask the court for a waiver of the costs of legal representation. Officially, waiver of these costs is always related to the appointment of a representative by the court (or the Bar Association).

Only attorneys can provide legal aid as a paid service, and only an attorney can be appointed as a representative of a party who is asking for free legal aid. On the other hand, it is possible for a party to be represented before a court or administrative organ by someone other than an attorney. In practice, the NGOs often provide basic free legal aid (as counselling centres) in their fields of specialisation, and sometimes also represent parties in court. Legal aid is used relatively frequently in environmental cases and the frequency seems to be growing constantly.

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?

Free legal aid is available for legal persons under the same conditions as for natural persons. The Supreme Administrative Court ruled, with respect to the environmental NGOs who regularly apply to courts to challenge administrative decisions in environmental matters, that it is up to them to organise their activity in a way they have sufficient resources for it, and therefore, they cannot be provided with free legal aid repeatedly (decision of the Supreme Administrative Court of 9 February 2017, no. 1 As 326/2016-22, or decision of the Supreme Administrative Court of 27 May 2010, no. 1 As 70/2008 - 74).

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

There is a possibility to obtain a financial grant for legal services from non-governmental organisations, see e.g. Foundation Via.

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

The loser pays principle applies as a general rule in the Czech court system. The losing party is therefore customarily obliged to pay the costs of the successful party as well as the cost of expert opinions and other costs of the procedure.

However, the case-law of the administrative courts states that the costs of the legal representation (attorney’s fees) are not eligible costs for the administrative authorities which act as defendants in the administrative courts (the administrative body issues a decision and subsequently defends it before the court), as they employ their own lawyers who can represent them in the dispute. This case law also admits some exceptions. Under special circumstances (depending on the consideration of the court) the court may also decide in civil jurisdiction that each party has to bear its own costs as well.

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?

As stated above, both civil and administrative courts can mitigate the costs of the proceedings by granting a waiver of the court fees when the applicant proves the need for the waiver. This possibility is applicable at all instances in the proceedings, including the appeals. The administrative courts shall grant a partial waiver of the fees if the applicant proves he/she does not have the funds to pay the fee in full. A full waiver of the fee can be granted only under special circumstances. Waivers of these costs is related to the appointment of the representative by the court (or by the Bar Association).

The civil judges can grant a full or partial waiver of the court fees if the applicant proves a lack of funds and the action itself is not arbitrary, or almost certainly without any chance of being successful. Case-law in environmental cases further specifies these rules in a way that an NGO cannot be awarded waivers repeatedly; if the NGO wants to protect the environment in court, it must raise essential resources for that and “not transfer them onto the state”.

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?

With regard to the possibilities for public participation in environmental decision-making and subsequent access to justice, the most important are general provisions of the Code of Administrative Procedure and the Code of Administrative Justice and specific provisions of environmental laws, mostly regulating the rights of environmental NGOs (see section 1.1 point 3 for more details).

The Collection of Laws is available here and all laws, regulations etc. are free available on private websites as well https://www.zakonyprolidi.cz/. The Ministry of the Environment provides information on the application of the Aarhus Convention, including rules on access to justice on environmental matters, in this publication. A summary document about the possibilities of public participation and access to justice in environmental and related matters can be found also here.

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

There are general provisions in the Code of Administrative Procedure dealing with service of documents, the obligation on administrative bodies to provide information about proceedings to the parties and to notify the parties and the persons concerned about the taking of evidence and the right of access to the files. In proceedings with a large number of parties, the initiation of proceedings is usually announced by public notice.

One can also request information from administrative bodies according to the laws on access to information. There are two different regimes: general Act No. 106/1999 Coll., Freedom of Information Act and specific Act No. 123/1998 Coll., on the Right to Access to Environmental Information. They are not applicable simultaneously; the specific act should always be applied to requests for environmental information.

The request for environmental information can be made orally, in writing or in any technically available form. The request must not be anonymous, and it has to be clear from the request what information is being requested. There are no other specific formal requirements for the request. If the request is incomprehensible or too general, the authority shall ask for more detail. The information shall be provided within 30 days of receipt or provision of additional details. This deadline can be extended, for serious reasons, up to 60 days maximum.

According to the “general” Freedom of Information Act, the courts can order the authority to disclose the information required. Such provision is, however, not contained in the Act on the Right to Access to Environmental Information, which applies exclusively with respect to requests for environmental information.

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

The information about the EIA procedures, and all documents relevant for the assessment stage (until the EIA statement is issued), are available online, on the website of the competent authority and also (with an archive) here.

In the case of IPPC, the information is available in the integrated prevention information system. According to the Building Act, the draft land use plans must be made available to the public, where possible via the internet. This applies also to other plans and programmes subject to SEA (Air Quality Improvement Programmes, Waste Management Plans, National River Basin Management Plans, Strategies of Regional Development, Regional Energy Conceptions etc.), which are available here.

4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment?
In the first instance administrative decision, there must be information on the right to launch an administrative appeal and the deadline for it. However, for the final decision of the superior administrative authority, the law does not require it to contain any information about the possibility of judicial review. The judgement must contain the information about the right to appeal, including the timeframe for it. Both administrative decisions and judgements must include legal reasoning explaining why the decision was made. According to the jurisprudence, the decision is not reviewable if it does not contain sufficient legal conclusions resulting from the relevant facts or its reasons are not unambiguous in relation to the verdict. This is also the case for a decision where the reasoning does not make properly show the factual and legal reasons which led the administrative authority to issue a decision.

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

The general rule of administrative procedure is that all documents and hearings are in the Czech language. Documents in languages other than Czech have to be submitted in the original and parties have to submit officially certified translation as well. Anyone who declares that he or she does not speak the language of the hearing has the right to an interpreter (see Article 16 paragraph 3 Code of Administrative Procedure and Article 37 paragraph 4 of the Charter of Fundamental Rights).

In court procedures, the rules are the same. The right to an interpreter is provided in Article 36 paragraph 1 and 2 Code of Administrative Justice.

1.8. Special procedural rules


Country-specific EIA rules related to access to justice

The EIA procedure is not an integral part of development consent (subsequent approval) procedures in the Czech legal system, but a separate process which has following main characteristics:

the EIA procedure is fully open to the public,
the EIA report (documentation) is accessible and everyone is entitled to make comments on it within the given time limits,
the process is finalised by issuing an “EIA statement” which must be adopted before further decisions (permits) are issued,
the EIA statement is binding in the subsequent proceedings,
the EIA statement cannot be reviewed separately, it can only be reviewed in the review proceedings for the subsequent decision.

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

If the competent authority concludes that a project subject to screening (“Annex II” project, in the sense of the EIA Directive) shall not be subject to EIA, it shall issue a decision to this effect. Only environmental NGOs meeting the requirement for either 3 years of legal existence or 200 people supporting their action can file an administrative appeal against such a decision. The NGO can also subsequently file a lawsuit with the administrative court. The EIA Act grants the right to file a lawsuit against this type of decision explicitly and only to the NGOs. However, the general rules on access to justice contained in the Code of Administrative Procedure also apply. Therefore, anyone claiming an infringement of rights should have the right to bring an action (taking into account the case law on the infringement on rights, see above).

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

The scoping decision, as well as the final “EIA statement” cannot be reviewed by the courts independently (directly). As the Supreme Administrative Court has ruled in its judgement of 28 August 2007, No. 1 As/13/2007-83 (see section 1.1, point 4 above), they shall be subject to judicial review only together with (or within the scope of) the permit for which the EIA statement serves as the basis. In the administrative procedures in which such permits are issued, NGOs meeting the same requirements as described above for appeal against the screening decision can apply for status of party and consequently file an administrative appeal against the final decision (permit) and then an appeal to the court.

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

As follows from the above, screening decisions can be challenged by administrative appeal by an NGO meeting the above requirements, within 15 days after delivery (i.e. 30 days after it is published by public notice). The decision of the superior administrative authority can be further appealed in court, within 2 months after delivery.

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

Pursuant to Article 65 of the Code of Administrative Justice (see section 1.1, point 3), anyone who claims that their rights have been infringed directly by a final decision of an administrative authority or due to violation of their rights in the preceding proceedings can bring an action against such a decision. Although it does not follow directly from the provision in question, the right to bring action is usually granted to persons with the status of party to the proceedings. An environmental NGO meeting the requirement for either 3 years of legal existence or 200 people supporting its action can file an administrative appeal against the final authorisation of a project subject to EIA and subsequently an appeal to the administrative court.

There is no special provision concerning the possibility for the foreign NGOs to participate in the environmental administrative procedures. Foreign NGOs should be able take part in these administrative procedures under the same requirements as the Czech ones.

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

The courts shall review both the substantive and procedural legality of the development consents. The rules of evidence are the same as in the administrative courts in general. The courts are entitled, at the suggestion of the parties, to review or amend the evidence considered in the administrative procedure. Together with the final development consent, the substantive and procedural legality of the EIA statement and/or EIA screening and scoping decision shall also be reviewed.

The EIA Act states explicitly, for the administrative procedures subsequent to EIA, that the environmental NGOs can challenge both the substantive and procedural legality of the decisions issued in these procedures and they should be deemed to have rights capable of being impaired by the decision. The court shall, at the suggestion of the plaintiff, also verify materials and technical findings on which the EIA statement and subsequently the development consent is based, at least to the extent that there is not a clear conflict between these findings and the conclusions and reasoning of the administrative authorities.

There are no judicial procedures concerning environmental matters which the courts could start of their own motion. The courts can act solely on the basis of the lawsuit or other appropriate motion, never on their own initiative (see section 1.2 point 4 for more details). They only can grant suspensive effect or issue injunctive relief in EIA cases of their own motion. As for the scope of the review, the courts shall, of their own motion, consider whether the decision is not null and void, if it is not clearly incomprehensible or if there is not a clear absence of reasoning. The court also shall, without any explicit plea from the party in this respect, interpret national law as far as possible in accordance with EU law.

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

The public can challenge the final administrative decisions (development consent), e.g. the land use permit, building permit, mining permit etc. (the list of the proceedings subsequent to the EIA is provided in Article 3, letter g) of the EIA Act), for which the EIA statement serves as the basis. The standard deadlines, i.e. 15 days for administrative appeal and 2 months for appeal to the court, apply, except for some of the infrastructures projects, where the deadline for filing a lawsuit is 1 month.
7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

As a general principle of Czech administrative law, it is possible to file an appeal against administrative decisions to a superior administrative body. The appeal to a superior administrative body must be exhausted before the administrative decision can be further appealed before the court. The only exception is a situation where there is no possibility of administrative appeal because of an explicit regulation by law.

As stated above, the screening decision according to which a project shall not be subject to EIA can be subject to administrative and subsequently also judicial review by an environmental NGO meeting the requirement for either 3 years of legal existence or 200 people supporting its action. Other outcomes of the EIA process can be challenged only together with the final administrative decisions (development consents).

The administrative remedies have to be exhausted before taking a case to administrative court also in case of omissions (illegal inaction) by the administrative authorities.

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?

Active participation in the consultation phase of the procedure (making comments, participating in the hearing on the EIA procedure itself) does not represent a condition for administrative appeal and standing before the court. However, not using the procedural rights actively can influence the probability of success of the court action, as the courts often refuse to deal with arguments which were, without a proper reason, not already raised at the administrative stage. The same applies to not raising objections in subsequent administrative proceedings.

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

Article 7 paragraph 1 of the Code of Administrative Procedure in this regard provides that the persons concerned (including NGOs) shall enjoy equal treatment in the exercise of their procedural rights. The administrative authority shall act impartially towards the persons concerned and shall require all persons concerned to fulfil their procedural obligations equally. The authorities are obliged to provide them with the same opportunities to exercise their rights and to provide them with information on their procedural rights and obligations to the extent necessary not to suffer harm in the proceedings.

According to Article 36 of the Code of Administrative Justice the participants have an equal position in the proceedings. The court is obliged to provide them with the same opportunities to exercise their rights and to provide them with instructions on their procedural rights and obligations to the extent necessary so that they do not suffer harm in the proceedings. In the decision of the Supreme Administrative Court of 6 December 2007, No. 2 Afs 91/2007-90, the Court found that if the court decides on the merits of the case without a hearing, it is necessary that the parties have the opportunity to meet all the documents on which the court will base its decision.

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

According to Article 6 of the Code of Administrative Procedure, the administrative authorities have to proceed without undue delay. If the administrative authority does not act within the statutory period (usually up to 30, 60 or 90 days, in various procedures), or within a reasonable period if the statutory period is not specified, the party to the administrative proceedings can ask for a measure against inactivity and subsequently file a lawsuit to the administrative court. As described in section 1.7.2, points 5) and 6) submission of a lawsuit against a decision of an administrative authority generally does not have a suspensive effect. The court may grant a suspensive effect to the lawsuit if executing the decision would cause the applicant “incomparably more serious” harm than that which could be caused to other persons by granting injunctive relief and issuing injunctive relief would not be contrary to an important public interest. The Constitutional Court stated that the court has to deal with the application for suspensive effect of the administrative action before the authorised project against which the complainant was appealing has already been irreversibly realised (see Decision of the Constitutional Court of 6 May 2015, No. II. US 3831/14). The Supreme Administrative Court has stated repeatedly that the lawsuits filed by the public concerned in environmental matters should normally be granted suspensive effect, so that the legal protection is not only formal but can also have a practical meaning (see e.g. judgement of 28 August 2007, nNo. 1 As 13/2007-63).

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?

Article 9d paragraph 2 of the EIA Act provides that in cases of actions taken against decisions made in subsequent procedures, the court shall decide of its own motion whether to grant suspensive effect of the action, and the same applies for the injunctive relief. The court should grant suspensive effect to the action or order injunctive relief if there is a risk of serious damage to the environment. General regulation on issuing injunctive relief upon request also applies (see section 1.7.2 point 5 for more details).


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

The environmental NGOs (without having to meet any specific conditions, except having the protection of the environment or other public interests as a main goal in their by-laws) can apply for the status of party to the proceedings according to the IPPC Act within 6 days of publication of the information about the request for the IPPC decision by public notice. The employers’ organisations and chambers of commerce can get the status of party under similar conditions to environmental NGOs.

The status of party is also granted to municipalities and regions on whose territory the facility is to be located.

Final decisions issued according to these acts can be challenged by the parties to the proceedings, including environmental NGOs if they participated in the administrative procedure with status of party.

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?

Parties to the IPPC procedure can appeal the IPPC decisions (integrated permits) to the superior administrative authority (the Ministry of the Environment). Final IPPC decisions (integrated permits), issued according to the IPPC Act, can be reviewed by courts under the general conditions for judicial review of the administrative acts. Standing to appeal against the integrated permits is therefore granted to persons who assert that their rights have been directly infringed by the IPPC decision and other parties to administrative proceedings for issuing the IPPC decision, who assert that their rights have been infringed in these proceedings and this could render the decision illegal (standing to appeal for the environmental organisations is derived from this provision).

The environmental organisations have standing to appeal the IPPC decision if they meet the conditions under b), i.e. if they applied for and were subsequently granted the status of party to the IPPC administrative proceedings (ending with issuance of the IPPC permit). To get the status of party to such proceedings, the organisation has to notify the competent administrative body that it wants to participate in the proceedings within 8 days of publication of the information about the request for the IPPC decision by public notice. A specific way for an NGO to become party to the IPPC process and get standing is to meet the criteria in the EIA Act (see section 1.8.1 point 4 for more details).

The legal basis for NGO participation in the IPPC process, as described in this section, also applies to foreign NGOs (see also section 1.4, point 3) for more details).

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)
12) How is the notion of "timely" implemented by the national legislation?

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

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?

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

8) At what stage are these challengeable?

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?

6) Can the public challenge the final authorisation?

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

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

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

2) The final administrative decision (integrated permit) is challengeable.

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

If the project is subject to EIA, the screening procedure under the EIA Act is carried out separately, outside the scope of the IED/IPPC procedure (see section 1.8.1, point 1) for more details).

The IPPC Act regulates the procedures enabling change to the integrated permit already issued. The operator is obliged to notify the administrative authority of any planned change in the use, mode of operation or extent of the facility which could have consequences for the environment. At the same time, the administrative authority shall review at least every 8 years whether there has been a change in the circumstances that could have led to a change in the binding conditions on the integrated permit. The administrative authority shall first assess whether the change is substantial or minor, then it is possible to initiate an integrated permit change procedure or a minor change procedure.

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

There is no "scoping stage" in the IPPC procedure. If the project is subject to EIA, the scoping procedure under the EIA Act is carried out separately, outside the scope of the IED/IPPC procedure (see section 1.8.1, point 2) for more details).

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

The public can challenge the final administrative decision (integrated permit) within the standard deadlines, i.e. 15 days for administrative appeal and 2 months for appeal to the court.

Where the grounds for appeal relate to the decision on the application for the use of BAT under the responsibility of the Ministry of Industry and Trade or the Ministry of Agriculture, the Ministry of the Environment shall send an appeal and a copy application for an integrated permit including this decision to the Ministry of Industry and Trade or the Ministry of Agriculture to assess whether there has been a mistake in applying the relevant BAT and BREF conclusions to the setting of binding conditions for operation. These central administrative authorities shall send their statement within 15 days from the date of receipt of the appeal or appeal against the issued decision. These statements are the basis for the decision of the Minister of the Environment on appeal or dismissal.

6) Can the public challenge the final authorisation?

If an environmental organisation meets the criteria for being a party to the IPPC administrative proceedings (see section 1.8.2 point 2), it can file an administrative appeal against the IPPC decision (integrated permit) and consequently have standing to appeal the final decision on the administrative appeal.

The same applies to municipalities and regions on whose territory the facility is located. Individuals who assert that their rights have been directly infringed by the IPPC decision are entitled to challenge the final authorisation despite they did not have the status of party to the administrative proceedings.

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 regional courts are the forum to challenge the IPPC decisions (with the possibility to file a cassation complaint against their decision to the Supreme Administrative Court). Hearings do not take place if the courts refuse the lawsuit as inadmissible, or if they cancel the development consents for procedural mistakes or for being insufficiently justified (unverifiable). Moreover, the court usually asks the parties if they agree to decide the case without a hearing, and in many (probably most), the parties agree to this.

The courts shall review both the substantive and procedural legality of the IPPC decisions. The rules of evidence are the same as in the administrative judiciary in general. The courts are entitled, upon the suggestion of parties, to review or amend the evidence considered in the IPPC administrative procedure. The court shall, at the suggestion of the plaintiff, also verify material and technical findings on which the IPPC decision is based, at least to the extent that there is not a clear conflict between these findings and the conclusions and reasoning of the IPPC decision.

There are no judicial procedures concerning environmental matters which the courts could start of their own motion. The courts can act solely on the basis of the lawsuit or other appropriate motion, never on their own initiative (see section 1.2 point 4 for more details).

Failure by the administrative authority to issue a decision can also be challenged under the general conditions (see section 1.4 point 3 for more details).

8) At what stage are these challengeable?

The final administrative decision (integrated permit) is challengeable.

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

As a general principle of Czech administrative law, it is possible to file an appeal against administrative decisions to a superior administrative body. The appeal to a superior administrative body must be exhausted before the administrative decision can be further appealed before the court. The only exception is a situation where there is no possibility of administrative appeal because of an explicit regulation in law.

As stated above, final IPPC decisions (integrated permits) issued according to the IPPC Act can be reviewed by the courts under the general conditions for judicial review of the administrative acts.

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?

Formal status of party to an administrative procedure is in general necessary for the possibility to file an administrative appeal and therefore also for standing before the court. The only exceptions are situations where there is no possibility of administrative appeal, because the person affected by the decision was not granted the status of party to the proceedings and therefore could not launch an administrative appeal.

From the formal point of view, it is not necessary to participate actively in the public consultation phase of the IPPC procedure in order to have standing to appeal the IPPC decision before the courts. If an individual or an environmental organisation meets the criteria for being a party to the IPPC administrative procedure, it can file an administrative appeal against the IPPC decision and consequently have standing to appeal the final decision, even if it was not active in the IPPC administrative procedure.

However, not using the procedural rights actively can influence the probability of success of the court action, as the courts often refuse to deal with arguments which were, without a proper reason, not already raised at the administrative stage.

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

Art. 7 paragraph 1 of the Code of Administrative Procedure in this regard provides that the persons concerned (including environmental organisations) shall enjoy equal treatment in the exercise of their procedural rights. The administrative authority shall act impartially towards the persons concerned and shall require all persons concerned to fulfil their procedural obligations equally. The authorities are obliged to provide them with the same opportunities to exercise their rights and to provide them with information on their procedural rights and obligations to the extent necessary for them not to suffer harm in the proceedings.

According to Article 36 of the Code of Administrative Justice the participants have an equal position in the proceedings. The court is obliged to provide them with the same opportunities to exercise their rights and to provide them with information on their procedural and substantive rights to the extent necessary for them not to suffer harm in the proceedings. In the decision of the Supreme Administrative Court of 6 December 2007, No. 2 Afs 91/2007-90, the Court found that if the court decides on the merits of the case without a hearing (written procedure), it is necessary that the parties have the opportunity to see all the documents on which the court will base its decision.

12) How is the notion of "timely" implemented by the national legislation?
According to Article 6 of the Code of Administrative Procedure, the administrative authorities have to proceed without undue delay. If the administrative authority does not act within the statutory period (usually up to 30, 60 or 90 days, in various procedures), or within a reasonable period if the statutory period is not specified, the party to the administrative proceedings can ask for a measure against inactivity and subsequently file a lawsuit to the administrative court. As described in section 1.7.2, points 5) and 6) submission of a lawsuit against a decision of an administrative authority generally does not have suspensive effect. The court may grant suspensive effect to the lawsuit if executing the decision would cause the applicant “incomparably more serious” harm than that which could be caused to other persons by granting the injunctive relief and issuing injunctive relief would not be contrary to an important public interest. The Constitutional Court stated that the court has to deal with the application for suspensive effect of the administrative action before the authorised project against which the complainant was appealing has already been irreversibly realised (see decision of the Constitutional Court of 6 May 2015, No. II. US 3831/14). The Supreme Administrative Court stated repeatedly that the lawsuits from the public concerned in environmental matters should normally be granted suspensive effect, so the legal protection is not only formal but can also have a practical meaning (see e.g. judgement of 28 August 2007, nNo. 1 As 13/2007-63).

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? The administrative body may, ex officio or at the request of a party before the end of the proceedings, order injunctive relief. It is used in cases where the conditions of the parties need to be adjusted provisionally or in cases where there is a fear that enforcement of the final decision will not be possible (see Article 61 Code of Administrative Procedure).

Article 9d paragraph 2 of the EIA Act provides that, in actions against decisions made in subsequent procedures, the court shall decide of its own motion whether to grant suspensive effect to the action, and the same applies to injunctive relief. The court should grant suspensive effect to the action or order injunctive relief if there is a risk of serious damage to the environment. This applies also with respect to the IPPC permit if the project is also subject to EIA. General regulation on issuing injunctive relief upon request applies (see section 1.7.2 point 5 for more details).

14) Is information on access to justice provided to the public in a structured and accessible manner? The IPPC Act provides that data from the integrated prevention information system should be published on the website of the Ministry of the Environment. There is however no structured information about access to justice in this area.

1.8.3. Environmental liability

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?

General conditions for standing in environmental matters (see section 1.4. points 1 and 3) apply. Parties to proceedings concerning environmental liability matters may file the lawsuit to the administrative courts once the administrative decision is final. That means that ordinary administrative remedy, which is an appeal to the Ministry of the Environment, has to be exhausted first. Environmental NGOs may become parties to the proceedings according to the Environmental Liability Act (no. 167/2008 Coll.) by initiating the procedure, i.e. by filing the request for preventive or remedial measures, or if they notify the competent authority in writing of their participation within 8 days of the date of notification of the initiation of the proceedings. Other natural or legal persons may file a request for preventive or remedial measures, but they cannot become parties to the proceedings.

2) In what deadline does one need to introduce appeals? The administrative appeal can be introduced within 15 days for administrative appeal and appeal to the court within 2 months from the day the decision was delivered to the appellant.

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones? The procedure for imposing preventive or remedial measures relating to environmental damage may be initiated ex officio by the Czech Environmental Inspectorate or upon request. This request may be filed by persons affected or likely to be affected by environmental damage (such as landowners) or by environmental organisations or other non-commercial legal persons whose main activity according to their statutes is protection of the environment. The request for action must be accompanied by information demonstrating that there has been environmental damage or that the environmental damage is imminent. There are no more detailed requirements.

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. There is only a requirement that the request for action must be accompanied by information demonstrating that there has been environmental damage or that the environmental damage is imminent (as above). But the law does not specify the way of submitting information.

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)?

There is no time set directly for notification of the decision by the competent authority to the entitled natural or legal persons (including the entitled environmental NGOs). The general deadlines for issuing the decision in Article 71 of the Code of Administrative Procedure (30 days, with the option to extend up to 60 days) apply. However, the authority must take into account the urgency of the matter. Where needed, it shall ask the operator to take preventive or remedial measures before the decision is issued.

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? No extension of the entitlement to request action by competent authority is applied in cases of imminent threat.

7) Which are the competent authorities designated by the MS? There are two principal competent authorities in the field of environmental liability: the Czech Environmental Inspectorate and the Ministry of the Environment. The Ministry of the Environment exercises the competencies of the central administrative body in the whole segment of environmental protection, including environmental damage. The Inspectorate accepts the submissions and requests for action. It is empowered to impose preventive or remedial measures relating to environmental damage and penalties.

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings? The administrative review procedure - appeal to a superior administrative body - must be exhausted prior to recourse to judicial proceedings in the area of environmental liability. Similarly, the administrative remedy - a request to the superior body to take measures against inaction (omission) - has to be exhausted before taking a case to an administrative court in case of failure by the Inspectorate to start the proceedings on the request to impose preventive or remedial measures.

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?
Special provisions in relation to the affected states are included in the Czech EIA Act. They grant any “affected state” whose territory may be affected by significant environmental impacts of a project the right to initiate a transboundary assessment procedure. Besides, it is obligatory for the administrative authorities to inform the affected states of the relevant IPPC procedures and enable them to submit their statements and consult on the project with them when required to do so.

Theoretically, it should be also possible for the affected states to participate in the subsequent administrative procedures such as the procedures on the land use permit and the building permit. The final administrative decisions (development consent), e.g. the land use permit, building permit, mining permit, IPPC etc. for projects subject to EIA or IPPC procedure, can be challenged. As a general principle of Czech administrative law, the appeal to a superior administrative body must be exhausted before the administrative decision can be further appealed before the courts.

2) Notion of public concerned?
There is no specific notion of the public concerned in a transboundary context. The general definition of public concerned applies, i.e. to grant the association the status of “public concerned”, the environmental NGOs must meet the requirement for either 3 years of legal existence or 200 people supporting the action.

The concept of “affected state” applies with respect to transboundary EIA and IPPC procedures.

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)?
There is no special provision concerning the possibility for the foreign NGOs or other members of the public concerned to participate in the environmental administrative procedures. The foreign NGOs need to meet the same requirements as the Czech ones to participate in the administrative procedures. In line with the interpretation of the EIA and IPPC Acts in conformity with EU law, they should have the same rights as the Czech NGOs. They have a right to an interpreter in the proceedings, but they are obliged to pay for his or her services.

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)?
There are no special rules for this. Individuals of the affected country need to meet the same requirements as the Czech ones to participate in administrative procedures. Only those persons, including foreigners, who prove that they fulfill one of the conditions stated by law can become parties to the administrative procedures in question. Individuals must therefore prove that their rights may be infringed by the decision. They have a right to an interpreter in the proceedings, but they are obliged to pay for his or her services.

5) At what stage is the information provided to the public concerned (including the above parties)?
General provisions of the Code of Administrative Procedure dealing with service of documents, obligations on the administrative body to provide information about the proceedings to the parties and to notify the parties and the person concerned about the taking of evidence, the right to access to the files etc. apply (see section 1.7.4). Most of the information about the procedural rights is provided when the procedure is announced. In proceedings with a large number of parties, the initiation of proceedings is usually announced by public notice.

The information about EIA procedures and all documents relevant to the assessment stage (until the EIA statement is issued) are available online on the website of the competent authority and also (with archive) [here]. The notification and documentation must be submitted in the official language of the State concerned (see Article 13 and 14a of the EIA Act).

In the case of IPPC, the information is available in the [integrated prevention information system]. According to the Building Act, the draft land use plans must be made available to the public, where possible via the internet. This applies also to other plans and programmes subject to SEA.

The documents are available only in Czech, with the exception regarding EIA procedures described above.

6) What are the timeframes for public involvement including access to justice?
The general rules described in section 1.7. apply. In regard to the EIA/SEA processes, in the case of a project carried out in the Czech Republic, a notification, including a translation, shall be sent within 7 working days of the receipt to the affected state with a request for comments. The public, the public concerned, the authorities concerned, the municipalities concerned and the state concerned may comment on the notification to the competent authority within 30 days of the date of publication of the notification and this period may be extended by up to 30 days if the state concerned requests it.

If the concept implemented in the territory of the Czech Republic may have an impact on the territory of another state, the Ministry of the Environment shall send, within 10 days of its receipt, information on the draft concept, including a translation to the affected state.

If the concept may affect the territory of a country other than the Czech Republic, the Ministry of the Environment shall publish within 20 days of its receipt information on the draft concept and send it to the authorities, affected regions and affected municipalities and inform them of the possibility of commenting on the concept. Anyone may send written comments within 30 days of the date of publication of the draft concept. The Ministry of the Environment shall send to the state of origin, within 40 days of the date of publication, information on the draft concept, together with its observations and information that it may take part in the consultation.

7) How is information on access to justice provided to the parties?
In the administrative decision of the first instance administrative authority, there must be information about the right to launch an administrative appeal and the deadline for it. However, for the final decision of the superior administrative authority, the law does not require this to contain information about the possibility of judicial review. The judgement must contain the information about the right to appeal. This applies to any party to the proceedings, including the public concerned in another country.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?
It is stated in the procedural laws that all parties to the judicial procedures must have equal rights and be treated equally and the courts are obliged to guarantee that. A similar principle applies in administrative procedures where administrative authorities are obliged to act impartially and treat the parties equally. These clauses relate also to language and country of origin and may be considered as general anti-discrimination clauses.

In the court procedures, all parties are entitled to be heard in their mother tongue. Anyone who does not speak Czech may ask for an interpreter (translator); this right is guaranteed directly by the Charter of Fundamental Rights and Freedoms.

It is the state which bears the cost of translation in the court procedures, contrary to the administrative procedures where the party who does not speak the language has to bear the cost of the translation.

9) Any other relevant rules?
The basic rule for granting the status of party to the proceedings is based on the concept of one’s “rights or duties being possibly directly affected” by the decision. According to Article 27 of the Code of Administrative Procedure, the parties to the proceedings are persons whose rights or duties can be directly affected by the administrative decision. However, this general regulation shall apply only if the specific administrative procedure is not regulated by a special law, which would take precedence over the general regulation. Most administrative proceedings are further regulated in special legislation which lays down special definitions for the parties to the proceedings which take precedence over general legislation. There are a large number of special laws governing the individual decision-making processes relevant to the protection of the environment. The most important ones, next to the EIA and IPPC processes, are listed below.


The Building Act sets its own definitions of parties of the administrative proceedings for issuing land use permits, building permits and other permits under the act. The definitions are generally based on the principle that only the applicant, individuals and legal entities whose property rights or other rights in rem can be directly affected by the permit, including the applicant, in some cases the environmental NGOs, and in land use processing the affected municipalities, have a status of party of the proceedings and may exercises the rights associated with that status.


The Act sets out the conditions under which environmental NGOs can become participants in proceedings under this Act. The NGOs are entitled to be informed of all administrative proceedings in which the interests of nature and landscape protection may be affected. Subsequently, if the NGO notifies its participation in the procedure under this Act within eight days of the date of the notification, it has the status of a party to the proceedings. The Act further grants the status of a party to such proceedings to affected municipalities.

c) Act No. 254/2001 Coll. on waters and amendment to some acts (the Water Protection Act)

The Act grants to environmental NGOs status of a party to the proceedings under this Act (with exceptions) under similar conditions as Act on Nature and Landscape Protection. The act further grants the status of a participant to municipalities and that in proceedings in which decisions which may affect water conditions or the environment are made.

d) Special definitions of the parties to administrative proceedings related to the environment are contained in a number of other special laws, such as the Act no. 44/1988 Coll. Mining Act, Act no. 61/1988 Coll. Act on Mining activities, Act No. 258/2000 Coll. Public Health Protection Act, or Act no.263/2016 Coll., Nuclear Act. With regard to the proceedings under the last two acts of these, the status of a party is granted only to the applicant. No other subjects are granted the status of party to the proceedings. This is the case, for example, for proceedings to grant “noise exceptions” – decisions which authorise an operator of a source of noise in excess of the maximum limits to continue with the operations for a limited period of time (with the possibility of repeated prolongation). Other examples are the permits issued according to the Act no.263/2016 Coll., Nuclear Act. The time limit to challenge administrative decision by an administrative appeal is fifteen days, according to Article 83 of the Code of Administrative Procedure. For challenging the decision before the administrative court, the standing is, according to Article 65 of the Code of Administrative Justice, granted to persons who assert that their rights have been infringed by the decision which “creates, changes, nullifies or authoritatively determines their rights or duties” and other parties to administrative proceedings for issuing the administrative decision, who assert that their rights have been infringed in these proceedings and this could render the decision illegal (standing of the environmental organisations is derived from this provision).

Until 2014, the prevailing case law provided that the environmental NGOs could only challenge the administrative decisions on grounds of violation of their procedural rights, but not on grounds of violation of substantive requirements of environmental laws. In this respect, the decision of the Constitutional Court of 30 May 2014, No. I. US 69/14 and subsequent jurisprudence of the administrative courts (see section 1.1, point 4) and section 1.4, point 3 above) represented a change in the case law of the Czech courts. In this decision, the Court concluded that, although the Aarhus Convention was not self-executing in the Czech legal system, it had to be considered as an interpretative source. Therefore, where it is possible to interpret national standards in several ways, the interpretation that meets the requirements of the Aarhus Convention will prevail.

At the same time, the Constitutional Court explicitly defined the criteria for the environmental NGOs to have standing to review the land use plans in court, which include having environmental protection as the subject of the NGO activity according to its bylaws, a factual relationship of the NGO to the affected locality and the length of existence and factual activities of the NGO.

The above-mentioned decision of the Constitutional Court specifically dealt with the standing of the environmental NGOs to appeal the land use plans before the administrative courts. By the judgment of the Supreme Administrative Court of 25 June 2015, No. 1 As 13/2015-295 (see section 1.1, point 4) above) and following case law, the above principles were applied to the standing of the NGOs in environmental matters in general.

The parties to the administrative procedure must challenge the decision before the court within 2 months of the time when the final administrative decision was delivered (which is the decision of the superior body on the administrative appeal). In cases concerning some large infrastructure projects, the deadline is 1 month. If the person challenging the decision was not a party to the administrative procedure, the deadline starts at the day the person provably learned about the decision and its content.

As for the omissions, if the administrative authority does not comply with the time limit, it is possible to submit a request to the superior body to take measures against inaction (omission) by the subordinate authority. Afterwards, it is possible to file a lawsuit and request the court to order the administrative authority to issue a decision on the merits of the matter (see section 1.4, point 3 for more details).
As for the effectiveness of access to justice in the national courts, it was increased by the change in case law described above, according to which the environmental NGOs can challenge not only the procedural but also the substantive legality of decisions (permits) relating to the environment and protect the right of their members to a favourable environment. In this context, the Supreme Administrative Court referred to CJEU decisions C-263/08 Djiugarden, C-240/09 VLK and C-115/09 Trianel.

Also, both the Constitutional and the Supreme Administrative Court have repeatedly stated that the courts should deal with applications for suspensive effect of the lawsuits in environmental matters in such a way that the judgment is issued before the project has already been irreversibly realised, so the legal protection is not only formal but can also have a practical meaning. (see e.g. Decision of the Constitutional Court of 6 May 2015, No. II. ÚS 3831/14 or the judgement of the Supreme Administrative Court of 28 August 2007, no. 1 As 13/2007). However, this jurisprudence is not always applied by the lower courts. CJEU case C-416/10 Krňan was mentioned by the Supreme Administrative Court in this respect in judgment of 23 February 2018, No. 1 As 296/2017. According to settled case law, procedural mistakes can represent a reason for annulment of a decision if the decision might be different without the procedural defect. The courts have not so far stated that it is not up to the applicant to prove a causal link between the procedural defect and the contested decision, but for the other party to provide evidence that the procedural defect would have made no difference to the outcome, as the CJEU ruled in case C-72/12 Altrip. However, it could be deduced from the jurisprudence that it is for the court to explain sufficiently such a conclusion. The jurisprudence has also not dealt with other aspects of the effectiveness of access to national courts, as emanating from the CJEU case law, so far. This applies e.g. on the requirement for compensation for pecuniary damage caused non-fulfilment of EU environmental law (case C-420/11 Leth) or addressing unlawful harm to the environment retrospectively (case C-399/14 Grüne Liga Sachsen).

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

In the administrative appeal, the applicants, including the environmental NGOs, can challenge both the substantive and procedural legality of the decisions issued in these procedures. The objections should however relate to the rights of the applicant or public interests they protect (in case of the NGOs). This is explicitly stated in the Building Act for procedures regulated by it, but applies as a general principle. Also the courts shall review both the substantive and procedural legality of the administrative decisions. The courts are entitled, at the suggestion of the parties, to review or amend the evidence considered in the administrative procedure. The objections should again be related to the rights of the applicant – this is inferred from the standing rules (see previous point). As already stated, until 2014 the prevailing case law provided that the environmental NGOs could only claim infringement of their procedural rights before the administrative courts. However, after the decision of the Constitutional Court of 30 May 2014, No. I. US 59/14, this approach is no longer applied by the administrative courts and the scope for admissible objections from the NGOs is deduced from the scope of the public interests they protect.

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

The appeal to a superior administrative body must be exhausted before the administrative decision can be further appealed before the courts. The only exception is a situation where there is no possibility of administrative appeal (see section 1.1, point 2 for more details).

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.?

Formal status of party to an administrative procedure is in general necessary for the possibility to file an administrative appeal and therefore also for standing before the court (see the previous answer). The only exception is a situation where there is no possibility of administrative appeal, because the affected person is not granted the status of party to the proceedings (as in the case of the "noise exceptions" - see section 1.1, point 2 for more details). Active participation in the administrative procedure (making comments etc.) does not represent a formal condition for administrative appeal and standing before the court. However, not using the procedural rights actively can influence the probability of success of the court action, as the courts often refuse to deal with arguments which were, without a proper reason, not already raised at the administrative stage. The Supreme Administrative Court concludes that the petitioner, who was passive in previous procedures, may be successful in court only exceptionally, either (i) if its procedural passivity resulted from objective circumstances or (ii) to the extent that the irregularities referred to are fundamental and have an impact on the public interest (see Judgement of the Supreme Administrative Court of 30 November 2016, No. 1 As 197/2016-66).

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

Generally no; however, where the applicant has not made any claims in the previous administrative procedure or in the previous instance of judicial review, the court normally does not take these claims into account. Moreover, the court will not deal with arguments which do not relate at all to the rights of the applicant, or, in case of the NGOs, to the public interests the NGO protects.

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

Article 7 paragraph 1 of the Code of Administrative Procedure in this regard provides that the persons concerned (including environmental organisations) shall enjoy equal treatment in the exercise of their procedural rights. The administrative authority shall act impartially towards the persons concerned and shall require all persons concerned to fulfil their procedural obligations equally. The authorities are obliged to provide them with the same opportunities to exercise their rights and to provide them with information on their procedural rights and obligations to the extent necessary not to suffer harm in the proceedings.

According to Article 36 of the Code of Administrative Justice, the participants have an equal position in the proceedings. The court is obliged to provide them with the same opportunities to exercise their rights and to provide them with instructions on their procedural rights and obligations to the extent necessary so that they do not suffer harm in the proceedings. In the decision of the Supreme Administrative Court of 6 December 2007, No. 2 Afs 91/2007-90, the Court found that if the court decides on the merits of the case without hearing, it is necessary that the parties have the opportunity to meet all the documents on which the court will base its decision.

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

According to Article 6 of the Code of Administrative Procedure, the administrative authorities have to proceed without undue delay. If the administrative authority does not act within the statutory period (usually up to 30, 60 or 90 days, in various procedures), or within a reasonable period, if the statutory period is not specified, the party to the administrative proceedings can ask for a measure against inactivity and subsequently file a lawsuit to the administrative court. As described in section 1.7.2, points 5) and 6) submission of a lawsuit against a decision of an administrative authority generally does not have suspensive effect. The court may grant a suspensive effect to the lawsuit if executing the decision would cause the applicant "incomparably more serious" harm than that which could be caused to other persons by granting the injunctive relief and issuing injunctive relief would not be contrary to an important public interest. The Constitutional Court stated that the court has to deal with the application for suspensive effect of the administrative action before the authorised project against which the complainant was defending has already been irreversibly realised (see decision of the Constitutional Court of 6 May 2015, No. II. US 3831/14).

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 administrative body can, at the request of a party or ex officio before the end of the appeal, proceedings, order injunctive relief if the conditions of the parties need to be adjusted provisionally or if there is a fear that enforcement of the final decision will not be possible (Article 61 Code of Administrative Procedure). There are no specific sectoral rules in this respect.

The administrative courts issue injunctive relief on the basis of Article 38 of the Code of Administrative Justice in cases where there is a need for an interim arrangement of the relationship between the parties. There must be a threat of a “serious harm”, but it is not necessary that it is the claimant personally who is under this threat. The court may order the parties to the dispute, or even third parties, to make something, abstain from something or endure something. There are no specific sectoral rules in this respect except in the EIA Act.

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 court fees for individual kinds of administrative lawsuits are based on a flat rate regardless of the value of the case, see regulation in Act No. 549/1991 Coll. A fee for a lawsuit to review an administrative decision is CZK 3,000 (approx. EUR 125), the same fee applies to the cassation complaint. The fee for a lawsuit against a land use plan is CZK 5,000 (approx. EUR 200),. See section 1.7.3 for more details.

The general rule that the losing party pays applies; however, the case law of the administrative courts upholds the general principle that the costs of legal representation are not eligible costs for the administrative authority, as they employ their own lawyers who can represent them at the dispute. This can be seen as a general safeguard against the prohibitive costs in administrative judiciary. There is however no express statutory reference in this respect. There is not an express statutory reference to a requirement that costs should not be prohibitive.

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

In accordance with Directive 2001/42/EC, the Czech EIA Act states that the concepts subject to the SEA are:

- concepts that set the framework for future authorisation of projects subject to EIA in the fields of agriculture, forestry, hunting, fisheries, surface or groundwater management, energy, industry, transport, waste management, telecommunications, tourism, territorial planning, regional development and the environment;
- concepts with a significant impact on NATURA 2000 areas;
- concepts of local importance, if the affected territory consists of the territorial district of one or a few municipalities, if so provided in the screening procedure


There is no special institution in Czech law that would explicitly provide the public concerned (individuals and NGOs) with access to justice with regard to concepts, plans or programmes subject to the SEA; or, more generally, relating to the environment. However, a number of plans and programmes are issued in the form of “measures of a general nature” according to Article 171 of the Code of Administrative Procedure. A measure of a general nature is a hybrid administrative act that is neither a legal norm nor an individual decision. It regulates a specific subject and relates to an indefinite number of addressees. There is a specific regulation of judicial review of this kind of administrative acts (see below).

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?

As for the administrative review, the legality of measures of a general nature, subject to the SEA (see above) can be assessed in the extraordinary review proceedings, which may be initiated ex officio by the superior administrative authority. Anyone (including any individual or environmental NGO) may request that such proceedings should be started. However, there is no legal entitlement to initiate the review proceedings if the superior administrative authority does not find grounds for their initiation. The review proceedings may be initiated within 1 year of the entry into force of the measure of a general nature.

The legality of measures of a general nature can further be reviewed by the courts on the basis of a lawsuit to annul a measure of a general nature or parts thereof under Article 101a of Act No. 150/2002 Coll., the Code of Administrative Justice. The application may be filed by a person who claims that his or her rights were infringed by the measure of a general nature issued by the administrative authority.

According to the decision of the Constitutional Court of 30 May 2014, No. I. US 59/14, the environmental NGOs may challenge measures of a general nature, including those subject to SEA, under following conditions:

- the NGO must claim that the illegality of a measure of a general nature affects its legal sphere,
- the NGO must have environmental protection as the subject of its activity according to its bylaws,
- the NGO must have a factual relationship to the locality regulated by the land use plan (registered office, residence of members, etc.),
- the establishment, i.e. longstanding activity of the association; however, an ad hoc association is not excluded either

The application may be filed within 1 year of the effective date of the measure of a general nature.

If the act is adopted in the form of a legal regulation, the only direct possibility of judicial review is by the Constitutional Court, and only specific subjects are entitled to initiate this review (e.g. a group of members of the Parliament, the Ministry, the Public Defender of Rights, etc.). Anyone may ask any of the entities with standing under Article 64 (2) of the Constitutional Court Act to ask for annulment of a statutory instrument too. However, there is no legal entitlement to file a petition for the annulment of statutory instrument.

For the public (both individuals and NGOs), it is only possible to file a petition for the annulment of a legal regulation under section 64 (2) subparagraph d), i.e. only together with a constitutional complaint if the application of legal regulation resulted in the fact which is the subject of the constitutional complaint. The NGOs (like anyone else) cannot file a constitutional complaint to the Constitutional Court directly, but only after they have exhausted all other remedies and claim that their constitutionally guaranteed rights have been infringed.

If the Constitutional Court finds that the legal regulation violates the Constitution, it will annul it. Pursuant to Article 89 (2) of the Constitution, enforceable decisions of the Constitutional Court are binding on all bodies and persons.

The general courts may refuse to apply a sub-legal regulation if it is against the law. Courts cannot annul this regulation, but only choose not to apply it in a specific case.

If plans or programmes are not issued in the form of a measure of a general nature, such acts can be annulled by the same administrative authority which issued them. If such plan or programme represents a basis for a subsequent decision, it can be reviewed by a court as part of the judicial review of this subsequent act.

As for the effectiveness of access to justice in the national courts, it was increased, in accordance with the relevant CJEU case law (namely C-240/09 Lesoschranárské zoskupenie) by the change in case law described above, according to which the environmental NGOs can challenge, under conditions settled by the Constitutional Court in decision no. I. US 59/14 of 30 May 2014 (see section 1.1, point 4) above), both the substantive and the procedural...
legality of measures of a general nature relating to the environment and protect the right of their members to a favourable environment. In the subsequent case law of the Supreme Administrative Court (namely the judgment of 25 June 2015, No. 1 As 13/2015-295; see section 1.1, point 4) above), this was applied as a general principle in the field of environmental law, with a reference to the CJEU judgment in C-115/09 Trianel.

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

In the administrative review proceedings, the superior authority deals only with the legality of measures of a general nature. Before the court, affected persons, including NGOs, can challenge both the substantive and procedural legality of the measures of a general nature.

The legality of the SEA proceedings and its outcome (the SEA statement) can be reviewed together with the concept, plan or programme issued in the form of the measure of a general nature.

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

As stated in general summary of concepts which are subject to the SEA, the majority of the concepts are adopted in the form of measures of a general nature. For this form there is no possibility of administrative remedy like an appeal against an administrative decision. However, review proceedings can be initiated (see above at point 1).

Exhaustion of administrative review is, therefore, not a requirement for starting a judicial review procedure in such cases.

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

There is no specific injunctive relief for the SEA cases, but the general regulations apply. The administrative courts may issue a preliminary injunction on the basis of Article 38 of the Code of Administrative Justice where there is a need for an interim arrangement of the relationship between the parties. There must be a threat of “serious harm”, but it is not necessary for it to be the claimant personally who is under this threat. The court may order to the parties to the dispute, or even a third party, to do something, abstain from something or endure something. As the courts should deliver the final judgment in 90 days in cases concerning measures of a general nature, injunctive relief is not in practice issued in these cases.

5) 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 court fees for individual kinds of administrative lawsuits are based on a flat rate regardless of the value of the case; see regulation in Act No. 549/1991 Coll. Fee for a lawsuit against a measure of a general nature is CZK 5,000 (approx. EUR 200) see section 1.7.3 for more details.

The general rule that the losing party pays applies; the costs of proceedings dealing with an application for annulment of plans or programmes are usually between CZK 10,000 and 20,000 (approx. EUR 410–830). However, the case law of the administrative courts upholds the general principle that the costs of legal representation are not eligible costs for the administrative authority, as they employ their own lawyers who can represent them in the dispute. This can be seen as a general safeguard against prohibitive costs in administrative proceedings. This case law also admits some exceptions.

6) 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?

As with the administrative review, the legality of the acts subject to Article 7 of the Aarhus Convention which are issued in the form of measures of a general nature can be assessed in the review proceedings, which may be initiated ex officio by a superior administrative authority. Anyone (including any individual or environmental NGO) may indicate that such proceedings should be started. However, there is no legal entitlement for private subjects to initiate the review proceedings, if the superior administrative authority does not find grounds for their initiation. The review proceedings may be initiated within 1 year of the effective date of the measure of a general nature.

The legality of measures of a general nature can be further reviewed by the courts on the basis of a lawsuit to annul a measure of a general nature or parts thereof under section 101a of Act No. 150/2002 Coll., the Code of Administrative Justice. The application may be filed by anyone who claims that his or her rights were infringed by the measure of a general nature issued by the administrative authority.

According to the decision of the Constitutional Court no. I. ÚS 59/14 of 30 May 2014, environmental NGOs may challenge measures of a general nature under following conditions:

the NGO must claim that the illegality of a measure of a general nature affects its legal sphere,
the NGO must have environmental protection as the subject of its activity according to its bylaws,
the NGO must have a factual relationship to the locality regulated by the land use plan (registered office, residence of members, etc.),
the establishment, i.e. longstanding activity of the association; however, an ad hoc association is not excluded either
the application may be filed within 1 year of the effective date of the measure of a general nature.

If the act is adopted in the form of a legal regulation (normative instrument), the only possibility of direct judicial review is before the Constitutional Court, and only specific subjects (the Ombudsman, the Ministry of the Interior, a group of at least 25 Deputies or a group of at least 10 Senators) are entitled to initiate this review. For the public (both individuals and NGOs), it is only possible to suggest annulment of a legal regulation together with a constitutional complaint.

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

There are multiple plans and programmes that are not submitted to SEA, i.e.:

Regulatory orders pursuant to Act No. 201/2012 Coll., Air Protection Act. Also the Air Protection Act, issued in the form of a municipal regulation (normative instrument).

The River Basin Management Plans and Flood Risk Management Plans according to the Water Protection Act, issued in the form of measures of a general nature.

The Forest Management Plans according to Act No. 289/1995 Coll, the Forest Act, which are binding on the forest owners and by their nature, are rather individual administrative decisions regulating the obligations of specific forest owners, although they do not formally have this form.

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?

As stated in general summary of concepts which are subject to the SEA, the majority of the concepts are adopted in the form of measures of a general nature. For this form there is no possibility of administrative remedy like an appeal against an administrative decision. However, review proceedings can be initiated (see above at point 1).

Exhaustion of administrative review is, therefore, not a requirement for starting a judicial review procedure in such cases.

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.?

Active participation in the consultation phase of the procedure (making comments, participating at the hearing) does not represent a formal condition for standing before the court. However, not using the procedural rights actively can influence the probability of success of the court action, as the courts often refuse to deal with arguments which were, without a proper reason, not already raised at the administrative stage. This in particular applies to the argument of (un)proportionality of the measure of a general nature.
against a specific decision in the case where the regulation was applied. The NGOs (like anyone else) cannot go to Constitutional Court directly, but only after they have exhausted all other remedies and claim that the courts or other bodies which dealt with their case interpreted the law in conflict with the Constitution.

If the Constitutional Court finds that a legal regulation violates the Constitution, it will annul it. Pursuant to Article 89 (2) of the Constitution, enforceable decisions of the Constitutional Court are binding on all bodies and persons.

The general courts may refuse to apply a regulation if it is contrary to law. The court cannot annul this regulation, but only choose not to apply it in a specific case.

If the plans or programmes are not issued in the form of a measure of a general nature, such acts can be annulled by the same administrative authority which issued them. If such plan or programme represents a basis for a subsequent decision, it can be reviewed by the court as part of the judicial review of this subsequent act.

As for the effectiveness of access to justice in the national courts, it was increased by the change in case law described above, according to which the environmental NGOs can challenge, under conditions settled by the Constitutional Court in its decision of 30 May 2014, No. 1. US 59/14 (see section 1.1, point 4) above, both the substantive and procedural legality of measures of a general nature relating to the environment and protect the right of their members to a favourable environment.

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

In administrative review proceedings, the superior authority deals only with the legality of measures of a general nature. Before the court, affected persons, including the NGOs, can challenge both the substantive and procedural legality of the measures of a general nature. This applies also to the review of plans issued in a form of a legal regulation before the Constitutional Court.

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

For plans and programmes issued in form of measures of a general nature, there is no possibility of administrative remedy, like an appeal against an administrative decision. However, review proceedings can be initiated (see above at point 1).

Exhaustion of administrative review is, therefore, not a requirement for starting a judicial review procedure in such cases.

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.?

Active participation in the consultation phase of the procedure (making comments, participating at the hearing) does not represent a formal condition for standing before the court. However, not using the procedural rights actively can influence the probability of success of the court action, as the courts often refuse to deal with arguments which were, without a proper reason, not already raised at the administrative stage. This namely applies to the argument of (un) proportionality of the measure of a general nature.

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

There is no specific injunctive relief for this kind of cases, but the general regulations apply. The administrative courts may issue a preliminary injunction on the basis of Article 38 of the Code of Administrative Justice where there is a need for an interim arrangement of the relationship between the parties. There must be a threat of “serious harm”, but it is not necessary for it to be the claimant personally who is under this threat. The court may order to the parties to the dispute, or even to a third party, to do something, abstain from something or endure something. As the courts should deliver the final judgment in 90 days in cases concerning measures of a general nature, injunctive relief is not in practice issued in these cases.

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 court fees for individual kinds of administrative lawsuits are based on a flat rate regardless of the value of the case, see regulation in Act No. 549/1991 Coll. Fee for a lawsuit against a measure of a general nature is CZK 5000 (approx. EUR 200) see section 1.7.3 for more details.

The general rule that the losing party pays applies; the costs of proceedings dealing with an application for annulment of plans or programmes are usually between CZK 10,000 and 20,000 CZK (approx. EUR 410–830). However, the case law of the administrative courts upholds the general principle, that the costs of legal representation are not eligible costs for the administrative authority, as they employ their own lawyers who can represent them in the dispute. This case law also admits some exceptions.

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

The plans covered by this section include:

- Air Quality Improvement Programmes (required by Directive 2008/50/EC on Ambient Air Quality and Cleaner Air for Europe),
- Areas within the Natura 2000 system (required by Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora) are designated in the form of a government regulation according to Act no. 114/1992 Coll., on Nature and Landscape Protection.

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?

Laws which regulate plans and programmes that are specifically required by EU legislation do not provide for specific rules for an administrative or judicial review.

For the administrative review, the legality of measures of a general nature can be assessed in the review proceedings, which may be initiated ex officio by a superior administrative authority. Anyone (including any individual or environmental NGO) may indicate that such proceedings should be started. However, there is no legal entitlement for private subjects to initiate the review proceedings if the superior administrative authority does not find grounds for their initiation. The review proceedings may be initiated within 1 year of the effective date of the measure of a general nature.

The legality of measures of a general nature can be further reviewed by the courts on the basis of a lawsuit to annul a measure of a general nature or parts thereof under Article 101a of Act No. 150/2002 Coll., the Code of Administrative Justice. The application may be filed by any person who claims that his or her rights were infringed by the measure of a general nature issued by the administrative authority. The application may be filed within 1 year of the effective date of the measure of a general nature.

If the act is adopted in the form of a legal regulation (normative instrument), the only possibility of its direct judicial review is before Constitutional Court and only specific subjects (the Ombudsman, the Ministry of the Interior, a group of at least 25 Deputies or a group of at least 10 Senators) are entitled to initiate
this review. For the public (both individuals and NGOs), it is only possible to suggest annulment of a legal regulation together with a constitutional complaint against a specific decision in the case where the regulation was applied. The NGOs (like anyone else) cannot go to Constitutional Court directly, but only after they have exhausted all other remedies and claim that the courts or other bodies which dealt with their case interpreted the law in conflict with the Constitution.

If the Constitutional Court finds that legal regulation violates the Constitution, it will annul it. Pursuant to Article 89 (2) of the Constitution, enforceable decisions of the Constitutional Court are binding on all bodies and persons.

The general courts may refuse to apply a regulation if it is contrary to law. Court cannot annul this regulation, but only choose not to apply it in a specific case. If plans or programmes are not issued in the form of a measure of a general nature, such acts can be annulled by the same administrative authority which issued them. If such plan or programme represents a basis for a subsequent decision, it can be reviewed by a court as part of the judicial review of this subsequent act.

As for the effectiveness of access to justice in the national courts, it was increased by the change in case law described above, according to which the environmental NGOs can challenge, under conditions settled by the Constitutional Court in decision of 30 May 2014, No. 1, US 59/14 (see section 1.1, point 4) above, both the substantive and the procedural legality of measures of a general nature relating to the environment and protect the right of their members to a favourable environment. In relation to judicial review of the Air Quality Improvement Programmes, the Supreme Administrative Court, in its judgment of 20 December 2017, No. 6 As 288/2016-146, with reference to CJEU cases C-237/07 Janecek and C-404/13 ClientEarth, confirmed that the national court has the authority to review the content of the plan and its fulfilment of the requirements of EU law. Subsequently it can instruct the administrative authority on how an already adopted plan should be revised and amended.

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)?

Special environmental legislation (the Building Act, the Air Act, the Water Protection Act, the Forest Act, etc.) does not contain any special provisions on the judicial review of plans contained therein. In some cases, however, it expressly states that a certain plan or programme is issued in the form of a measure of a general nature, or it can be inferred from a substantive point of view that it is a measure of a general nature. In this case, the plan is administratively and judicially reviewable under the general provisions relating to measures of a general nature.

If the plan or programme is adopted in the form of a legal regulation than there is only special judicial review by Constitutional Court and only explicitly designated persons are entitled to initiate this review (see section 2.5).

If plans or programmes are issued neither as a legal regulation nor as a measure of a general nature, such acts can be annulled by the same administrative authority which issued them. If such plan or programme represents a basis for a subsequent decision, it can be reviewed by the court as part of the judicial review of this subsequent act.

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 environmental NGOs can challenge, in the administrative review as well as in the judicial review, both the substantive and procedural legality of the decisions issued in these procedures and they should be deemed to have rights capable of being impaired by the decisions.

In the administrative review proceedings, the superior authority deals only with the legality of measures of a general nature. Before the court, affected persons, including the NGOs, can challenge both the substantive and procedural legality of the measures of a general nature.

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

For the form of measure of a general nature (which is typical for plans and programmes) there is no possibility of administrative remedy such as an appeal. The appeal can be lodged only against an administrative decision. However, the review proceedings for the measure of a general nature can be initiated (see above at point 1).

If a plan or a programme is adopted in the form of an administrative decision, the appeal to a superior administrative body must be exhausted before the administrative decision can be further appealed before the court. The only exception is a situation where there is no possibility of administrative remedy because of an explicit regulation by law.

The administrative remedies have to be exhausted before taking a case to the administrative court also in the case of omissions (illegal inaction) by the administrative authorities.

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.?

Active participation in the consultation phase of the procedure (making comments, participating at the hearing) does not represent a condition for administrative appeal and standing before the court. However, not using the procedural rights actively can influence the probability of success of the court action, as the courts often refuse to deal with arguments which were, without a proper reason, not already raised at the administrative stage.

The Supreme Administrative Court concludes that the petitioner, who was passive in previous procedures, may be successful in court only exceptionally, either (i) if its procedural passivity resulted from objective circumstances or (ii) to the extent that the irregularities referred to are fundamental and have an impact on the public interest (see Judgement of the Supreme Administrative Court of 30 November 2016, No. 1 As 197/2016-66).

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

Generally no; however, if the plaintiff has not made any claims in the previous administrative procedure or in the previous instance of judicial review, the court will not take these claims into account.

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

Article 7 paragraph 1 of the Code of Administrative Procedure in this regard provides that the persons concerned (including environmental organisations) shall enjoy equal treatment in the exercise of their procedural rights. The administrative authority shall act impartially towards the persons concerned and shall require all persons concerned to fulfill their procedural obligations equally. The authorities are obliged to provide them with the same opportunities to exercise their rights and to provide them with information on their procedural rights and obligations to the extent necessary not to suffer harm in the proceedings.

According to Article 36 of the Code of Administrative Justice the participants have an equal position in the proceedings. The court is obliged to provide them with the same opportunities to exercise their rights and to provide them with instructions on their procedural rights and obligations to the extent necessary so that they do not suffer harm in the proceedings. In the decision of the Supreme Administrative Court of 6 December 2007, No. 2 Afs 91/2007-90, the Court found that if the court decides on the merits of the case without hearing, it is necessary that the parties have the opportunity to meet all the documents on which the court will base its decision.

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

According to Article 6 of the Code of Administrative Procedure, the administrative authorities have to proceed without undue delay. If the administrative authority does not act within the statutory period (usually up to 30, 60 or 90 days, in various procedures), or within a reasonable period if the statutory period is not specified, the party to the administrative proceedings can ask for a measure against inactivity and subsequently file a lawsuit to the administrative court.
As described in section 1.7.2, points 5) and 6) submission of a lawsuit against a decision of an administrative authority generally does not have a suspensive effect. The court may grant a suspensive effect to the lawsuit if executing the decision would cause the applicant “incomparably more serious” harm than that which could be caused to other persons by granting the injunctive relief and issuing injunctive relief would not be contrary to an important public interest. The Constitutional Court stated that the court has to deal with the application for suspensive effect of the administrative action before an authorised project against which the complainant was appealing has already been irreversibly realised (see Decision of the Constitutional Court of 6 May 2015, No. II. ÚS 3831/14). The Supreme Administrative Court stated repeatedly that the lawsuits of the public concerned in environmental matters should normally be granted suspensive effect, so the legal protection is not only formal but can also have a practical meaning (see e.g. judgement of 28 August 2007, No. 1 As 13/2007-63).

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 court fees for individual kinds of administrative lawsuits are based on a flat rate regardless of the value of the case; see regulation in Act No. 549/1991 Coll. A fee for a lawsuit to review an administrative decision is CZK 3,000 (approx. EUR 125), the same fee applies for a cassation complaint. Fee for a lawsuit against a measure of a general nature is CZK 5,000 (approx. EUR 200) see section 1.7.3 for more details.

The general rule that the losing party pays applies; however, the case law of the administrative courts upholds the general principle that the costs of legal representation are not eligible costs for the administrative authority, as they employ their own lawyers who can represent them in the dispute. This case law also admits some exceptions.

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

Examples of this form of acts are the Waste Management Plan of the Czech Republic (issued in the form of a government regulation) according to Act No. 185/2001 Coll. on Waste, Regulatory Order according to Act No. 201/2012 Coll., Air Protection Act, or designation of Areas within the Natura 2000 system declared according to Act No. 114/1992 Coll., on Nature and Landscape Protection.

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 the act is adopted in the form of a legal regulation (normative instrument), the only possibility for direct judicial review is before the Constitutional Court and only specific subjects (the Ombudsman, the Ministry of the Interior, a group of at least 25 Deputies or a group of at least 10 Senators) are entitled to initiate this review.

For the public (both individuals and NGOs), it is only possible to suggest annulment of a legal regulation together with a constitutional complaint against a specific decision in the case where the regulation was applied. The NGOs (like anyone else) cannot go to Constitutional Court directly, but only after they have exhausted all other remedies and claim that the courts or other bodies which dealt with their case interpreted the law in conflict with the Constitution. If the Constitutional Court finds that a legal regulation has been issued in violation of the Constitution or the law, it will annul it. Pursuant to Article 99 (2) of the Constitution, enforceable decisions of the Constitutional Court are binding on all bodies and persons.

Pursuant to Article 95 (1) of the Constitution the general courts may refuse to apply a sub-legal regulation if it is against the law. The court cannot annul this regulation, but only choose not to apply it in a specific case.

The public can participate in the legislative process at the preparatory stage, in a form of consultative participation. However, this is not regulated by law and is not possible in all cases.

The requirements for the effectiveness of access to the national courts in environmental matters, as formulated in CJEU case law, have not been directly applied by the Constitutional Court in reviewing the normative acts.

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 kind of “administrative review” of legal regulations in the Czech legal system. However, the Ministry of the Interior supervises the normative instruments of municipalities and regions. The Ministry of the Interior may call on the municipality to remedy or file a complaint to the Constitutional Court if the Constitutional Court reviews the legal regulation, this review covers both the substantive and the procedural legality of the regulation. The Constitutional Court examines whether the regulation was adopted within the limits of the competence of the respective authority and in a manner prescribed by law.

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 usually no possibility to participate in the process of issuing legal regulations and no kind of administrative review. Concerning judicial review of the normative acts before the Constitutional Court, it is necessary for members of the public to exhaust all other remedies in the case where the act was applied and claim that the courts or other bodies which dealt with their case interpreted the law in conflict with the Constitution, or that the act itself is contrary to the Constitution.

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 entities which are entitled to initiate a judicial review of legal regulations (normative acts) before the Constitutional Court are not obliged to participate in consultation procedures.

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?

With regard to the review of the legal regulations (normative acts) before the Constitutional Court, injunctive relief is not available. However, in some cases the Constitutional Court may annul the statutory instrument with retroactive effect.
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?

Access to the Constitutional Court is free of charge; it is, however, obligatory to be represented by a lawyer (attorney) and it is necessary to exhaust all other remedies and claims before constitutional compliance. Therefore, the costs of the preceding procedures are relevant (see section 1.7.3 point 1) in this respect.

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]

The obligation of the courts to introduce a preliminary reference (see section 1.3 point 5) applies in every case where EU law is interpreted and it also applies to interpretation of the validity of acts adopted by the EU institutions and bodies. Any party to the dispute can ask the court to make such a reference, but it is for the court alone to decide whether to do so. There is no specific procedure in national law to challenge directly an act adopted by an EU institution or body before the national courts.

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[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-126/09-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 Hoeksche Waardshoek, ECLI:EU:C:2017:774

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

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The Danish Constitution from 1953 does not enshrine a right to a clean environment or healthy environment. Thus, the protection of the environment relies on the relevant legislation at national and EU level and to some extent also case law regarding nuisance etc. The procedural rights of access to courts for individuals and others in relation to administrative decisions by the authorities is established in Sec. 63 of the Constitution. There are no administrative courts in Denmark. However, administrative appeals boards have traditionally provided an alternative option for independent review of administrative decisions within the environmental legislation, primarily the Environment and Food Appeals Board and the Planning Appeals Board. The Energy Appeals Board may also address issues of environmental law, e.g. environmental assessment requirements related to energy facilities. The administrative appeal system in general provides an easily accessible option for access to justice in environmental matters both for individuals and NGOs.

The Danish Parliament (Folketinget) has the legislative powers to adopt environmental legislation. It is a one-chamber system with 179 members of Parliament.

Several ministries have responsibilities relating environmental matters in a broad sense, including issuing executive orders. The Ministry of Environment has the main responsibilities as regards environmental issues, including protection of nature, water, air etc. The Ministry of Climate, Energy and Utilities has responsibilities regarding climate and energy issues as well as water and waste utility regulation. The Ministry for Food, Agriculture and Fisheries has responsibilities regarding general environmental regulation of agriculture. The Ministry of Internal Affairs and Housing holds responsibilities regarding land use planning and the Planning Act and the Building Act, while the Ministry of Transport has responsibilities regarding transport infrastructure. The Ministry of Industry, Business and Financial Affairs has the overall responsibility as regards the secretariat of the administrative appeals boards. The appeals boards, however, operate independently from the Ministry when deciding cases.

2) Constitution

Sec. 63 in the Danish Constitution of 5th June 1953 establishes that any questions about the limits of public authority can be brought to the courts. It also states that a court case will in general not suspend the administrative decision. However, the court may in specific circumstances grant suspensive effect while the case is pending.

It is not specified in Sec. 63 who can take such cases to a court. This is determined by the standing requirements applied by the courts. The decisive standing criterion is the existence of a legal interest, see below 1.4.

As mentioned above, there are no constitutional rights for protection of the environment in Denmark.

3) Acts, Codes, Decrees, etc.

The main rules on access to justice in environmental matters are to be found in the relevant pieces of environmental legislation. A distinction must be drawn as regards access to the (general) courts and access to the administrative appeal boards. As regards access to courts, the relevant legislation generally establishes a time-limit of 6 months for bringing an appeal to the courts. As regards access to the administrative appeal boards, the legislation generally establishes a time-limit of 4 weeks for bringing an administrative appeal. Furthermore, the relevant legislation specifies what can be appealed and by whom.

The main environmental acts include:

Act on Nature Protection: [Lovbekendtgørelse nr. 240/2019 af lov om naturbeskyttelse]
Act on Planning: [Lovbekendtgørelse nr. 1157/2020 af lov om planlægning]
Act on Environmental Protection: [Lovbekendtgørelse nr. 1218/2019 af lov om miljøbeskyttelse]
Act on Environmental Assessment: [Lovbekendtgørelse nr. 973/2020 af lov om miljøvurdering af planer og programmer og af konkrete projekter]
Act on Environmental Liability: [Lovbekendtgørelse nr. 277/2017 af lov om undersøgelse, forebyggelse og afhjælpning af miljøskader (miljøskadeloven)]

More general legislation on procedures etc. includes:
Access to courts:
Act on Administration of Justice: [Lovbekendtgørelse nr. 938/2019 af lov om retspleje]
Access to appeal boards:
Act on Environment and Food Appeals Board: [Lov nr. 1715/2016 om Miljø- og Fødevareklagenævnet]
- Statutory Order on procedures: [Bekendtgørelse nr. 131/2017 om forretningsordningen for Miljø- og Fødevareklagenævnet]
Act on Planning Appeals Board: [Lov nr. 1658/2016 om Planklagenævnet]
- Statutory Order on procedures: [Bekendtgørelse nr. 108/2017 om gebyr for indbringelse af klager for Planklagenævnet]

4) Examples of national case-law

Case law from the Danish courts regarding access to justice in environmental matters is somewhat limited. Some examples as regards access of NGO’s and citizen groups include:
U2012.2572H (Østerild): The Supreme Court case concerned the granting of suspensive effect in a case where an NGO and affected citizens challenged the Act on a national wind turbine test centre (647/2010). The Supreme Court confirmed the ruling of the Western High Court rejecting the granting of suspensive effect based on a balancing of the interest in not postponing the implementation of the law against the interests of the appellants. As regards the right of access, the Western High Court accepted right of access to the ad-hoc organization (National Organisation for a Better Environment). The high court made reference to the number of members (more than 200), to objections raised during the parliamentary process, and to the fact that the organization would have had a right to administrative appeal if the test centre had been established by an administrative decision.
U2009.2706H/MAD2009.1612H (Kyndby Huse): The right of appeal of an ad-hoc citizens group (Citizens for Offshore Turbines in Marine Areas on its own and as representative of individual citizens) against the Nature Protection Appeal Board regarding EIA-decisions for two test turbines on land was not disputed, but their claim was unsuccessful (costs: 250,000 DKK). In U2009.1785H, the claim of the organization against the project developer was dismissed as the project was abandoned.
U2005.2143H/MAD2005.538H: The Supreme Court dismissed the claims raised by a citizens group against the Metro Company partly as not addressing an issue of law, and partly as not being sufficiently precise.
MAD2004.1360D: A local citizens group claim against the Nature Protection Appeal Board regarding EIA of the Metro project was not granted suspensive effect.
U2001.1594V/MAD2001.539V: The Western High Court acknowledged the right of appeal of the Danish Anglers Association regarding a decision to reintroduce beavers in Denmark.
MAD2003.6020: Standing of an ad-hoc local citizens group (Amager against Superficial Malls) was not disputed, but they were unsuccessful in their claim against the Nature Protection Appeal Board regarding plans for a new shopping centre (costs: 50,000 DKK)
U2000.1103H/MAD2000.838H: A claim raised by the Danish Cyclist Association regarding lack of EIA of a road project was successful in the Supreme Court. The standing of the association was not disputed in the case and was not discussed by the courts ex officio.
U1994.7800: Greenpeace Denmark was accepted as having a sufficient legal interest in a claim against the Ministry of Transport regarding EIA of the Øresund bridge project.

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?

International agreements are only considered part of Danish law if they have been incorporated into statutes or other official statements of national law (the dualist approach). This means that international agreements cannot be relied upon directly before the courts or administrative bodies. They may, however, be called upon as important elements for the interpretation of Danish law. Furthermore, those international agreements to which the EU is a party – such as the Aarhus Convention – may, in accordance with EU law, be directly applicable in the Member States if the provisions are sufficiently clear and precise. Under such circumstances courts and administrative bodies are obliged to apply international agreements directly.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

The Danish court system is a general court system where the courts adjudicate civil, administrative and criminal cases. The court system consists of three levels:

- District courts (24)
- High courts (2)
- The Supreme Court

Since 2007, a case will normally start in a district court with appeal option to the Western or Eastern High Court. A district court may, however, refer cases on matters of principle or more complex issues to the high courts. In such cases, an appeal can be made to the Supreme Court as second instance. Third instance appeals to the Supreme Court may also be accepted in special circumstances by the Appeals Permission Board.

The Supreme Court consists of one president and 17 Supreme Court judges. Court rulings are normally made by a minimum of five judges. The Eastern High Courts consist of one president and 59 judges, whereas the Western High Court consists of one president and 38 judges. The high court cases are in general decided by three judges. In criminal cases, laymen or juries may supplement the court judges. The district court cases are normally decided by one judge. In more complicated or important civil and administrative cases three judges may participate in the case. In criminal cases, two laymen or six jury members may supplement the district court judge(s).

2) Rules of competence and jurisdiction

Denmark has a system of ordinary – or general – courts dealing with both criminal and civil cases, including cases challenging administrative decisions. There is no constitutional court and no administrative courts. Consequently, there are no specialised environmental courts in Denmark. There are, however, quasi-judicial administrative appeals boards which, to some extent, are comparable to environmental courts, see further below. In general, it is not a requirement that administrative appeal is exhausted before a case can be taken to the ordinary courts.

3) Specialties as regards court rules in the environmental sector

As regards the general courts, there is no specialisation or use of expert judges in environmental matters.

The administrative appeals boards in the environmental sector have a varying degree of specialisation, including laymen and expert members, see further below 1.3.3.

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

In administrative matters the role of the courts is to oversee the public authorities. This includes judicial review of the procedural and substantive legality of administrative decisions or omissions, i.e. matters regarding legal basis, competence, procedure, and compliance with general principles of law. Review of the merits or discretionary elements of administrative decisions is in principle not excluded, but the courts are generally reluctant to review the discretionary powers of administrative authorities.

The courts apply the adversarial principle relying on the claims and arguments brought forward by the parties to the case. In general, they cannot act on their own motion. A court may, however, ask the parties to elaborate on matters that it finds important to the case. In district court cases where a party is not represented by a lawyer, the court may give advice on how the party can inform the case and safeguard his/her interests, cf. Act on Administration of Justice Sec. 339.

1.3. Organisation of justice at administrative and judicial level

1) System of the administrative procedure

Most environmental decision-making rests with the local authorities – the 98 municipalities. In a few areas decisions are made by the relevant minister – in practice by ministerial agencies such as the Environmental Protection Agency (Miljøstyrelsen), the Coastal Authority (Kystdirektoratet) or the Energy Agency (Energistyrelsen).

Such administrative decisions can in general be appealed to the administrative appeal boards – or to the courts. In case of administrative appeals, the appeal will in most cases first be presented to the authority who made the decision allowing a reconsideration of the decision.

It is also possible to submit a complaint to the Parliamentary Ombudsman. This is, however, only possible if other options of administrative appeals, e.g. to the appeals boards, have been exhausted. If a decision has been made by a ministerial agency it might in some specific circumstances be possible to make a complaint to the minister, in particular regarding access to environmental information that are not related to administrative decisions.

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

An appeal of an administrative decision to the general courts must in general be made within 6 months. This time-limit is stipulated in the relevant environmental legislation. An appeal must be submitted in writing in accordance with the rules laid down in the Act on Administration of Justice.

It is difficult to estimate when one can expect a final ruling. The time frames may vary from one district court to another. In 2019 the average time frame in civil cases in the Supreme Court was 11 months, while the time frames in the high courts depend upon whether it is first instance cases or appeal cases.

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

As mentioned above, there are specialised administrative appeals boards in Denmark. They do not belong to the court system, but are established as independent appeals boards within the administrative system. Since February 2017 the administrative appeals boards have a joint secretariat in the Appeals Board Agency (Nævnenes Hus) organisationally placed within the Ministry for Industry, Business and Financial Affairs (Erhvervsministeriet). The composition of the boards varies depending upon the types and the relevant legislation.

With effect from February 2017, as a consequence of a reshuffle of the Government, the former Nature and Environment Appeals Boards was divided into two separate appeals boards: the Environment and Food Appeals Board and the Planning Appeals Boards.

Administrative decisions made under a broad range of environmental legislation, including the Environmental Protection Act, the Nature Protection Act and the Environmental Assessment Act can be made to the Environment and Food Appeals Board. Whereas decisions under the Planning Act can be appealed to the Planning Appeals Board. The relevant legislation determines who can appeal and which decisions can be appealed to the boards. In general, there is broad access to appeal by individuals as well as NGOs.
The Environment and Food Appeals Board is a so-called ‘combination board’ in the sense that the composition of the board may differ from one type of case to another. In essence the board has two distinct configurations:

- a lay configuration consisting of a chairman (qualified as judge), two high court judges and four lay members appointed by Parliament, or
- an expert configuration consisting of a chairman (qualified as judge), two high court judges and (in general) two experts. There are eight different expert “groups” depending upon the topic of the case, e.g. industry, soil pollution, groundwater and water supply, freshwaters, marine waters, agriculture, food or veterinary topics.

The Planning Appeals Board has one configuration consisting of a chairman (qualified as judge), one high court judge, five expert members and four lay members.

For both boards, the chairman and the expert members are appointed by the Minister for Business for a period of four years. The lay members are appointed by the Parliament, whereas the two high court judges are appointed by the high courts among their judges.

In the Environment and Food Appeals Board the lay board mainly deals with appeals related to nature protection, while the expert board mainly deals with appeals related to pollution issues. The board has a fairly wide discretion to delegate decision-making to the chairman. It is possible that in special cases the board configurations may join into one combined board. It is also possible that an appeal case in special circumstances may be transferred from one configuration to another.

If you wish to challenge an administrative decision made by the authorities it is in most cases possible to choose between the administrative appeal system, i.e. the appeals boards, or the general courts. Access to the appeals boards is easy and cheap. An appeal must be submitted in writing to the authority that made the decision within four weeks from when the decision was announced. The authority is obliged to consider whether it will change the decision in view of the appeal. If not, it must forward the appeal to the Appeals Board together with relevant information.

A minor fee (2017:- 900 DKK (approx. 120 EUR) for individuals and 1.800 DKK (approx. 241 EUR) for organisations and businesses) has to be paid. The fee will be reimbursed if the appeal is wholly or partly successful. There are no requirements as to the formulation of the appeal, but the digital complaints system must be used. The appeals boards must provide the necessary information for making a decision in the case. Unless explicitly limited by law the appeals boards can make a full review of the administrative decision, including matters of legality as well as discretionary matters (merits). The appeals boards may use cassation and return an invalid decision to the authority or, in the case of a full review, replace the decision with a new decision on the merits (reformatory). A decision of an appeals board can be brought to the courts normally within 6 months.

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

As mentioned above, an appeal against an administrative decision by local authorities or ministerial agencies can in general be made either to the appeals boards or to the general courts. In some circumstances access to administrative appeals is cut off, including in general supervisory decisions on environmental matters as well as some specific types of decisions, e.g. wastewater plans. A decision by the administrative appeals boards can be appealed to the general courts – normally to the district courts and with the option for a second appeal to the high courts. Third instance appeals to the Supreme Court may also be accepted in special circumstances by the Appeals Permission Board. A district court may refer cases on matters of principle or more complex issues to the high courts. In such cases, an appeal can be made to the Supreme Court as second instance.

The illustration below illustrates how administrative decisions made by local authorities or ministerial agencies can be appealed in general.

<table>
<thead>
<tr>
<th>Local authorities (decision)</th>
<th>Ministerial agencies (decision)</th>
<th>Appeals Boards</th>
<th>District courts (24)</th>
<th>High courts (2)</th>
<th>Supreme Court</th>
</tr>
</thead>
</table>

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

In general, there are no extraordinary ways of appeal in the Danish court system, apart from the option of applying for a third instance appeal in the Supreme Court. The parties of a court case may make a request for a preliminary reference to be made to the Court of Justice of the European Union or the court can make a preliminary reference on its own initiative in accordance with Art. 267 TFEU. If a request for preliminary reference is made by the prosecutor in a criminal case or by a state authority in a civil case a statement from a special committee within the Ministry of Justice will be obtained. The Danish appeals boards, including the Environment and Food Appeals Board, do not consider themselves capable of making preliminary references to the CJEU – primarily due to the members (apart from the high court judges) being appointed by the minister for a limited period of four years), see also the ruling of the CJEU in C-222/13 TDC.

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

The Act on Administration of Justice establishes a system for mediation within the court system upon the request of the parties of a civil case. In such cases, the court will offer mediation as an alternative to an ordinary court procedures if the court considers that the case is suitable for mediation.

Apart from the general mediation option, there are no specific out of court solutions in the environmental area.

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

Apart from the option of appeal to the administrative appeals boards and the courts it is also possible to bring an administrative decision to the Ombudsman. Furthermore, questions regarding the supervisory powers of local and regional authorities can be brought to Appeals Agency (Ankestyrelsen). Finally, if a person or NGO considers that a criminal offense has been made by violation of environmental legislation, it is possible to report the matter to the police /public prosecutor.

The Ombudsman may raise cases on his own initiative or respond to complaints being brought to him, according to the Ombudsman Act. It is up to the Ombudsman to determine whether a complaint should lead to further investigations. It is a requirement that the options for administrative appeal have been exhausted before bringing a case to the Ombudsman. The Ombudsman cannot make decisions with legally binding effect. He can raise criticism of and make recommendations to the authorities.

The Appeals Agency may receive complaints regarding municipal and regional authorities – but only if there are no options for administrative appeal according to the Act on Municipal Government. The Agency determines whether a complaint should lead to further investigations. It may review the legality of acts or omissions. The Agency may also issue a guiding opinion on the matter – it cannot replace the decision in question. It may, however, annul or suspend clearly illegal decisions.
The public prosecutor determines whether there is a basis for initiating criminal proceedings before the courts. There is no specialized prosecutor in environmental matters in Denmark. In general, there are rather few environmental criminal cases in Denmark and the sanction level (fines or imprisonment) is fairly low. There are generally no options for private criminal prosecution in environmental matters. This has to be established specifically by law. Administrative inaction or omissions can, in principle, be subject to complaints to the Ombudsman, the Appeals Agency, or be reported to the public prosecutor. Administrative inaction or omissions can presumably also be challenged before the courts. If no administrative decision has been made it is generally not possible to lodge an appeal within the administrative appeal system – unless the inaction can be equated with a decision. In some circumstances a complaint can be made to a superior authority, e.g. to the minister regarding omissions of a ministerial agency.

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)?

The general terminology regarding standing or access to justice in Denmark is the concept of “legal interest.” In relation to court procedures, the concept of legal interest is not defined in legislation, but it is most often interpreted as having a sufficient individual and significant interest. This does not, however, exclude standing for organizations. There is no actio popularis in Denmark giving everybody access to courts. The courts may determine on a case by case basis whether a claimant has a sufficient legal interest. It is generally accepted that the group of persons and NGOs that have a right to administrative appeal will also be considered to have a sufficient legal interest to bring the case to the courts.

In relation to the administrative appeal system in environmental matters, the relevant legislation specifies who has access to appeal to the administrative appeals boards. The legislation was amended and to some extent streamlined in 2000 with the purpose of implementing the Aarhus Convention (Act no. 447 /2000). The legislation provides access for both individuals and certain NGOs, in particular ENGOs. In general, the rules on access to administrative appeal do not distinguish between the public concerned and the public in general. Rather, it relies on the term of “legal interest” which may be interpreted differently depending upon the topic of case.

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

The rules on who has access to administrative appeal differ from one area to another. It is specified in the relevant sectoral legislation who has access to administrative appeals and what decisions that can be appealed, see further below. There are, however, no specific rules as regards who has access to the courts.

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.)

Legal standing for individuals in the administrative appeal system may range from a broad understanding of the concept of “legal interest” in matters regarding physical planning in the Planning Act, to a narrower understanding in the Environmental Protection Act of having “an individual, significant interest,” whereas the Nature Protection Act for individuals only grants access to administrative appeal to the addressees (or others pertaining to a status as a party to the case).

Following the implementation of the Aarhus Convention in 2000, most environmental legislation stipulates the right of administrative appeal for NGOs. In general, nationwide NGOs having protection of nature and environment or recreational interests as their main purpose have access to administrative appeal. It is a requirement that the organization can present bylaws that document such a purpose. Generally, local organizations or groups also have access to administrative appeal, however, with some variations from one area to another. According to the Environmental Protection Act local organizations must have requested to be notified about decisions in order to have access to administrative appeal. This is not a requirement according to the Nature Protection Act and the Planning Act.

Foreign NGOs are not explicitly referred to in the legislation as having access to administrative appeal. The Nordic Environmental Protection Convention from 1974 explicitly recognizes the principle of non-discrimination and grants persons from the Nordic countries affected by a decision regarding environmentally harmful activities access to administrative appeal as well as to the courts on equal terms. As mentioned above, legal standing in the court procedures is determined by the concept of legal interest on a case by case basis. In most cases the same circle as those having a right of access to the administrative appeals will also have legal standing before the courts, both as regards individuals and NGOs. In general, the courts apply a fairly liberal approach to groups and organizations representing individuals and generally accept such groups as having a sufficient legal interest depending upon the individual interests being represented. Whether foreign NGOs can raise a claim in the courts will most likely depend upon whether the NGO is affected or represents a sufficient legal interest in the case. Group or class actions on behalf of the interests of a group of persons have been possible since 01/01/2008 according to the Act on Administration of Justice Chap. 23a.

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

According to the Act on Administration of Justice Sec. 149, the court language is Danish, which means that documents etc. should be elaborated in Danish unless both parties and the court accepts a foreign language. Oral negotiations etc. will be translated if needed or requested, however, costs may be placed on the parties of the case in civil cases. Use of Nordic languages should in general be accepted.

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 civil court cases, the collection and presentation of evidence relies on the initiative of the parties to the case. The parties to the case may call witnesses and request expert opinions. There are no restrictions on what kind of evidence may be presented. However, the court will reject irrelevant evidence. The court cannot request evidence on its own. But the court may ask the parties to elaborate on matters that it finds important to the case or encourage the parties to present evidence.

As public authorities, the administrative appeals boards have a duty to ensure that sufficient information is available for making a decision – the adversarial procedure. The boards may seek expert opinions. Expert opinions etc. cannot be requested by the parties in an administrative appeals case.

2) Can one introduce new evidence?

Evidence will normally be presented during the main negotiations, but it may also take place prior to the court negotiations depending upon the acceptance of the court. Prior to the court negotiations, the court may request the parties to present a statement regarding the evidence that will be presented in the case. Additional evidence may be permitted by the court.

In the administrative appeals boards there are no restrictions, in principle, as regards the supply of new relevant information to the boards.

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

A party to a court case may request expert opinions and also suggest specific experts, but it is the court that makes the final decision on whether to call an expert and who.

There are no official lists, but the Danish Technological Institute maintains a list of potential experts on technological matters.

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

Expert opinions are not binding on the court.
3.2) Rules for experts being called upon by the court
The court may call upon experts based on the request of a party, see below.

3.3) Rules for experts called upon by the parties
If a party requests an expert opinion he/she should make a suggestion for the questions to be asked. The opposing party will have the opportunity to comment on the suggestion and the court then approves the questions and appoints an expert. It is possible for the parties to pose additional questions to the expert and also to request another expert opinion on the same issue subject to approval by the court.

3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?
In general, there are no procedural fees related to expert opinions. The costs of the expert opinion will normally be borne by the party who has called for expert opinions as determined by the court and they should do so when the costs occur. The court may, however, distribute the costs between the parties.

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
In general, legal representation is not compulsory in administrative appeal or judicial procedures in environmental matters. In administrative appeals, the appeals board (or authority) has an obligation to ensure that the necessary information is available for making a decision. It is not necessary to have the assistance of a lawyer in administrative appeals even though a qualified lawyer may provide valuable assistance. In court cases, the courts rely on the claims and arguments brought forward by the parties to the case. In most cases it is recommended to seek qualified legal advice before bringing a case to the courts and also to be represented by a lawyer, e.g. from law firms that are either specialized or have specific and documented expertise in environmental matters. Also, the court may in some circumstances request legal representation if this is deemed necessary.

1.1 Existence or not of pro bono assistance
It is possible to apply for legal aid according to the Act on Administration of Justice. Normally, you have to fulfill certain criteria regarding maximum income (as of 01/01/2020: DKK 336,000 for a single income and 427,000 for a couple). In addition, your case needs to be reasonably justified. In environmental matters it is possible that legal aid may be granted on the basis of special circumstances alone. This may be fulfilled in cases dealing with matters of principle or matters of general public importance. Individuals as well as groups or organizations may apply for legal aid on the basis of special circumstances. Pro bono legal assistance can be provided by "legal clinics" or by law firms. However, this does not normally extend to environmental matters. There are no public interest environmental law organizations or lawyers in Denmark that offer legal advice to the public as such.

1.2 If pro bono assistance does exist, what are the main elements of the procedure to receive it
Applications for legal aid must be submitted to the Department of Civil Affairs.

2) Expert registries or publicly available websites of bars or registries that include the contact details of experts
A list of lawyers is available at advokatnoeglen.dk, where it is possible to select specialized lawyers within environmental matters.

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible
There are no NGOs specialized in giving legal advice to private individuals regarding administrative appeals or court cases in environmental matters. Some Danish NGOs have significant expertise in environmental cases – most often in administrative appeals, e.g. the Danish Society for Nature Conservation, Danish Ornithological Association, Danish Outdoor Council and the Danish Anglers Association. Only few environmental court cases are initiated by NGOs, but they often use the administrative appeals system.

4) List of International NGOs, who are active in the Member State
Greenpeace, WWF, NOAH/Friends of the Earth

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).
For administrative appeals, time limits may be set in the legislation. In most environmental legislation, a time limit of four weeks from the decision is set for appeals to the appeals boards.

The general time limit for challenging an administrative environmental decision in court is 6 months. This time limit is stipulated in most environmental laws. Regarding the time limit for appeals within the judicial system, the regular time limit of appeal from a district court to one of the high courts is four weeks. A decision by one of the high courts can be appealed to the Supreme Court within eight weeks. In regard to the extraordinary appeal to the Supreme Court as third instance, this can only be granted in special circumstances, see above 1.3.4.

2) Time limit to deliver decision by an administrative organ
In general, there are no time limits for the administrative authorities to deliver a decision in environmental matters, apart from a general expectation to deliver a decision within reasonable time. One exception is the time limit of 90 days as regards screening decisions in EIA matters regarding so-called Annex II projects.

3) Is it possible to challenge the first level administrative decision directly before court?
It is possible to challenge first level administrative decisions directly before court, see above 1.3.2.

4) Is there a deadline set for the national court to deliver its judgment?
The ruling of the court must be given as soon as possible after the end of the court negotiations – in district courts and in high court appeals normally within four weeks, according to the Act on Administration of Justice Sec. 219, see also above 1.3.2 on the average time frames in civil cases.

5) Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)
In judicial procedures different time limits apply mainly for the parties. As a general rule, it is the court who decides the different time limits and ex officio set out the progress of the case. In civil cases, after the submission of a application a deadline of two weeks will normally be set for the defendant to submit a reply. The court will then decide whether a preparatory meeting will be held. The court will also decide whether further written statements should be submitted, including a description of the documents and evidence to be submitted during the main negotiations. The court decides when the preparation ends. However, if this is not decided by the court, the preparatory meetings will end four weeks before the main negotiations in court start.

1.7.2. Interim and precautionary measures, enforcement of judgments
1) When does the appeal challenging an administrative decision have suspensive effect?
Regarding administrative appeals to the Environment and Food Appeals Board, it may vary to what extent an administrative appeal may have suspensive effect. In general, an appeal regarding a prohibition or an order will suspend the decision, whereas an appeal regarding a permit will not suspend the decision. The Appeals Board may, however, decide otherwise when an appeal has been submitted.

2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?
There are very few explicit rules on injunctive relief, e.g. Sec. 53 of the Environmental Assessment Act regarding administrative appeals.

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?

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

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

This will depend upon whether the appeal has suspensive effect or not, see above section 1.7.2.1.

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

An appeal to the courts does not automatically suspend the administrative decision, as stated in the Danish Constitution Sec. 63. However, due to the particular circumstances of a case, the court may grant suspensive effect, which can be on the basis of a request from a party. In general, the courts are reluctant to grant suspensive effect and may, in some cases, request a safety deposit for the potential costs associated with suspending a decision and, thereby, a project. A court decision regarding suspensive effect or a court order can be appealed to a higher court. The court will balance the public interests of not suspending the decision on the one hand and the nature and scope of harm suffered by the appellants on the other hand.

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 request a court order to prevent action in a civil (private) lawsuit, according to the Act on Administration of Justice Ch. 40. A (temporary) court order may be conditional upon the payment of a financial deposit. The order can be subject to a separate appeal.

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.

Fixed court fees apply within the court system for filing a case. The standard fee is DKK 500 (67 EUR). If a case has a value of more than 50,000 DKK (6,700 EUR) an additional fee of 250 DKK + 1.2 % of the value above 50,000 DKK (6,700 EUR) will apply. The maximum fee is 75,000 DKK (10,000 EUR) or 112,500 DKK (15,100 EUR) in the Supreme Court. In cases regarding administrative decisions, the maximum fee is 2,000 DKK. The fees apply in the preparatory phase after submission of an application. They will apply again if the case reaches the main negotiations. If a case is appealed, new fees will apply, including the standard court fee (750 DKK (100 EUR) in the high courts and 1,500 DKK (200 EUR) in the Supreme Court) and fees calculated on the basis of the value of the case if the value is above 50,000 DKK. Expert fees and lawyer fees will be determined by the court based on certain standard fees. Within the administrative appeals system a standard fee of 900 DKK (120 EUR) for individuals and 1,800 DKK (241 EUR) for NGOs and companies apply in most cases. The fee is reimbursed if the claim is wholly or partially successful or if the appeal is rejected, see statutory order 132/2017 regarding the Environment and Food Appeals Board.

In general, the administrative appeals system is intended to fulfil the obligations of the Aarhus Convention to ensure fair, equitable, timely and not prohibitively expensive access to review of administrative decisions by independent appeals board. In situations where there is no access to administrative appeals, it may have been specified either in the legislation or in the preparatory works that the courts must ensure that costs are not prohibitively expensive. This may also be the case even if there is access to administrative appeals, see e.g. the Act on Environmental Assessment Sec. 54.

2) Cost of Injunctive relief/Interim measure, is a deposit necessary?

The courts may request a deposit if they grant suspensive effect or injunctive relief. There are no additional procedural costs apart from the general court fees. There are no deposit requirements within the administrative appeal system.

3) Is there legal aid available for natural persons?

Within the court system it is possible to apply for legal aid according to the Act on Administration of Justice, see 1.6.1.1.

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?

Individuals, but under special circumstances also groups or organizations, may apply for legal aid on the basis of special circumstances according to the Act on Administration of Justice, see 1.6.1.1 above.

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

Private insurances often include coverage for some costs.

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

In general, the ‘loser pays principle’ applies in court cases, cf. Act on Administration of Justice Sec. 312. The court may, however, in special situations decide that the losing party is not required pay the costs of the opponent, e.g. if the opponent is a public authority, or the case addresses a matter of principle. But there is no general exemption from ‘the loser pays principle’ in cases against public authorities and there are several examples of private claimants being ordered to pay the costs of public authorities.

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?

According to the Act on Court Fees (Consolidated Act no. 1252/2014), court fees do not apply to those who are granted legal aid under the Act on Administration of Justice, or those who have a private insurance cover and fulfil the criteria for being granted legal aid.

1.7.4. Access to information on access to justice - provisions related to Directive 2003/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?

The courts provide general information on access to the courts and a digital platform for filing a lawsuit is available together with further guidance. The administrative appeals boards provide information on how to submit an administrative appeal in environmental matters. In general, a digital platform must be used for administrative appeals. Furthermore, the Environmental Protection Agency provides information on access to justice in environmental matters.

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

In general the applicant can request information from the relevant authorities.

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

There is no specific active dissemination on access to justice within sectoral rules. However, the environmental acts in general provide some details on administrative appeal procedures, e.g. Act of Environmental Assessment Sec. 52.

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

It is mandatory to provide information on appeal options in an administrative decision. If there is no option for administrative appeals, a decision must provide information on access to courts. There is no requirement to provide information regarding legal aid, in a decision or in a judgement.

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

There are no formal rules on translation etc. in administrative procedures and decisions. It does, however, follow from the general obligation to provide necessary guidance to the citizens according to the Act on Administrative Decisions (Forvaltningsloven), that an authority has certain obligations to provide translations or interpreters if this is necessary [1].

Country-specific EIA rules related to access to justice

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

The rules on EIA are primarily implemented in the Act on Environmental Assessment (consolidated Act 973/2020). The Environmental Assessment Act stipulates that screening decisions can be appealed within four weeks to the Environment and Food Boards of Appeal (or the Energy Appeals Board).

Anyone with a legal interest as well as NGOs representing at least 100 members can submit an appeal to the administrative appeals boards. It is also possible to bring an appeal to the courts. In particular, this might be relevant in cases that are subject to specific rules such as state road or rail projects where there is no administrative appeal regarding EIA of such projects. In other cases, administrative appeals may be cut off.

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

Due to the fact that scoping is not a final administrative decision but a procedural decision, there are no specific rules on administrative appeals in the Environmental Assessment Act in relation to scoping. This does not, however, hinder appeals to the courts.

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

There is a general deadline of four weeks to challenge administrative decisions according to the Act on Environmental Assessment. This applies to screening decisions as well as the decision to grant a permit for the project. With respect to bringing a case to the courts there is a deadline of 6 months.

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

The final EIA permit can be subject to administrative appeals in full by individuals as well as NGOs, including foreign NGOs. Anyone with a legal interest and also environmental NGOs representing at least 100 members may bring an appeal. It is also possible to challenge an EIA permit in the courts.

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

A decision to grant a permit under the Act on Environmental Assessment can be appealed in full to the administrative appeals boards, including procedural and substantive legality as well as the merits of the case. As regards the courts a full review can be carried out, but in general the courts will restrict themselves and not review the merits of a case.

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

See above, section 1.8.1.3.

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

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

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 the national courts it is not necessary to participate in the public consultation phase of the administrative procedure.

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

This is not specified in the Danish legislation. The notion is in general associated with the administrative appeal system providing a broad and easy access to review of administrative decisions.

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

This is not specified in the Danish legislation.

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?

According to Sec. 53 of the Environmental Assessment Act, the Environment and Food Appeals Board may issue an order to stop building or construction works. In general an appeal to the administrative appeals boards will not suspend a screening or permit decision unless the appeals board decides otherwise, cf. the Act on Environmental Assessment (Sec. 53). The appeals board may also order a project to be stopped if this is deemed necessary, cf. Sec. 53. Bringing a case to the court will not suspend the decision either unless the court decides otherwise.

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

The IPPC rules are primarily implemented in the Danish Act on Environmental Protection (Consolidated Act no. 1218/2019). Most decisions under the Environmental Protection Act can be appealed to the Environment and Food Appeals Board. The rules on administrative appeals in the Environmental Protection Act apply in parallel to the rules in the Environmental Assessment Act if separate decisions are made. An IED permit will, however, normally replace an EIA permit.

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?

Final IED decisions can be appealed to the appeals board within four weeks from the decision. Anyone with an individual and significant interest in the case can appeal the decision. ENGOs as well as certain specific organisations can appeal decisions. Local ENGOs can also appeal decisions if they have requested to be informed about such decisions.

Decisions determining that a permit is not required for the establishment or amendment of certain large-scale installations, including IED activities, can also be appealed to the Environment and Food Appeals Board, cf. Statutory Order 1534/2019. Supervisory decisions regarding baseline reports can also be appealed, but not decisions regarding baseline reports as part of an application process, cf. Statutory Order 1534/2019 Sec. 56.

There are no specific rules regarding judicial review by the courts apart from the general rule that appeals to the courts can be made within 6 months from the decision.

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

See above 1.8.2.2. Otherwise there are no specific screening rules related to IED projects apart from the rules on EIA, see above.

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

See above 1.8.2.2. Otherwise, there are no specific scoping rules related to IED projects apart from the rules on EIA, see above.

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

See above 1.8.2.2.

6) Can the public challenge the final authorisation?

In order to appeal a final permit according to the Environmental Protection Act to the appeals board, it is necessary to demonstrate an individual and significant interest or to be an NGO. There is no right of administrative appeals for the public as such. The courts are likely to set similar requirements for standing.

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 appeals board can make a full review of a permit, including procedural and substantive legality as well as the merits of the case. The appeals board can also review the scientific accuracy, request further information or call on additional expert advice. In general it is not possible to challenge omissions, e.g.
decisions not to use the supervisory powers within the administrative appeal system. However, such issues can be brought to the supervisory authority (Appeal Agency).

As regards the courts, a full review can be carried out but in general the courts will restrict themselves and will not review the merits of a case. A court cannot act on its own motion.

6) At what stage are these challengeable?
See above, 1.8.2.2.

9) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
There is no requirement of exhausting administrative review procedures prior to bringing a case to the courts.

10) In order to have standing before the national courts it is 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?
There are no requirements of prior participation in order to gain standing before the courts. The general standing requirement of an individual and significant interest applies.

11) Fair, equitable – what meaning is given to equality of arms in the national jurisdiction?
This is not specified in the Danish legislation. The notion is in general associated with the administrative appeal system providing a broad and easy access to review of administrative decisions.

12) How is the notion of "timely" implemented by the national legislation?
There is no specific implementation of the notion "timely" into national legislation apart from the access to administrative appeals.

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?
An administrative appeal to the appeals board of a permit will normally not suspend the decision unless the appeals board decides otherwise. Taking a permit into use during an appeal case is, however, at the responsibility of the operator. There are no specific rules on injunctive relief.

14) Is information on access to justice provided to the public in a structured and accessible manner?
See above 1.7.4.

1.8.3. Environmental liability
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?
Specific rules on appeals in relation to environmental liability are laid down in the Environmental Liability Act. The Act stipulates access to administrative appeals by anyone with an individual and significant interest as well as environmental NGOs. Local NGOs safeguarding the environment and nature as well as recreational interests also have access to administrative appeals. Those who have a right of administrative appeal also have a right to request a decision on whether there is an environmental damage under the relevant sectoral laws, e.g. the Environmental Protection Act.

There are no specific rules on access to review by the courts, on the general rules see above 1.4.

2) In what deadline does one need to introduce appeals?
An administrative appeal must be submitted within four weeks from the decision or public announcement.

An appeal to the courts must be submitted within 12 months from the decision or public announcement of the decision.

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?
Those who have the right of administrative appeal may also request action from the authorities, cf. Act on Environmental Liability Sec. 36 and the relevant sectoral laws. The request must be accompanied by relevant information to support the request, e.g. scientific information.

4) Are there specific requirements regarding "plausibility" for showing that environmental damage occurred, and if yes, which ones?
No, see above 1.8.3.2.

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 competent authority must inform the entitled persons of a draft decision and set a deadline of at least 4 weeks to comment on the draft decision, cf. Act on Environmental Liability Sec. 38.

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?
The right to request action also applies in cases of imminent threat of damage.

7) Which are the competent authorities designated by the MS?
In most cases, the local authorities will handle the initial stages according to the relevant legislation. If there is environmental damage as defined in the legislation the case will be transferred to the Minister for Environment and Food. In practice cases will be handled by the Environmental Protection Agency.

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?
The Act on Environmental Assessment includes a specific Section 38 on transboundary effects and the obligations to provide information to other countries. There are also provisions to ensure information to potentially affected countries in case of environmental damages, e.g. Environmental Protection Act Sec. 73g. There are no specific rules on access to justice for e.g. foreign NGOs. Thus, the general rules will apply.

2) Notion of public concerned?
The Act on Environmental Assessment defines the public as including the broad notion of the public as well as the public concerned. This is also relevant in relation to cross border hearings.

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)?
There are no special rules on appeals for foreign NGOs. The general rules for administrative appeals as well as judicial review etc. apply, see above 1.4.3.

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)?
There are no specific rules regarding standing of individuals. The general rules for administrative appeals as well as judicial review applies, see above 1.4.3.

5) At what stage is the information provided to the public concerned (including the above parties)?
According to the Act on Environmental Assessment, information on potential transboundary effects must be provided regarding draft plans or programmes as well as environmental impact statements for EIA projects before a permit is granted. Information will be provided to the authorities of the affected state.

6) What are the timeframes for public involvement including access to justice?
A reasonable timeframe must be established for submission of comments to draft plans. For environmental impact statements, the interpretation is normally 8 weeks, which is the same time limit for public consultation in Denmark. With effect from 1 January 2021, the timeframe for cross border consultations has, however, been set at minimum of 30 days. The general timeframes apply for standing in relation to administrative appeals or judicial review.

7) How is information on access to justice provided to the parties?
There are no specific rules on provision of information on access to justice. The information will be provided in the same way as nationally.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?
See above 1.7.4.5.

9) Any other relevant rules?
There are no other relevant rules.
1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[2]

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

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

Individuals having a legal interest have access to administrative appeals as well as nationwide NGOs safeguarding environmental and nature protection interests or other land use interests. An appeal must be submitted within four weeks from the screening decision or environmental assessment decision. There are no specific rules on access to judicial review in matters covered by the SEA Directive, apart from a six-month deadline.

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

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

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

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

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

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

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

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

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court?

What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

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

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

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

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

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

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

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

Individuals having a legal interest have access to administrative appeals. The same applies to nationwide NGOs safeguarding environmental and nature protection interests or other land use interests. An appeal must be submitted within four weeks from the screening decision or environmental assessment decision. There are no specific rules on access to judicial review in matters covered by the SEA Directive, apart from a six-month deadline.

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

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

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

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

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

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

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

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

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

There are no grounds/arguments precluded from the judicial review phase. As regards administrative appeals, see above 2.4.3.
7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
This is not specified in Danish legislation.

8) How is the notion of "timely" implemented by the national legislation?
The notion of "timely" is not specified in Danish legislation. There are, however, some indicative time limits as regards court procedures, see above.

9) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?
There are no specific rules on the suspensive effect or injunctive relief in relation to SEA matters. In general, administrative appeals regarding SEA will follow the appeal rules of the relevant plan.

10) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?
The Act on Environmental Assessment stipulates that in court cases the court must ensure that costs are not prohibitively expensive. Otherwise, the general rules on costs etc. apply, see above 1.7.3

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

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedure for adopting or the content of the decision, act or omission of the national regulatory act (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?
In general, there are no options for administrative appeals regarding executive regulations and/or generally applicable legally binding normative instruments. If, however, such executive regulations are to be considered a plan or a programme falling under the scope of the SEA requirements under the Act on Environmental Assessment, the rules on administrative appeals in the Environmental Assessment Act will apply as regards the environmental assessment. There are no specific rules on judicial review of executive regulations. However, the general rule on judicial review in Sec. 63 of the Danish Constitution also includes access to review of executive regulations and their legality. Thus, executive regulations can be challenged in courts e.g. as regards their legal basis in the relevant legislation and their compliance with EU law.
So, for the following points 1-6 we refer to the general rules described above.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?
If the Environmental Assessment Act applies, issues of legality (procedural and substantive) can be subject to administrative appeals.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
There is no legal requirement on the exhaustion of administrative appeals before bringing a case to the court.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?
In order to have standing before the national courts it is not necessary to participate in the public consultation phase of the administrative procedure.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?
There are no specific rules on the suspensive effect or injunctive relief.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?
The Act on Environmental Assessment stipulates that in court cases the court must ensure that costs are not prohibitively expensive. Otherwise, the general rules on costs etc. apply, see above 1.7.3.

7) Is it possible to bring a legal challenge before a national court concerning any related EU regulatory act with a view to a validity reference under Article 267 TFEU, and if so how?[6]
There are no specific rules on this in Danish legislation.

[1] This category of case reflects recent case-law of the CJEU such as Protect C-664/15, the Slovak brown bear case C-240/09, see as described under the Commission Notice C/2017/2616 on access to justice in environmental matters
[2] The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.
[3] See findings under ACCC/C/2010/54 for an example of a plan not submitted to SEA but subject to the public participation requirements of Article 7 of the Aarhus Convention.
[4] These fall within the scope of both Article 7 and Article 9(3) of the Aarhus Convention. See also relevant case-law of the Court of Justice of the European Union such as Case C-237/97, Janecek and cases such as Boxus and Solvoy 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
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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
3. Other relevant rules on appeals, remedies and access to justice in environmental matters

Access to justice in environmental matters - Germany

To find more national information about access to justice in environmental matters, please click on one of the links below:
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### Access to justice at Member State level

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

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

The Federal Republic of Germany is a federation and consists of 16 states ("Bundesländer" or just "Länder"). According to the German constitution, the so-called Basic Law (Grundgesetz, GG), state power is divided between the federal level (Bund) and the level of the states (Länder). As a general rule, the constitution assigns state power to the state level under Article 30 GG, Article 70 (1) GG (legislative power) and Article 83 GG (executive power). The federal level has administrative and legislative power only if the constitution expressly says so. In practice, however, the federal level has the largest share of legislative power. Article 73 (1) No. 1-14 GG assigns an important number of exclusive legislative powers to the federal level. In the areas of "concurrent legislative powers" (konkurrierende Gesetzgebung), see Article 74 (1) No. 1-33 GG in conjunction with Article 72 GG) the states (Länder) may legislate as long as and to the extent that the federal legislator has not (or not yet) exercised its legislative powers in the respective area. Article 72 (3) GG enlists certain fields of concurrent legislative powers, in which the states (Länder) may deviate from federal legislation by introducing their own legislation.

Today, most environmental acts in Germany are federal law. Very often these norms transpose EU law. More than two thirds of environmental legislation in Germany can be traced back to EU norms.[1] This is especially the case in the areas of air pollution control, noise protection, waste management, chemicals, genetic engineering and nuclear safety.

Fields of concurrent federal legislation in which the states may deviate from federal legislation according to Article 72 (3) GG include management of water resources (except for regulations related to materials or facilities), protection of nature and landscape management (except for the general principles governing the protection of nature, the law on protection of plant and animal species or the law on protection of marine life) and regional planning.[2]

The German system of administrative justice is designed to guarantee individual rights against the exercise of public power. Claimants generally have to assert a violation of an individual right ("subjective public right" / subjektiv öffentliches Recht) in order to have access to justice, Art. 19 (4) GG. Public interest litigation is an exception to the general rule. It has to be justified by special statutes. The Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz, UmwRG) makes it possible for NGOs (see 1.4), legal and natural persons to appeal against the violation of important environmental provisions.

However, the underlying concept of the Aarhus Convention according to which the "public concerned" should have access to justice in all environmental matters is not made visible by a comprehensive domestic provision. A green actio popularis has not been established.

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

Regarding access to justice in environmental matters, the Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO) applies to cases brought by individuals and legal entities. Under § 42 (2) VwGO a person has locus standi if they claim that their rights have been violated by the administrative act or its refusal or omission, unless otherwise provided by law. According to § 43 (1) VwGO the establishment of the existence or non-existence of a legal relationship or of the nullity of an administrative act may be requested by means of an action if the plaintiff has a justified interest in the establishment being made soon (action for a declaratory judgment).

Special provisions on environmental access to justice for NGOs can be found in federal law (Bundesrecht) as well as in the respective laws of the states (Landesrecht).

On the federal level the most important pieces of legislation are:

- the Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz, UmwRG)
- the Federal Nature Conservation Act (Bundesnaturschutzgesetz, BNatSchG).

A number of states (Länder) have included complementary provisions on environmental access to justice in their respective nature conservation legislation, see for example:

- Berlin: § 46 of the Nature Conservation Act (Gesetz über Naturschutz und Landschaftspflege von Berlin, NatSchG Bln)
- Brandenburg: § 37 of the Implementation Act for the Federal Nature Conservation Act (Brandenburgisches Ausführungsgesetz zum Bundesnaturschutzgesetz, BbgNatSchAG)
- North Rhine-Westphalia: § 68 of the Nature Conservation Act (Gesetz zum Schutz der Natur in Nordrhein-Westfalen, LNatSchG NRW)

Since 1994 the German constitution has enshrined environmental protection as a national objective in Article 20a GG. Environmental protection and sustainability have thus gained constitutional status. According to the wording of Article 20a, the state and its legislative, executive and judicial organs are bound to protect the natural foundations of life and animals, also as a responsibility towards future generations. Still, up until now, Article 20a GG is not understood as a legal provision that grants an individual right to natural or legal persons or associations to initiate legal proceedings in cases concerning environmental matters.

The main constitutional provision on access to justice is Article 19 (4) GG. This is a constitutional guarantee that does not refer to environmental cases specifically. It states: "Should any person’s rights be violated by public authority, he may have recourse to the courts". The provision thus reflects the traditional rights-based approach to access to justice in Germany.

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In those cases, the Federal Administrative Court is a court of second instance. and the constitutional courts of the Länder do not function as supreme courts, and they are not part of the regular court system. Their jurisdiction is restricted to constitutional questions, which might, however, also arise in certain environmental cases (e.g. regarding the scope of fundamental rights or of the national objective of environmental protection enshrined in Article 20a GG).

Cases involving environmental issues generally fall within the competence of administrative courts. Therefore, the Federal Administrative Court (Bundesverwaltungsgericht, BVerwG) and the constitutional courts of the Länder do not function as supreme courts, and they are not part of the regular court system. Their jurisdiction is restricted to constitutional questions, which might, however, also arise in certain environmental cases (e.g. regarding the scope of fundamental rights or of the national objective of environmental protection enshrined in Article 20a GG).

In Germany there is no Supreme Court in charge of all branches of the court system. The Federal Constitutional Court (Bundesverfassungsgericht, BVerfG) and the constitutional courts of the Länder do not function as supreme courts, and they are not part of the regular court system. Their jurisdiction is restricted to constitutional questions, which might, however, also arise in certain environmental cases (e.g. regarding the scope of fundamental rights or of the national objective of environmental protection enshrined in Article 20a GG).

Decision of the BVerwG on a controversial case initiated by an NGO, inter alia on the question, whether a ban on diesel-powered vehicles can be the only appropriate measure to secure that air pollution is tackled in the quickest possible way to an extent still in compliance with the law in force and whether, in consequence, such a ban has to be enacted to comply the obligations of Article 23 (1) (2) of Directive 2008/50 EC on ambient air quality and cleaner air for Europe.

2019: “NGO standing”[4]

Decision of the BVerwG on the question whether an environmental organisation has standing in a situation where the NGO potentially would have had the right to take part in a public participation process which did not take place, when the NGO claims that participation was omitted without good reason.[5]


In a pending case[7] an environmental NGO is challenging a local regulation that establishes an area of “outstanding natural beauty”. Does the procedure to adopt such a regulation require a Strategic Environmental Assessment (the “SEA”) or at least a reasoned decision by the competent authority not to do one? If so, the environmental NGO would have access to justice to invoke a violation of EU law on the SEA in court proceedings under the Environmental Appeals Act (Umweltrechtsbehelfsgesetz, UmwRG). The BVerwG has therefore requested a preliminary ruling from the CJEU under Article 267 TFEU. [8]

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?

International environmental agreements (for example the ESPPOO Convention) require implementation by the German legislator in order to become part of the domestic legal system. Only then can a person rely on its provisions before a domestic court. Of course, EU law can be invoked by a party. However, the national court has to check whether the relevant provision of EU law is meant to have direct effect according to the Treaties and/or to the case-law of the CJEU. Therefore, beneficial provisions in a not duly implemented EU Directive can be referred to if this provision is “unconditional and sufficiently clear”.

To give an example: In the environmental landmark case C-115/09 (BUND/Trianel) from May 2011 the CJEU held that an individual rights approach to establishing NGO standing in environmental matters used by the German legislator is not a sufficient implementation of the access to justice clause in Directive 2003/35/EC. As a result environmental NGOs in Germany could directly rely on the access to justice provisions under Directive 2003/35/EC when bringing actions to court. This legal situation lasted till Germany enacted an amendment to the Environmental Appeals Act (Umweltrechtsbehelfsgesetz, UmwRG) which widened NGO standing in order to comply with Directive 2003/35/EC.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

As a general rule the German court system has three levels or instances.

Very often, the first and second instance belong to the judiciary of the respective state (Land) and the third instance court is a federal court (Bundesgericht). The court system has several branches. For instance, the so-called ordinary jurisdiction of the federal court (ordentliche Gerichtsbarkeit) has jurisdiction to decide cases of private and criminal law. Cases involving environmental issues are very often public law cases and thus fall within the competence of the administrative courts. Administrative courts (Verwaltungsgerichte) belong to a separate branch of the judiciary (Verwaltungsgerichtsbarkeit) and are to some extent subject to specific rules on court procedure laid down in the Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO).

The three levels of the German administrative judiciary are:

Administrative Court / several in each state (Verwaltungsgericht, the “VG”)

Higher Administrative Court / one for each state (Oberverwaltungsgericht, the “O VG” or Verwaltungsgerichtshof, the “VGH”)

Federal Administrative Court / one for Germany based in Leipzig (Bundesverwaltungsgericht, the “BVerwG”)

In general, administrative court proceedings start at the administrative court. The losing party has a restricted possibility to appeal (Berufung) to the Higher Administrative Court and, after that, a restricted possibility to further appeal (Revision) to the Federal Administrative Court on questions of federal law. A number of important environmental cases (e.g.: nuclear energy projects or offshore wind farms) start in the Higher Administrative Court, see § 48 (1) VwGO. [9] In those cases, the Federal Administrative Court is a court of second instance.

Some environmental cases of fundamental importance start (and end) in the Federal Administrative Court. Examples are big infrastructure projects like federal highways (Federal Highways Act), projects falling under the General Rail Act or federal waterways (Federal Waterways Act). The planning of such big projects is subject to a formal administrative procedure where the public and other authorities have to be heard. The final development consent by the public authority is called the “plan approval decision” (Planenehmung oder Planfeststellungsbeschluss). All and any disputes related to project approval procedures and plan approval procedures for projects falling under the legal acts mentioned in § 50 (1) no. 6 VwGO can be legally challenged at the Federal Administrative Court, see § 50 (1) no. 6 VwGO.

As mentioned above, the Federal Constitutional Court (Bundesverfassungsgericht, BVerfG) and the constitutional courts of the states are not part of the regular court system. Their jurisdiction is restricted to constitutional questions. However, citizens can apply to the constitutional courts to ascertain whether their constitutional rights have been violated, with the basic right to health (Art. 2 (2) GG) being the most relevant to environmental cases. The so-called constitutional complaint (Verfassungsbeschwerde) is of utmost importance. The decisions of the BVerfG on constitutional complaints are numerous and enjoy a high reputation as cornerstones of the rule of law in Germany.

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)?

Jurisdiction is clearly defined by law beforehand.
The court has to verify its competence by its own motion (ex officio). The judge has to decide whether he/she is competent to rule on the case or not. This concerns the competent branch of the judiciary and substantive jurisdiction (see above, 1) as well as territorial jurisdiction, which is determined according to § 52 (1) No. 1-5 VwGO. In disputes regarding immovable property or a local entitlement or legal relationship, territorial jurisdiction shall lie solely with the administrative court within whose district the assets or the site are located or the local entitlement applies (§ 52 Nr. 1 VwGO). Other cases of territorial jurisdiction are determined in § 52 (1) No. 2, 3 and 5 VwGO.

If the court comes to the conclusion that it lacks substantive, territorial or hierarchical jurisdiction it has to hear the parties on the matter and then take a decision to refer the case to the competent court (the “Verweisungsbeschluss”). If this decision becomes final it has a binding force on the court chosen to decide, even if this court belongs to another branch of the judiciary, see §§ 17 ss., § 17b (1) of the Courts Constitution Act (Gerichtsverfassungsgesetz, GVG).

The German Courts Constitution Act is not a sufficient legal basis to refer a case to the competent court of another Member State.

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

In Germany there are no special environmental courts that deal exclusively with environmental issues. In general, administrative courts are competent to decide environmental law cases because, typically, these cases involve an action or non-action by a public law body (e.g. permitting or inspection authority). Most administrative courts have chambers that are specialized in environmental law.

It is noteworthy that state liability cases are not under the jurisdiction of the administrative courts but are decided by ordinary courts.

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

Insofar as the administrative act is unlawful and the plaintiff’s rights have been violated, the court shall rescind the administrative act and any ruling on an objection. If the administrative act has already been executed, the court may also state on request that the administrative authority has to countermand execution, and how. This statement shall only be permissible if the authority is able to do so and this question is mature for adjudication. If the administrative act has been settled previously by withdrawal or otherwise, the court shall declare on request by judgment that the administrative act was unlawful if the plaintiff has a justified interest in this finding, § 113 (1) VwGO.

Insofar as the rejection or omission of the administrative act is unlawful and the plaintiff’s rights are violated thereby, the court shall announce the obligation incumbent on the administrative authority to effect the requested official act if the case is ready for adjudication. Otherwise, it shall hand down the obligation to notify the plaintiff, taking the legal view of the court into consideration, § 113 (5) VwGO.

Also, administrative discretion is not without reviewable legal limits. Insofar as the administrative act is unlawful and the plaintiff’s rights have been violated, the court shall also examine whether the administrative act or the refusal or omission of the administrative act is unlawful because the statutory limits of discretion have been overstepped or discretion has been used in a manner not corresponding to the purpose of the empowerment, § 114 (1) sentence 1 VwGO. The exercise of administrative discretion has to be in conformity with the aim of the legal empowerment, considering all relevant factual and legal aspects by taking due account, inter alia, of the fundamental rights at stake and the principle of proportionality. If the exercise has not been done properly by the public administration, the court grants injunctive relief under § 113 (5) sentence 2 VwGO and obliges the public administration to take a new decision in which the legal opinion of the court has to be taken into consideration (Neubescheidung unter Beachtung der Rechtsauffassung des Gerichts). Sometimes legal proceedings lead to the assumption of the court that in the individual case the margin of administrative discretion is “reduced to zero” (Ermessensreduzierung auf Null), meaning the rule of law only allows one specific administrative action to be taken. If this specific administrative action is identical with the one requested by the claimant, the power of the court is not any longer restrained by the principle of the separation of powers. The administrative court directly obliges the public administration to act, see § 113 (5) sentence 1 VwGO.

1.3. Organisation of justice at administrative and judicial level

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

The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (Bundesministerium für Umwelt, Naturschutz und nukleare Sicherheit, the “BMU”) is responsible for a wide range of government policy areas in environmental matters, including preparing legislation and transposing directives of the European Union into national law, as well as issuing ordinances and administrative regulations.[10]

Four federal environmental agencies exist:

Federal Environmental Agency (Umweltbundesamt, the “UBA”),
Federal Agency for Nature Conservation (Bundesamt für Naturschutz, the “BfN”),
Federal Office for Radiation Protection (Bundesamt für Strahlenschutz, the “BfS”)
Federal Office for the Safety of Nuclear Waste Management (Bundesamt für die Sicherheit der nuklearen Entsorgung, the “BASE”).

They are specialised in tasks such as providing scientific support and advice to the BMU, monitoring specific federal issues such as air pollution, emissions from nuclear power plants or assessment of environmental risks in fields such as medical products and biocides.[11]

Administrative competence in environmental matters in most cases lies within the competences of the states (Länder). The states implement both federal and their own state environmental law. State authorities are responsible for e.g. granting construction permits and permits for installations, inspecting installations and enforcing environmental law in case of non-compliance by means of administrative fines, interdiction of plants or withdrawal of permits.[12]

The structural set-up of the administrative system depends on the state as each state has the autonomy to establish its own administrative set-up and procedures. Thus, some states have introduced a hierarchy of administrative bodies on three different levels while others employ a two-level system in this context. Additionally, the cities of Berlin, Hamburg and Bremen, which form their own respective states, have adopted administrative structures of their own.[13]

The diversity of administrative procedures and appeals among the states leads to the situation that access to justice vary from state to state.[14]

2) How can one appeal an administrative environmental decision before court?

Prior to lodging a rescissory action, the lawfulness and expediency of the administrative act shall be reviewed in preliminary proceedings (administrative appeal procedure, Vorverfahren or Widerspruchsverfahren). Such a review shall not be required if a statute so determines, or if the administrative act has been handed down by a supreme federal authority or by a supreme Land authority, unless a statute prescribes the review, or the remedial notice or the ruling on an objection contains a grievance for the first time, § 68 (1) VwGO.

This applies mutatis mutandis to the enforcement action if the motion to carry out the administrative act has been rejected, § 68 (2) VwGO. An administrative decision has to provide an information on legal remedies (Rechtsbehelfsbelehrung) at its end.

In environmental law, there are several provisions that exclude the administrative appeals procedure.

For the area of federal environmental law this is the case inter alia for:
actions brought against planning permissions (Plangenehmigung), see § 74 (6) sentence 3 VwVfG.
State law may have its own provisions regarding the necessity of preliminary administrative proceedings before having access to court, for example:
North Rhine-Westphalia: § 110 Judiciary Act of North Rhine-Westphalia (Justizgesetz Nordrhein-Westfalen, JustG NRW)

Lower Saxony: § 80 (1) Judiciary Act of Lower Saxony (Niedersächsisches Justizgesetz, NJG).

Bavaria: in this state the administrative appeal is optional and thus not mandatory, see § 15 of the Bavarian Act on the Implementation of the Federal Code of Administrative Court Procedure (Gesetz zur Ausführung der Verwaltungsgerichtsordnung, BayAGVwGO).

The general time limit for bringing administrative appeals (objections) or court actions is **one month** after the administrative act has been announced to the aggrieved party, § 70 (1) VwGO (administrative appeal), or of service of the ruling on the objection, § 74 (1) sentence 1 VwGO (judicial appeal). If in accordance with § 68 VwGO a ruling on an objection is not required, a judicial appeal must be lodged within one month of announcement of the administrative act or announcement of its rejection, § 74 (1) sentence 2 VwGO.

**one year** if the information on legal remedies has not been provided or has been incorrectly provided, § 58 (2) VwGO.

Specific limits are provided in the Environmental Appeals Act, namely

**one year**, if members of the public concerned were not notified of the administrative decision, and if there was no public notification either. The time limit starts from the day the decision came to attention of the claimant or could have come to its attention, see § 2 (3) sentence 1 UmwRG,

**two years**, meaning that NGOs, after this time period, are excluded from bringing judicial complaints against certain environmental administrative decisions, § 2 (3) sentence 2 VwGO. [15] The time limit starts and expires regardless of their awareness of the existence of the respective administrative decision.

**When can one expect the final ruling?**

There are no fixed deadlines for the courts to deliver a judgment. After Germany was criticized by the European Court of Human Rights in November 2011, new legislation was enacted which enables the parties to the proceedings to warn a court when the procedures are on the verge of taking excessive time, and to claim special damages if the procedure takes too long [16].

According to data published by the Federal Statistical Office (Statistisches Bundesamt) in 2018, for the year of 2018 there was a duration of 12.1 months for proceedings in the first instance (Klageverfahren) at the Administrative courts on average, with 6.3 months being the shortest average time in some states and 19.6 months being the longest average time in other states. [17]

For proceedings continuing at the level of Higher Administrative Courts the duration of the appeal proceedings (Berufung) is 11.7 months as a national average, with 5.3 months being the shortest average time in some Länder and 25.5 months being the longest average time in other states. [18]

For 2018, the statistics of the Federal Administrative Court list an average duration of revision proceedings (Revision) of about 11.5 months. [19]

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

In Germany there are no special courts that deal exclusively with environmental issues. In general, administrative courts are competent to hear environmental law cases (see above at I.2). Some aspects of liability fall within the competence of ordinary courts. Most administrative courts have chambers specialized in environmental law.

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

Appeals against an environmental administrative decision

In general, there is a regular administrative appeal against first instance administrative decisions in environmental matters, which is mandatory according to the general rule in § 68 VwGO, unless statutes determine otherwise (see above at 1.3.2). Administrative decisions must give the addressee all the necessary information on the remedy, the time limit to be observed and where to lodge it, see § 58 (1) VwGO. If necessary preliminary administrative proceedings are unsuccessful, the appeal may be brought before the administrative courts.

Appeals against court decisions

Court decisions, other than judgments, can be challenged by a complaint (Beschwörde), see §§ 146 et seq. VwGO.

Judgments of administrative courts can be challenged by an appeal (Berufung) - appeal on points of fact and law - to the Higher Administrative Court, see § 124 (1) VwGO. The Administrative Courts admits the appeal under § 124a (1) sentence 1 VwGO in conjunction with section 124 (2) VwGO if serious doubts exist as to the correctness of the judgment, if the case has special factual or legal difficulties, if the case is of fundamental significance, if the judgment derogates from a ruling of the Higher Administrative Court, of the Federal Administrative Court, of the Joint Panel of the supreme courts of the Federation or of the Federal Constitutional Court, and is based on this derogation, or if a procedural shortcoming subject to the court of appeal on points of fact and law is claimed and applies on which the ruling can be based. If the appeal on points of fact and law is not admitted in the judgment of the Administrative Court, admission shall be applied for within one month after service of the complete judgment, § 124a (4) sentence 1 VwGO. The Higher Administrative Court refuses to admit the appeal by an order (Nichtzulassungsbeschluss) if none of these grounds can be demonstrated by the claimant. This court order cannot be appealed, see § 124a (5) sentence 4 VwGO. If the Higher Administrative court admits the appeal by an order it then continues to conduct appeal proceedings taking into account all points of fact and law raised in the case presented.

Against judgments of the Higher Administrative Court parties have recourse to an appeal on points of law to the Federal Administrative Court (Revision). This recourse has to be admitted by the Higher Administrative Court or, upon request, by the Federal Administrative Court itself.

Against the judgment of an administrative court those concerned have recourse to an appeal on points of law, circumventing the appeal on points of fact and law instance, if the plaintiff and the defendant agree in writing to the submission of the appeal on points of law in lieu of an appeal on fact and law, and if it is admitted by the administrative court in the judgment or on request by order. § 134 (1) sentence 1 VwGO - "leapfrog" appeal (Sprungrevision). Furthermore, parties have recourse to an appeal on points of law to the Federal Administrative Court against the judgment of an administrative court if the appeal on points of fact and law is ruled out by federal law. The appeal on points of law can only be lodged if the administrative court has admitted it, or if the Federal Administrative Court has admitted it in response to a complaint against non-admission, § 135 sentence 1 VwGO.

In some environmental matters, in particular in cases concerning infrastructural projects, the Federal Administrative Court is competent as a court of first instance, see § 50 (1) no. 6 VwGO. This means that there is only one instance in which all factual and legal aspects of the case are examined. A further appeal procedure is not possible, see 1.2.1.

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

In environmental matters there are no extraordinary remedies or ways of appeal.

When a court is uncertain as to the interpretation or validity of an act adopted by the European Union it will stay the proceedings by analogy to § 94 VwGO and refer the matter to the CJEU and request a preliminary ruling according to Article 267 TFEU. After the CJEU decision on the interpretation or the validity of the provisions in question, the national court will continue its own proceedings.

According to the CJEU’s statistics, with a total of 2249 requests between 1952 and 2017, German national courts have the highest share of requests for preliminary rulings, including 149 requests in 2017 [20].

6) **Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?**
Alternative dispute resolution (ADR) is still not very frequently used in Germany in environmental matters. Some well-known mediation procedures took place in the course of big infrastructure permit procedures, for example Airport Berlin (Flughafen Berlin Brandenburg “Willy Brandt”), Frankfurt Airport, Main Station Stuttgart (“Stuttgart 21“)[21]. However, the ADR processes in these cases were not binding and in each of the cases the administrative decision was followed by several lawsuits. It is noteworthy that the German judiciary provides an optional mediation procedure during the litigation which is conducted by the court’s judge mediator (Güterichter).

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

Other actors hardly any role in Germany. Ombudspersons are only available in a private context – for instance in daily newspapers etc. and are not specialized in environmental matters. Some commissioners for data protection are also responsible for access to information under the Freedom of Information Acts ([Informationsfreiheitsgesetze - federal and state level] and in only few German States also for the provisions on access to environmental information.[22] They act as mediators between those holding information and those requesting access to information. On the Federal level the German Parliament (Deutscher Bundestag) adopted in December 2020 a new law (that will enter into force in spring 2021) – based on this the Federal commissioner for data protection will be in charge as well for requests that refer to the Environmental Information Act ([Umweltinformationsgesetz, UIG]).

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)?

In general, individuals, legal entities and NGOs can challenge administrative decisions. In principle, this covers ad-hoc groups of citizens or foreign individuals as well.

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

There are different rules applicable for individuals and NGOs but also depending on sectoral legislation, see 1.4, 3) and 1.8.1 - 1.8.3, and 2.1 – 2.4.

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.)

Standing rules applicable for individuals and legal entities

Individuals and other legal entities only have standing at the judicial level if they can maintain that their “own rights” (such as health or property) have been possibly violated by the administrative decision, see § 42 (2) VwGO. In other words: Individual standing is denied if any “possible or thinkable” violation of such an individual right can be excluded by a prima facie assessment of the court.

The individual rights concept has two important consequences. Firstly, the claimant can neither invoke the violation of someone else’s rights nor “the rights of nature”; an actio popularis launched by an individual is manifestly inadmissible. Secondly, if the individual claimant is a third party, being for example the neighbour of a permitted industrial facility, they must show a possible violation of their own rights.

More precisely, the claimant has to demonstrate a possible violation of an individual right (subjektiv öffentliches Recht) by invoking a violation of public law that is aimed to protect not only the public interest but – at least also – the specific private interests of the claimant who brought the action.

This legal concept is a cornerstone of administrative justice in Germany. It is referred to as “protective norm theory” (Schutznormtheorie) and leads to two different categories of German public law:

legal norms that protect the private interest of the third party conferring standing (drittschützende Normen) and

legal norms that do not protect the private interests of the third party (Normen ohne drittschützende Wirkung).

Over the last 60 years German administrative courts have developed a detailed case law on the question “whether” and “for whom” a specific provision of public law is considered to be “protective” and therefore confers standing. All major provisions are covered; German law commentaries very often have a special chapter on the issue.

These principles of German procedural law also apply in environmental law cases: individual standing is granted if the public administration by permitting (for example) an industrial facility did not comply with the public law provisions which are meant to protect the health or the property of the individual claimant. The claimant can for instance invoke the public law statutes against harmful environmental effects (air pollution, noises, odour etc) and the statutes on construction law (distances between buildings, type of use under the binding municipal development plan). If the only concern of the individual claimant is of a mere public interest (“danger for the protection of flora and/or fauna”) the action is considered to be clearly inadmissible. In this case an individual claimant lacks standing.

The Federal Administrative Court, in principle, also applies this legal concept in actions brought by individuals under the Environmental Appeals Act (Umweltrchtsbehelfsgesetz, UmwRG). According to § 4 (1) and (3) UmwRG, both individuals and environmental NGOs can demand the revocation of a decision on the permissibility of a project if a necessary Environmental Impact Assessment (EIA) has not been conducted or the procedure has been seriously flawed. However, private individuals cannot bring an action only based on the claim that an EIA was not conducted (correctly), as an EIA is conducted solely in the public interest. Therefore, individual claimants always also have to maintain a violation of their individual rights to overcome the hurdle of standing. If they have overcome this hurdle, however, the individual claimant can successfully invoke violations of the duty to conduct an EIA. In this case, the merits of the action do not depend on an actual violation of individual rights. This remarkable gap between a private interest assessment at the stage of the admissibility and a public interest assessment at the stage of the merits seems quite unusual in German administrative justice. It has not yet been decided by the CJEU whether the Aarhus Convention and the corresponding European legislation will allow such a split approach to access to justice for individuals and other legal entities.

Standing rules applicable for NGOs

Recognised environmental organisations are granted legal standing in all cases explicitly specified in § 1 Environmental Appeals Act (Umweltrchtsbehelfsgesetz, UmwRG).

This includes, for example, permit procedures for projects requiring an environmental impact assessment (EIA) or for industrial sites covered by the Industrial Emissions Directive. The Federal Nature Conservation Act (Bundesnaturschutzgesetz, BNatSchG) and some state nature conservation acts[23] grant legal standing to recognised nature conservation organisations in specified areas of nature conservation, see § 64 BNatSchG. In these cases, recognised NGOs can challenge, for example, decisions to grant an exemption from rules for the protection of Natura 2000 sites or for protected areas of marine environment. In order to be able to rely on the special procedural rights of recognised environmental organisations, NGOs have to obtain the status of an officially recognised environmental or nature conservation organisation. This requires NGOs to fulfil the conditions stipulated by § 3 UmwRG or the state nature conservation acts respectively and to request recognition from the competent federal or state authority. Recognition must be granted when the legal
requirements are met.[24] Some important requirements of § 3 UmwRG are that the organisation is committed to the protection of the environment, has been active in protection activities for at least three years and grants membership and voting rights in the internal members’ meeting to any person willing to support the environmental work of the organisation. For NGOs that are active on a national scale or on the territory of several states, and for foreign NGOs, the competent recognition authority is the German Environment Agency (Umweltbundesamt, the “UBA”). If an NGO is only active on the territory of one state, the recognition process has to be completed with the respective state authority.[25] For ad-hoc groups of citizens the same rule applies as for individuals, unless they successfully register as recognised environmental organisations. Foreign individuals are subject to the same rules as national individuals. This is the case also for foreign NGOs, unless they successfully register as recognised environmental organisations according to § 3 (1) and (2) UmwRG[26].

4) What are the rules for translation and interpretation if foreign parties are involved?
According to § 184 Courts Constitution Act (Gerichtsverfassungsgesetz, GVGG), § 55 Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO) the language used in court and court procedures is German. The only exception concerns certain areas of the Land of Brandenburg, where the Sorbian-speaking minority has the right to use their language.

According to § 185 GVGG and § 55 VwGO in oral hearings of administrative court procedures, translation has to be provided if there are persons directly involved who are not able to communicate in German. Apart from this general rule, there are no further legal requirements on translation. In general, courts will choose an interpreter from a list of registered and court-certified interpreters. In administrative court hearings, the costs of interpretation may be regarded as court expenses (Auslagen) and would then have to be borne by the losing party.

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?
When administrative courts decide cases in environmental matters they are not restricted to the information the parties bring. Courts can (and must, if necessary) explore the facts on their own motion and also produce evidence themselves. The principle of ex officio investigation (Amtserrichtungsgrundsatz) applies, see § 86 (1) Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO). The same principle applies to administrative proceedings (Untersuchungsgrundsatz), see § 24 Administrative Procedure Act (Verwaltungsverfahrensgesetz, VwVfG).

Nevertheless, it is up to the parties to clarify the facts in question. They are obliged to cooperate with the court, see § 86 (1) sentence 1 VwGO. This often requires the parties to refer to expert opinions. Thus, environmental organisations as well as the other parties to the dispute cooperate with and pay for experts in the specific fields to provide evidence.

2) Can one introduce new evidence?
According to § 6 Environmental Appeals Act (Umweltrechtsbehelfsgesetz, UmwRG), claimants must submit the full statement of grounds for the appeal including all relevant facts and evidence within 10 weeks after the action was initiated.

In contrast to the regular provisions of administrative procedural law and to the situation before the amendment of the UmwRG in 2017, when the prolonging of the time limit was more or less at the court’s discretion, the deadline of § 6 UmwRG is a strict one and can only be waived under clearly exceptional circumstances, if the plaintiff had no chance to participate during the preceding administrative procedure, § 6 (4) UmwRG, or if the plaintiff can adequately excuse the delay, § 6 (4) UmwRG.

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts.
In principle, the parties are free to introduce evidence in the form of an opinion by an expert of their choice. It is up to the parties to choose experts who are qualified for the matter in question. The court cannot prevent the parties from choosing a particular expert to provide evidence in the form of an expert opinion. However, if the court is not convinced of the professional qualification of the expert or the quality of the expert opinion itself, it will not take that opinion into consideration when deciding upon the case.

A helpful source is the online publication of the Bavarian Environmental Agency (Bayerisches Landesamt für Umwelt, LfU Bayern) of 2017 on laboratories and experts in environmental matters such as soil, contaminated sites, waste, water, air, noise, radiation[27].

Also the Hessian Agency for Nature Conservation, Environment and Geology (Hessisches Landesamt für Naturschutz, Umwelt und Geologie, HLNUG) provides information online[28].

The following lists are publicly available:
Federal Association of Experts and Reviewers[29];
register of experts provided by the chambers of commerce[30] (IHK – Industrie- und Handelskammern).
See also 1.3.3 and 1.6.2.

3.1) Is the expert opinion binding on judges, is there a level of discretion?
The court shall rule in accordance with its free conviction gained from the overall outcome of the proceedings, see § 108 (1) sentence 1 Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO). It is therefore up to the court to evaluate the expert opinions. The courts are independent and free to review the evidence, to judge whether there is a breach of law and to evaluate the severity of the infringement. In the judgment, the grounds which were decisive for the judicial decision must be named. The judgment may only be based on such facts and pieces of evidence on which those concerned have been heard.

3.2) Rules for experts being called upon by the court
The court is free to choose an expert and is not bound by the suggestions of the parties. Technically, the expert is not required to meet any specific qualifications set by law, it is enough if the court is convinced that the expert is adequately qualified in general and for the matter of the specific case. In practice, however, the courts choose experts from a list of publicly certified experts. The court is free to evaluate the content of the expert opinion and is not bound by conclusions of the expert opinion.

3.3) Rules for experts called upon by the parties
In principle, the parties are free to introduce evidence in the form of an opinion by an expert of their choice. It is up to the parties to choose experts who are qualified for the matter in question. The court cannot prevent the parties from choosing a particular expert to provide evidence in the form of an expert opinion. However, if the court is not convinced of the professional qualification of the expert or the quality of the expert opinion itself, it will not take that opinion into consideration when deciding upon the case.

The costs for the preparation of the expert opinion or for the expert being present at the court hearing are borne by the party relying on the respective expert, unless the court comes to the conclusion that the expert opinion or the expert being present at the court hearing were necessary to adequately pursue the matter before the court, as a whole or to a certain extent[31], see § 162 (1) Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO).
According to the case-law of the Federal Administrative Court, this is only the case if the party relying on the expert cannot rely on sufficient expertise of its own to prove its reasoning.[32] Whether this is the case is to be assessed from the point of view of a reasonably acting party who would do their best to represent their interests while aiming to keep the costs at a reasonable level.[33]

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

There are no special procedural fees that arise for expert opinions. The general procedural fees are calculated on the basis of the estimated value in dispute regardless of the actual efforts of the court. Still, if the court has hired an expert, the expert is paid according to the rates set by the law on the remuneration of experts, interpreters, translators etc. (Justizvergütungs- und –entschädigungsgesetz, JVEG). The court can decide that these expenses (Auslagen) have to be borne by the losing party. These costs can exceed the procedural fees, especially when the value in dispute is relatively low.

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

If the court of first instance is an administrative court (Verwaltungsgericht, VG), representation by a lawyer is not mandatory. If the court of first instance is a Higher Administrative Court (Oberverwaltungsgericht, OVG or Verwaltungsgerichtshof, VGH) or the Federal Administrative Court (Bundesverwaltungsgericht, BVerwG), representation by a lawyer is compulsory. However, almost all lawsuits in environmental matters are conducted with the assistance of a lawyer because, as with other areas of administrative law, environmental procedures are so complex that laypeople cannot oversee all legal consequences. Specialised environmental lawyers give advice at all stages of the procedure, often beginning with the public consultation during the administrative procedure. Legal representation plays a crucial role for the success of proceedings. The service of environmental lawyers often goes far beyond usual legal counselling. They work very closely with the claimants; often responses are co-authored by environmental lawyers and other experts on the issues concerned.

1.1 Existence or not of pro bono assistance

German lawyers are only allowed to waive fees under certain conditions according to § 49b of the Federal Lawyers’ Code (Bundesrechtsanwaltsordnung, BRAO). Environmental organisations usually hire specialists on a regular basis and use their funds to pay the lawyers.

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.)?

According to the Act on Advisory Assistance and Representation for Citizens with a Low Income (Advisory Assistance Act; Gesetz über Rechtsberatung und Vertretung für Bürger mit geringem Einkommen, Beratungshilfe-Gesetz - BerHG) persons seeking legal aid have access to advisory assistance for the exercise of rights outside court proceedings and in mandatory conciliation proceedings. Litigants can apply for a certificate of eligibility at the local court. If legal aid is granted the person has to pay at most 15 euros to the attorney. Provisions to be met are as follows: litigants cannot mobilise the necessary resources due to their personal and economic circumstances. Litigants can only apply for legal aid to the court, if the party has a reasonable prospect of success in the proceedings. For the purpose of examination a party’s application, the court is obliged to submit a declaration of its economic and personal circumstances, e.g. family background, job status, financial circumstances, earning capacity, financial burdens and potential legal expenses insurance.

1.3 Who should be addressed by the applicant for pro bono assistance?

One possibility is to contact an environmental NGO active in the area at issue. The NGO might be willing to take over the case in question, or possibly help with some aspects of the case.

Lawyers can be found via internet research. The Federal Bar Association (Bundesrechtsanwaltskammer - BRAK) provides a register listing all lawyers admitted to the legal profession in Germany (Bundesweites Amtliches Anwaltsverzeichnis). However, with regard to lawyers’ specialisations, the register’s search function is limited. However, almost all lawyers have a webpage that provides information about their specialisation. Some environmental lawyers are part of the IDUR – Informationsdienst Umweltrecht (information service environmental law) network. Another website listing several environmental lawyers is umweltanwaelt.de.

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

A helpful source is the following online publication of the Bavarian Environmental Agency (Bayerisches Landesamt für Umwelt, LfU Bayern) of 2017 on laboratories and experts in environmental matters such as soil, contaminated sites, waste, water, air, noise, radiation.[34] Also the Hessian Agency for Nature Conservation, Environment and Geology (Hessisches Landesamt für Naturschutz, Umwelt und Geologie, HLNUG) provides information online.[35] The following lists are publicly available:

Federal Association of Experts and Reviewers[36]

register of experts provided by the chambers of commerce[37] (IHK – Industrie- und Handelskammern)

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

An up-to-date list of all environmental organisations recognised on the federal level, also providing links to the Länder authorities that are competent for the recognition process on Länder level, is published by German Environment Agency (Umweltbundesamt, UBA).[38] Some of the most active NGOs in environmental litigation are the “BUND” and the “NABU” and their regional organisations.

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

With regard to international NGOs that are active in environmental litigation in Germany, Friends of the Earth/BUND (Bund für Umwelt und Naturschutz Deutschland e.V.) and their regional organisations play a crucial role. Also the other actively litigation NGO in Germany, NABU, has an international affiliation as a partner of BirdLife International.

The following international environmental NGOs active in Germany do not regularly initiate environmental proceedings as they are not registered as recognised environmental organisations under the Environmental Appeals Act (Umweltrechtsbehelfsgesetz, UmwRG):

Client Earth

WWF[39]

Greenpeace[40]

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)

If an administrative appeal is mandatory, see § 68 Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO, see also above at 1.3.2) the time limit to launch it is one month after the party was notified of the administrative decision, see §§ 70 (1) sentence 1 VwGO, 58 VwGO. The determination of this deadline follows the rules of § 57 (2) VwGO, § 222 (1) Code of Civil Procedure (Zivilprozessordnung, ZPO) and §§ 187 et seq. German Civil Code (Bürgerliches Gesetzbuch, BGB). With some exceptions, the time limit to lodge an appeal will expire at the end of the day with the number of the day of the notification, § 168 (2) sentence 1 BGB. For example, if the administrative decision was notified on October 23, the one-month time limit expires at the end of the day of November 23.

The deadline for an appeal or another legal remedy is only initiated if the party concerned has been informed in writing or in electronic form of the appeal, the administrative authority or the court at which the appeal is to be lodged, the seat and the deadline to be adhered to, § 58 (1) VwGO. If the information has not been provided or has been incorrectly provided, the lodging of the appeal is permissible within one year of service, publication or pronouncement, unless submission was impossible prior to expiry of the year’s deadline period as a result of force majeure, or a written or electronic notification was given that an appeal was not possible, § 58 (2) VwGO.

If members of the public concerned were not notified of the administrative decision, and if there was no public notification either, the decision must be challenged within one year from the day when the administrative decision came its attention or could have come to its attention according to § 58 (2) VwGO and § 2 (3) sentence 1 Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz, UmwRG).

If an administrative decision falling into the categories of § 1 (1) sentence 1 no. 5 or no. 6 UmwRG[41] is at stake, for NGOs, there is a deadline excluding any appeal against an administrative decision, when two years have expired since the administrative decision has been granted, regardless of whether the environmental organisation was aware or could have been aware of the decision, § 2 (3) sentence 2 UmwRG.

2) Time to deliver a decision by an administrative organ

Time limits to deliver a decision apply to decisions in administrative permit procedures. In permit procedures for general industrial plants, for example, a time limit of seven months applies to large projects and a period of three months to smaller projects, see § 10 (6a) Federal Immission Control Act (Bundes-Immissionsschutzgesetz, BImSchG). The period starts from the day when the application documents submitted to the competent authority are complete. The authority can prolong the period for up to three additional months if it can show that there is a valid reason.

In permit procedures for large-scale projects such as national roads, railways and waterways there are no fixed time limits. In such cases, decisions must be taken “within reasonable time” or in “an efficient manner”.

If with regard to an objection or an application to carry out an administrative act it has not been decided on the merits within a suitable period without sufficient reason, the action shall be admissible in derogation from § 68 VwG (see 1.3.2). The action may not be lodged prior to the expiry of three months after the lodging of the objection or since the filing of the application to carry out the administrative act, unless a shorter period is required because of special circumstances of the case. If an adequate reason applies why the objection has not yet been ruled on or the requested administrative act has not yet been carried out, the court shall suspend the proceedings until expiry of a deadline set by it, which can be extended. If the objection is admitted within the deadline set by the court or the administrative act carried out within this deadline, the main case shall be declared to have been settled.

In case of urgency, even prior to the lodging of an action, the claimant may request an interim court order to prevent the enforcement of his or her individual right being prevented or considerably impeded by the administrative inaction, see §§ 80 (5), 123 VwGO.

Concerning environmental public law, there are several provisions that allow a direct action to the court by excluding the administrative appeal procedure or making clear that it is not mandatory in the respective field of law.

Federal law allows for direct access to court, for example, for big infrastructure projects:

- actions brought against plan approval decisions (Planfeststellungsbeschlüsse), see §§ 74 (1), 70 Administrative Procedure Act (Verwaltungsverfahrensgesetz, the “VwVfG”)
- actions brought against planning permissions (Plangenehmigung), see § 74 (6) sentence 3 VwVfG.

State law may have its own provisions regarding the necessity of preliminary administrative proceedings before having access to court, for example:

- North Rhine-Westphalia § 110 Judiciary Act of North Rhine-Westphalia (Justizgesetz Nordrhein-Westfalen, JustG NRW)
- Lower Saxony: § 80 (1) Judiciary Act of Lower Saxony (Niedersächsisches Justizgesetz, NJG)

Bavaria: In this state the administrative appeal is optional and thus not mandatory, see § 15a of the Bavarian Act on the Implementation of the Federal Code of Administrative Court Procedure (Gesetz zur Ausführung der Verwaltungsgerichtsordnung, BayAGvVGO).

The general time limit for bringing administrative appeals or, if excluded, court actions is

- **one month** after the notification of the challenged administrative decision, see § 74 VwGO;
- **one year** if the information on legal remedies was missing or incorrect, § 58 (2) VwGO.

Specific limits for are provided in the Environmental Appeals Act, namely

- **one year**, if members of the public concerned were not notified of the administrative decision, and if there was no public notification either. The time limit starts from the day the decision came to attention of the claimant or could have come to its attention, see § 2 (3) sentence 1 UmwRG,
- **two years**, meaning that NGOs, after this time period, are excluded from bringing judicial complaints against certain environmental administrative decisions, § 2 (3) sentence 2 VwGO.[42]

The time limit starts and expires regardless of their awareness of the existence of the respective administrative decision.

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

There are no fixed deadlines for the courts to deliver a judgment. After Germany was criticised by the European Court of Human Rights in November 2011, new legislation was enacted which enables the parties to a court case to warn a court when the procedures are on the verge of taking excessive time, and to claim special damages if the procedure takes too long.[43]

The main provisions can be found in § 198 et seq. of the Courts Constitution Act (Gerichtsverfassungsgesetz, GVG).

According to data published by the Federal Statistical Office (Statistisches Bundesamt) in 2018, for the year of 2018 there was a duration of 12.1 months for proceedings in the first instance at the Administrative courts (Verwaltungsgerichte, VG) on average, with 6.3 months being the shortest average time in some
Länder and 19.6 months being the longest average time in other Länder. For proceedings continuing at the level of Higher Administrative Courts, the duration of the appeal proceedings is 11.7 months as a national average, with 5 months being the shortest average time in some Länder and 25.5 months being the longest average time in other Länder.[44]

For 2018, the statistics of the Federal Administrative Court list an average duration of revision proceedings of about 11.5 months.[45]

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

Apart from the time limits described under 1) and 3) there is a specific deadline that has to be observed during the environmental litigation. According to § 6 Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz, UmwRG), claimants must submit the full statement of grounds for the appeal including all relevant facts and evidence within 10 weeks after the action was initiated.

In contrast to the regular provisions of administrative procedural law and to the situation before the amendment of the UmwRG in 2017, when the prolongation of the time limit was more or less at the court’s discretion, the deadline of § 6 UmwRG is a strict one and can only be set aside under clearly exceptional circumstances.

The same time limit was introduced into specific sectoral legislation, e.g. for national roads, see § 17e Federal Highways Act (Bundesfernstraßengesetz, FStrG).

During the judicial procedures, individual deadlines can arise when the court asks the parties to substantiate their submissions. The court can set these deadlines independently according to § 87b Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO).

1.7.2. Interim and precautionary measures, enforcement of judgments

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

In general, both administrative and judicial appeals against an administrative decision have suspensive effect ("aufschiebende Wirkung" or "Suspensiveffekt"), see § 80 (1) Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO).[46]

However, § 80 (2) VwGO provides important exceptions to this rule. The administrative decision is immediately enforceable, and the appeal has no suspensive effect if public charges and costs are called for, with non-postponable orders and measures by police enforcement officers, in other cases prescribed by a federal statute or state statute, in particular for objections and actions on the part of third parties against administrative acts relating to investments or job creation, or in cases where an immediate execution is expressly ordered by the authority which has issued the administrative act or has to decide on the objection in the public interest or in the overriding interest of a party concerned.

Examples where the suspensive effect is precluded by federal law are:

§ 14e (2) Act on Federal Waterways (Bundeswasserstraßengesetz, WaStrG), §17e (2) Federal Highways Act (Bundesfernstraßengesetz, FStrG)

If the authority which has issued the administrative act orders its immediate execution, the special interest in immediate execution of the administrative act shall be reasoned in writing. No special reasoning shall be required if the authority takes an emergency measure designated as such in the public interest where a delay is likely to jeopardise the success, in particular with impending disadvantages for life, health or property as a precautionary measure, § 80 (3) VwGO. An order for immediate execution (Anordnung der sofortigen Vollziehung) removing the suspensive effect of the appeal is subject to judicial control. On request, the court dealing with the main case may completely or partly order the suspensive effect in cases falling under subsection 2 Nos. 1 to 3, and may restitute it completely or partly in cases falling under subsection 2 No. 4. The request is already admissible prior to filing of the rescissory action. If the administrative act has already been implemented at the time of the decision, the court may order the rescission of implementation, see § 80 (5) VwGO.

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

During an administrative appeal procedure, the claimant may request "the restitution of the suspensive effect" from the administration, unless otherwise is provided by federal law, see § 80 (4) VwGO.

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?

The request can be introduced during the appeal procedure. As the request is usually based on the urgency of the matter (i.e., irreversible damage might occur if the project is realised during the time it takes to evaluate the merits of the appeal, such as cut trees etc.) there are no fixed deadlines for the request for restitution of the suspensive effect. It is most efficient to combine the request with the appeal against the administrative decision.

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

If there is no suspensive effect according to § 80 (2) VwGO, see 1.7.2.1), the administrative decision is legally valid and can be immediately enforced or executed, irrespective of any pending appeal or court action.

In these cases it is possible to request restitution of the suspensive effect from the administration, see § 80 (4) VwGO, or from the court, see § 80 (5) VwGO, as an order for interim relief (vorläufiger Rechtsschutz), see 1.7.2.5).

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

See above 1), page 30-31.

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?

In general, judicial procedures provide for the possibility of injunctive relief. In environmental matters this remedy plays an important role, e.g. when irreversible damage to natural resources is at stake. The injunctive relief is directed against the administrative decision in the form of a preliminary injunction (vorläufiger Rechtsschutz) seeking the restitution of the suspensive effect by a court order, see § 80 (5) Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO) or demanding interim measures to be taken until the merits of the case have been decided, see § 123 VwGO.

In order for a request for injunctive relief to be admissible, the plaintiff must show that the claim would also be admissible as a regular, non-injunctive action, i. e. the plaintiff must fulfil all conditions, e.g. on standing, which would apply for assessing the main case. In addition to that, in order to obtain interim relief, the plaintiff must prove that a preliminary decision is necessary (and it is not acceptable to wait for the regular judicial decision). This urgency can arise from different circumstances. For example, urgency can be based on the fact that a project was not stopped before the court’s main decision, irreversible damage would occur (i.e. trees cut down, natural landscape destroyed etc.). As injunctive relief can only be asked for when the matter is urgent, there is no fixed deadline.

The restitution of the suspensive effect may restitute it completely or partly in cases falling under subsection 2 Nos. 1 to 3, and may restitute it completely or partly in cases falling under subsection 2 No. 4. The request is already admissible prior to filing of the rescissory action. If the administrative act has already been implemented at the time of the decision, the court may order the rescission of implementation, see § 80 (5) VwGO.

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.
When seeking access to justice in environmental matters, parties face the following costs:

**Costs for administrative appeal procedures (Widerspruchsverfahren)**

In some environmental matters, applicants seeking justice must first initiate an administrative appeal procedure (see above at 1.3.2). To commence such a procedure, applicants have to submit a written complaint (Widerspruch) to the competent authority in which they explain why the authority’s decision or action is violating their rights. Costs for this procedure are relatively low. However, in some environmental matters, especially regarding big infrastructure planning procedures, an administrative review or appeal procedure is not available. Instead, applicants have to bring judicial proceedings directly against the responsible authority.

**Court fees in judicial proceedings**

The court fees in environmental matters depend on the number of instances and the type of remedies pursued during the proceedings. There are:

- Fees for the commencement of a procedure.
- Fees for appeal proceedings.

Fees for interim measures: If a case is so urgent that the time for a regular court case would result in major harm, applicants can seek interim measures, also called injunctive relief (einstweiliger Rechtsschutz). Court fees also apply to these cases. Lawyers’ fees can add a significant amount to a case’s costs. If according to the final decision the case is lost, applicants may have to pay not only for their own legal costs, but can be ordered to bear (a share of) the defendant’s legal costs. Usually, public authorities will try to avoid legal fees and will be represented by their employees. Under certain circumstances, however, other private parties such as operators or investors might be included in court cases. This is necessary where the court’s decision has direct legal consequences for those parties, § 65 (2) VwGO. A typical example would be the operator of a plant whose permit is appealed in court. Those private are usually represented by lawyers which may result in costs to be covered by the losing party.

Costs for evidence, expert fees: In environmental matters, many facts that are important for the decision of the case (evidence) need to be ascertained by specialists. The more skills and time are required for analysing and presenting the relevant facts, the higher the costs for scientific analyses and experts. The costs for the provision of evidence in a typical environmental case are difficult to estimate. On average, costs of evidence in the form of an expert opinion would range from a minimum of EUR 5,000 up to EUR 25,000. In the case of complex proceedings, where several expert opinions are required for different matters, the total amount can be significantly higher. These costs are estimates for expert opinions called for by the parties. If an expert is called upon by the court, the costs are calculated according to the law on the remuneration of experts, interpreters, translators etc. (Justizvergütungs- und –entschädigungsgesetz, JvEG). The catalogue makes the court fees and legal fees predictable. For cases brought by environmental organisations, the catalogue suggests a value in dispute of between EUR 15,000 and EUR 30,000. Based on this, for an ordinary case, court fees for the commencement of a procedure can vary from EUR 879 to EUR 1,218 and each party’s statutory lawyer fees for first instance court proceedings from EUR 1,957.55 to EUR 2,591.23. The exact amount of the fees will depend on various factors, such as the number of parties involved. Costs for the party’s own lawyer can be considerably higher as most experts do not base their remuneration on the lawyers’ fee scheme set by law but on individual contracts with hourly rates that can in total exceed the statutory fee. On top of that, the costs for the provision of evidence and expert opinions have to be added.

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

The value in dispute (Streitwert) as well as the court fees usually amount to about 50% of the fees for the main proceedings. However, a case usually does not end at that interim stage. The costs for injunctive relief follow the same logic as for the main proceedings, and they are additional costs that will be added to the costs of the main proceedings. Deposits normally do not arise in the procedure of injunctive relief/interim measures.

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

According to § 114 Code of Civil Procedure (Zivilprozessordnung, ZPO) and § 166 Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO), in order to obtain legal aid, individuals must show that they lack the financial resources to conduct a lawsuit without legal aid, that the action they want to bring has sufficient chances of success and that it is not abusive. For legal aid in out of court matters see explanation in in point 1.6-1)-1.2 above.

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?**

According to § 116 of the Code of Civil Procedure (Zivilprozessordnung, ZPO) and § 166 Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO), legal entities (i.e. also environmental organisations) can also request legal aid when they are based in or a resident of Germany or a Member State of the EU or EEA. They can ask for financial assistance when they want to bring a case to court and lack the resources to do so. As an additional requirement, legal personalities such as environmental organisations must also show that refraining from pursuing the action would be contrary to the public interest. For legal aid in out of court matters see explanation in in point 1.6-1)-1.2 above.

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

There are no other regulated mechanisms available to provide financial assistance. Sometimes, individuals, ad-hoc groups of citizens or environmental organisations launch public fundraising campaigns in order to cover the costs of a particular case. Recently, also crowdfunding has been a popular method.

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

In environmental matters, the general rules for administrative court proceedings apply. One of these rules is the “loser pays principle” in § 154 of the Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO). Thus, the defeated party has to pay for all the court fees, pay their own lawyer and also reimburse the winning party’s lawyer. The opposing party’s legal fees, however, will only have to be covered for the amount set by law. Furthermore, as public authorities often are represented by their own employees instead of lawyers, the costs of this party may be lower.

With regard to evidence and experts’ fees, the “loser pays principle” does not fully apply:

- Costs for evidence that has been ordered by the court have to be borne by the losing party. In general, costs for evidence and expert reports introduced by one of the parties are borne by the party that introduced the evidence. The winning party is not automatically reimbursed. However, the court can decide that the defeated party must bear the costs of evidence of the other party in total. For environmental organisations, in practice, chances are good that the private expert opinions they have commissioned will be reimbursed.
7) Can the court provide an exemption from procedural costs, duties, filling fees, taxation of costs, etc.? Any other national characteristics linked to this topic?

There are no exemptions from procedural or related costs in environmental matters.

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?

Information on access to justice in environmental matters can be found on the websites of the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (Bundesministerium für Umwelt, Naturschutz und nukleare Sicherheit, the “BMU”) and the German Environment Agency (Umweltbundesamt, the “UBA”).

The BMU gives an overview of the background of access to justice in environmental matters and provides links to the “Handbook on Access to Justice under the Aarhus Convention of the Regional Environmental Centre for Central and Eastern Europe (2003)” and to the national Environmental Information Act (Umweltinformationsgesetz, UIG) and Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz, UmwRG).[50]

The UBA provides on its website information on the recognition process for environmental organisations to gain standing in environmental matters, and a list of all environmental organisations that are recognised on the federal level. It lists research reports commissioned by the UBA and other scientific studies on the topic of access to justice and gives an overview of important case law by the Court of Justice of the European Union (CJEU) and the Federal Administrative Court (Bundesverwaltungsgericht, BVwG). Most of the information is in German language. UBA also provides a brochure published in May 2018 by the Ministry for the Environment, Nature Conservation and Nuclear Safety and the German Environment Agency, giving useful information for the public and environmental organisations.[51] Including a description of the available legal remedies and information on costs.

The Independent Institute for Environmental Issues (the “UfU”) operates a website on environmental participation which also has a section on access to justice.[52] In 2017, the UBA published a study conducted by the UfU on access to justice by environmental associations.[53] Both the website and the study are in German.

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

Administrative decisions must clearly state whether an appeal is possible, and, if so, specify the administrative unit or court that is competent to receive the appeal and the time limit for an appeal.

There is a special section at the end of the decision titled “Rechtsbehelfsbelehrung” or “Rechtsmittelbelehrung” (“instructions on available remedies”). If this information is missing or incorrect, the time limit for the appeal will not start running according to § 58 (1) Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO), and, in consequence, an appeal is possible within one year of service, publication or pronouncement, § 58 (2) sentence 1 VwGO. See also the following section 3.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)? Are there different ways of active dissemination of information on access to justice in the areas of EIA, IPPC/IED, regarding plans and programmes, etc.?

For projects under the regime of the Federal Immission Control Act (Bundes-Immissionsschutzgesetz, BImSchG) the permit has to be issued in written form and must either be sent to the applicant and to all those involved that raised objections or be published via public announcement, § 10 (7), (8) BImSchG. The written permit has to include information on access to justice, which is usually provided in a special section at the end of the permit titled “Rechtsbehelfsbelehrung” (“instructions on available remedies”), cf. § 10 (8) BImSchG.

For projects under the regime of the IPPC, the permit has to be published via the internet, § 10 (8a) BImSchG; this includes the instructions on available remedies.

For projects under the regime of the EIA Act (Gesetz über die Umweltverträglichkeitsprüfung, UVPG), the permit has to be published via public announcement and must be made available for perusal including information on access to justice provided in a special section headed “Rechtsbehelfsbelehrung” or “Rechtsmittelbelehrung” (“instructions on available remedies”), § 27 UVPG, § 74 (5) sentence 2 and (4) sentence 2 of the federal Administrative Procedure Act (Verwaltungsverfahrensgesetz, VwVfG).

For plans and programmes under the regime of the EIA Act (Gesetz über die Umweltverträglichkeitsprüfung, UVPG) – which also implements the SEA directive – the adopted plan or programme has to be made available for perusal together with several documents including information on access to justice provided in a special section headed “Rechtsbehelfsbelehrung” or “Rechtsmittelbelehrung” (“instructions on available remedies”), except if the plan or programme was adopted in form of a legislative act, § 44 (2) sentence 4 UVPG.

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

There are no special rules on this in the environmental sector. The general rule applies, see § 58 Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO):

“Administrative decisions as well as court decisions must clearly state whether an appeal is possible, and, if so, specify the administrative unit or court that is competent to receive the appeal and the time limit for an appeal.”

Thus, there is a special section at the end of the decision titled “Rechtsbehelfsbelehrung” or “Rechtsmittelbelehrung” (“instructions on available remedies”). If this information is missing or incorrect, the time limit for the appeal will not start running according to § 58 (1) VwGO, and, in consequence, appeal is possible within one year of service, publication or pronouncement, § 58 (2) sentence 1 VwGO.

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

According to law, German has to be used in court and court procedures, see § 184 Courts Constitution Act (Gerichtsverfassungsgesetz, GVG), § 55 Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO). If persons are participating in a court hearing who do not have a command of German, an interpreter shall be called in, § 186 (1) sentence 1 of the Courts Constitution Act (Gerichtsverfassungsgesetz, GVG).

In administrative procedures, German has to be used as well, see § 23 (1) Administrative Procedure Act (Verwaltungsverfahrensgesetz, VwVfG). Thus, in general, foreign individuals or NGOs are required to provide for translation themselves. In the case of transboundary procedures, different rules apply, see 1.8.4.

1.8. Special procedural rules


With regard to EIA, access to justice is granted regarding decisions on the permitting of projects in the meaning of § 2 (6) EIA Act (Gesetz über die Umweltverträglichkeitsprüfung, UVPG), which cover, inter alia, projects within the scope of the EIA Directive, § 1 (1) sentence 1 no. 1 Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz, UmwRG). Access to justice is provided as soon as there is the possibility that an EIA might be mandatory.

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

Focus on screening only, scoping and the substantive decision (permit) will come later. Screening (as well as scoping) decisions cannot be challenged in court separately, but only together with the substantive act that includes the EIA, see § 44a Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO): § 4 EIA Act (Gesetz über die Umweltverträglichkeitsprüfung, UVPG) stipulates that the EIA is a non-independent part of administrative permit procedures.

2) Rules on standing relating to scoping (conditions, timeframe, public concerned)
Scoping decisions cannot be challenged in court separately, but only together with the administrative act that includes the EIA, such as a permit or the adoption of a plan, see 1.8.1 1).

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

Screening as well as scoping decisions cannot be challenged in court separately, but only together with the administrative act that includes the EIA, see 1.8.1 1) and 2). The administrative decisions on scoping projects can thus only be challenged at the stage of final authorisation.[54] The regular deadlines for administrative law apply, along with the deadlines of § 2 (3) sentence 1 UmwRG and § 6 UmwRG, see 1.7.1 3).

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

The general rules apply, see 1.4.

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

In general, Article 19 (4) of the Basic Law (Grundgesetz, GG) obliges courts to review all factual and legal points of an administrative decisions. According to § 2 (1) sentence 1 no. 1 UmwRG, § 2 (4) sentence 1 UmwRG and § 1 (1) sentence 1 no. 1 UmwRG, the full scope of review (objektive Rechtskontrolle) applies for actions brought by NGOs.

The scope of judicial review is limited if the legislator confers a margin of discretion to the competent administrative authority. If statutes empower the authority to choose between different options, the court has to accept that and is limited in its judicial control. It only can examine whether the discretion has been exercised in a legally correct way by the administration. An error of discretion arises when the margin of discretion is exceeded or the objective of the authorisation has been disregarded, see § 114 Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO). This rule applies without special regulations in the field of environmental law.[55]

There is another exemption from full judicial review that is still to some extent relevant in environmental law. The administration hitherto enjoyed a certain margin of appreciation with regard to the interpretation of certain legal provisions (behördliche Einschätzungsprärogative). In the case of such a margin of appreciation a court would only examine whether the authority complied with the procedural rules, shows a correct understanding of the legal concept at stake, ascertained the facts in a correct and comprehensive manner, complied with standards of assessment, in particular the prohibition of arbitrariness, and the margin of appreciation had to follow directly from a legal provision or from interpretation.[56]

An example in the field of EIA is § 5 (3) sentence 2 EIA Act (Gesetz über die Umweltverträglichkeitsprüfung, UVPG) which explicitly specifies a margin of appreciation by limiting judicial review. Authorities thus enjoyed a margin of appreciation when deciding whether a project requires an EIA or not, if this decision derived from a preliminary examination according to § 7 UVPG. In the event that an authority decided that a project does not require an EIA, and it has conducted a preliminary examination according to § 7 UVPG, judicial review of the permit decision was limited to the question whether the preliminary examination complied with the requirements of § 7 UVPG and whether the outcome is reasonable. In its decision from 2018 in the field of nature protection, the Federal Constitutional Court (Bundesverfassungsgericht, BVerfG), criticised the use of this margin of appreciation.[57] The BVerfG stated that the limitation of the scope of judicial review would not follow from a margin of appreciation granted to the administration, but that the court could take the administration’s evaluation as a basis for its decision on the scientific and practical question at stake, if the court had reached the limits of possible clarification in terms of the state of scientific and practical knowledge in the field of nature protection. The court stated further that it was up to the legislator to provide, in the long run, at least regulatory standards on the underlying scientific findings.[58]

When administrative courts decide cases in environmental matters they are not restricted to the information the parties provide. Courts can (and must, if necessary) examine the facts on their own motion and also produce evidence themselves on the principle of ex officio investigation (Untersuchungsgrundsatz ), see § 86 (1) Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO). The courts are free to evaluate evidence following their conviction gained from the overall outcome of the proceedings, see § 108 VwGO. It is up to the court to evaluate the expert opinions - whether they are expert opinions introduced by the parties or opinions of court-appointed experts.

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

Administrative decisions on environmental projects can be challenged at the stage of final authorisation, see § 44a VwGO.

7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? The regular rules apply, see 1.3.2. and 1.1.7 3).

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 107

If a permit procedure requiring an EIA is at stake, standing does not require participation in the public consultation phase of the administrative procedure, see § 1 (1) sentence 1, § 7 (4) Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz; UmwRG).[59] § 5 UmwRG stipulates that if an individual or an association raises concerns for the first time during the judicial procedure and if this is done in an abusive or dishonest way, these concerns are to be left unconsidered by the court. § 5 UmwRG copies the limitations as envisaged by the CJEU.[60] Up until now national courts have not attached great importance to this legal norm and it is still open whether it will become more important in practice.

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

The national jurisdiction uses the framework given by the principles of an effective procedure as guaranteed in Article 19 (4) Basic Law (Grundgesetz, GG) to provide for a fair and equitable procedure as required in Article 9 (4) of the Aarhus Convention.

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

The notion of “timely” is an essential component of the constitutional guarantee for an effective legal remedy which is enshrined in Article 19 (4) Basic Law (Grundgesetz, GG). There are no fixed deadlines for the courts to deliver a judgment.

After Germany was criticised by the European Court of Human Rights in November 2011, new legislation was enacted which enables the parties to a court case to warn a court when the procedures are on the verge of taking excessive time, and to claim special damages if the procedure takes too long.[61] The main provisions can be found in §§ 198 et seq. of the Courts Constitution Act (Gerichtsverfassungsgesetz, GVG).

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 according to the general rules, see 1.7.2 6).


The IED was transposed into German national law in 2013 via amendments to the existing sectoral environmental legislation, mainly to the Federal Pollution Control Act (Bundes-Immissionsschutzgesetz, BImSchG), the Waste Management Act (Kreislaufwirtschaftsgesetz, KrwG) and
the Federal Water Act (Wasserhaushaltsgesetz, WHG).

For this reason, there is no specific standalone IED process or procedure, but the IED requirements are integrated into the generally applicable permission processes. Access to justice related to the IED is granted in the wide range of cases when IED requirements are part of projects and permission procedures listed in § 1 (1) sentence 1 no. 1 and (2) Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz, UmwRG). For the projects and permission procedures listed in no. 2, the same rules apply as for those in no. 1, so that in general, the answers given under 1.8.1 are also valid for 1.8.2.

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?

There is no specific standalone IED process or procedure, but the IED requirements are integrated into the generally applicable permission processes. The general standing rules apply, see 1.7.2. Only the final decision is challengeable, following the general rules.

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

There is no specific standalone IED process or procedure, but the IED requirements are integrated into the generally applicable permission processes. The general standing rules apply see 1.7.2. Only the final decision is challengeable, following the general rules.

Screening decisions cannot be challenged in court separately, but only together with the administrative act when the final authorisation is published.

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

There is no specific standalone IED process or procedure, but the IED requirements are integrated into the generally applicable permission processes. The general standing rules apply see 1.7.2. Only the final decision is challengeable, following the general rules.

Scoping decisions cannot be challenged in court separately, but only together with the administrative act when the final authorisation is notified.

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

There is no specific standalone IED process or procedure, but the IED requirements are integrated into the generally applicable permission processes. The general standing rules apply, see 1.7.2. Only the final decision is challengeable, following the general rules. The regular deadlines for administrative law apply, additionally the deadlines of § 2 (3) sentence 1 Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz, UmwRG) and § 6 UmwRG apply, see 1.7.1 3).

6) Can the public challenge the final authorisation?

(Only) the final decision is challengeable, following the general rules.

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?

See 1.8.1. 5).

8) At what stage are these challengeable?

See 1.8.2. 5).

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

The general rules apply, see 1.3.2. and 1.1.7 3).

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?

For projects listed and referred to in § 1 (1) sentence 1 no. 1 and no. 2 Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz, UmwRG), standing does not require participation in the public consultation phase of the administrative procedure, see § 7 (4) UmwRG.[62]

§ 5 UmwRG stipulates that if an individual or an association raises concerns for the first time during the judicial procedure and if this is done in an abusive or dishonest way, these concerns are to be left unconsidered by the court. § 5 UmwRG copies the limitations as envisaged by the CJEU[63]. Up until now national courts haven’t attached great importance to this legal norm and it is still open whether it will become more important in practice.

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

The national jurisdiction uses the framework of the constitutional guarantee for an effective legal remedy which is enshrined in Article 19 (4) Basic Law (Grundgesetz, GG) to provide for a fair and equitable procedure as required by Article 9 (4) of the Aarhus Convention.

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

Indeed in the context of IED decision-making and/or challenging IED related decisions (screening, scoping, authorization).

The notion of timely is an essential component of the constitutional guarantee for an effective legal remedy which is enshrined in Article 19 (4) Basic Law (Grundgesetz, GG). There are no fixed deadlines for the courts to deliver a judgement. After Germany was criticised by the European Court of Human Rights in November 2011, new legislation was enacted which enables the parties to a court case to warn a court when the procedures are on the verge of taking excessive time, and to claim special damages if the procedure takes too long.[64] The main provisions can be found in §§ 198 et seq. of the Courts Constitution Act (Gerichtsverfassungsgesetz – GVG).

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?

The IED requirements are integrated in the generally applicable permission processes, injunctive relief is available according to the general rules, see 1.7.2 6).

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

There are no specific shortcomings as to information on access to justice concerning IED requirements.

1.8.3. Environmental liability[65]

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?

Cover the legal standing requirements here that apply to national or legal persons (NGOs) in request for action cases for the judicial review of the environmental authorities.

In Germany, the ELD has been transposed by the Environmental Damages Act (Umweltschadensgesetz, USchadG). This law sticks closely to the wording of the Directive.[66] The USchadG is a framework law setting minimum standards. More specific legal regulations with stricter requirements prevail over the provisions of the USchadG, § 1 (2) USchadG.[67]

The standing rules for challenging decisions on environmental remediation that fall within the scope of the USchadG do not differ from the standing rules in other environmental cases[68], see 1.4.3) for more details. In general, the provisions of the Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO) apply.[69] Private persons have standing if they can claim an impairment of their own rights, see § 42 (2) VwGO.
According to § 11 (2) USchadG, NGOs (officially recognised environmental associations) have standing to challenge acts or omissions by authorities based on § 2 and § 1 (1) sentence 1 no. 3 Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz, UmwRG), see also 1.4.3 for more details[70]. According to § 2 (1) sentence 2 UmwRG, their standing covers only cases where the association claims an infringement of provisions relating to the environment in the meaning of § 1 (4) UmwRG.

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

The procedural requirements for legal actions against acts or omissions under the USchadG are generally the same as for other environmental acts[71], see 1.7.1. This means that a remedy first has to be sought at the administrative level; if relief is denied, the general deadline to appeal in court is one month, § 74 (2) of the Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO).

Additionally, the deadlines of § 2 (3) sentence 1 UmwRG (one year, if members of the public concerned were notified of the administrative decision, and if there was no public notification either; the time limit starts from the day the decision came to attention of the claimant or could have come to its attention) and § 6 UmwRG (10 weeks to substantiate an NGO claim and to provide evidence) apply, see 1.7.1.3.

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones? Does the request for action need to be accompanied by scientific underpinning or data?

The request to be accompanied in the meaning of Article 12 ELD is transposed by § 10 USchadG. This provision gives a right to individuals and environmental associations to request action and requires the applicant to submit evidence showing in a plausible manner that environmental damage exists.[72]

4) Are there specific requirements regarding 'plausibility' for showing that environmental damage occurred, and if yes, which ones? Does the person requesting action need to substantiate its request with data?

With regard to the plausibility requirement, the applicant who filed the request for action carries the burden of proof and is under an obligation to cooperate with the competent authorities. While the applicant is under an obligation to submit evidence showing that the occurrence of environmental damage is "plausible", the competent authority is under an obligation to take into account any information that it has of its own. The plausibility requirement does not need to be fulfilled only on the basis of the information given by the applicant. However, if the information provided by the applicant is insufficient and the authority does not have additional evidence to confirm the existence of environmental damage, the request can be rejected.[73]

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)?

Negative decisions constitute administrative decisions under German law, they must be reasoned and give details of the available remedies and must be notified to the applicant.[74]

If the competent authority decides to pursue the request, this conclusion does not amount to an administrative decision. The competent authority notifies the individuals and organisations that are entitled to request action according to § 10 USchadG of the remedial measures planned and gives them the opportunity to comment, § 8 (4) USchadG. The notification can be realised in form of a public announcement and § 8 (4) USchadG does not determine a deadline for comments but stipulates that the authority has to consider the comments arriving "on time" when deciding on the remedial measures.

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?

Germany did not extend the entitlement to request action of the competent authority to cases of imminent threat of such damage. According to § 10 USchadG, individuals affected by environmental damage or NGOs can only request action with regard to damage that already occurred. However, despite the absence of an obligation, an authority has the option to act in cases of imminent danger. If individuals or NGOs bring evidence of an imminent danger to the attention of an authority, the authority can ask the operator to take preventive measures. However, as stated above, in the absence of an obligation to act, in this case an action by the authority is not enforceable on the basis of § 10 USchadG.[75]

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

The USchadG does not determine the competent authorities. The competence of authorities is allocated by the states (Länder). In principle, the authority that is competent in a specific field is also competent for the enforcement of the USchadG in that field.[76]

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings? It applies only in cases where there is an administrative review available, obviously.

If an individual or an NGO demands that the competent authority take action according to § 10 USchG and the authority refuses this in its decision, the administrative review procedure is mandatory according to the general rule of § 68 VwGO prior to judicial review.

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 the event that a project is likely to have a significant impact on the environment of another country, a transboundary EIA has to be carried out. This is stipulated by the international Espoo Convention[77] and has been transposed into German law. The competent foreign authorities are to be notified “in good time” (“frühzeitig”), § 54 (1) sentence 1 EIA Act (Gesetz über die Umweltverträglichkeitsprüfung, UVPG), see also 1.8.4.6. When the decision on a project has been taken, the issuing German authority is under an obligation to forward the decision to the foreign authorities involved, see § 57 (1) UVPG. Only the final decision is challengeable.

For plans and programmes in a transboundary context the SEA Protocol stipulates in Article 10 (1) that if a party to the protocol considers that the implementation of a plan or programme is likely to have significant transboundary environmental effects this party shall notify the affected party as early as possible before the adoption of the plan or programme. This requirement is transposed into German law in § 80 (1) UVPG. According to Article 11 (2) of the SEA Protocol after the adoption of a plan or programme the parties consulted according to Article 10 are to be informed. This requirement is transposed into German law in § 61 UVPG.

2) Notion of public concerned?

In cases of cross-border EIA or SEA as set out in § 56 EIA Act (Gesetz über die Umweltverträglichkeitsprüfung, UVPG) or § 61 UVPG, the notion of the public concerned is – just like for national cases – defined by § 2 (8) UVPG. It includes any person whose interests are affected by a permit decision or a plan or a programme, including associations and environmental NGOs whose interests, as laid down in their statutes, are affected by a permit decision or a plan or a programme.

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)?

In principle, foreign NGOs enjoy the same rights to challenge acts and decisions taken during procedures in environmental cases as domestic NGOs.[79] In order to be able to exercise the special procedural rights of recognised environmental organisations, NGOs have to fulfill the conditions laid down in § 3 Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz, UmwRG) and make a request for recognition. Recognition must be granted when the legal requirements are met[80]. For foreign NGOs, the Federal Environmental Agency (Umweltbundesamt, the “UBA”) is in charge of the recognition process. The competent court is the same as for domestic NGOs and is specified in the information on legal remedies that is published along with the decision, § 57 (1)
sentence 2 no. 2, § 61 (2) sentence 2 no. 3 EIA Act (Gesetz über die Umweltverträglichkeitsprüfung, UVPG). For more details see section 1.4, inter alia on the safeguard measure for foreign associations in § 2 (2) sentence 2 UmwRG.

Injunctive relief is available according to the general rules, see 1.7.2 6).

According to § 116 Code of Civil Procedure (Zivilprozessordnung, ZPO) and § 166 Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGOG), legal entities (i.e. also environmental organisations) can also request legal aid, when they are based in or a resident of Germany or in a Member State of the EU or EEA. For more details see section 1.7.3, 4) and 5).

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)?

In principle, access to justice by the foreign public concerned is subject to the same rules that apply to the domestic public, see 1.4 3). In the case of individuals who are affected by a project as neighbours, for example, it is presumed that the requirement for standing is fulfilled. [81]

5) At what stage is the information provided to the public concerned (including the above parties)?

For information on the project and public participation: see 6).

Information on the decision and access to justice: When the decision (positive or negative) has been taken, the issuing German authority is under an obligation to forward the decision to the foreign authorities involved, see § 57 (1), § 61 (2) EIA Act (Gesetz über die Umweltverträglichkeitsprüfung, UVPG).

[82] While § 57 (1) sentence 1 UVPG explicitly only prescribes the communication of a positive decision, the objectives of the law also require rejections to be transmitted. [83]

6) What are the timeframes for public involvement including access to justice?

In the event that a project is likely to have a significant impact on the environment of another country, the competent foreign authorities are to be notified “in good time” (“frühzeitig”), see § 54 (1) sentence 1 EIA Act (Gesetz über die Umweltverträglichkeitsprüfung, UVPG). If the other country declares that it wishes to participate, a cross-border participation process is carried out, § 54 (5) UVPG, following the rules stipulated in §§ 55 – 57 UVPG.

If the other country does not wish to participate, the public concerned from this country can take part in the domestic participation process, § 54 (6) UVPG, following the rules stipulated in §§ 18 - 22 UVPG, so that the same time limits apply as to foreign stakeholders as for national actors, see also section 1.7.1.

7) How is information on access to justice provided to the parties?

The decision submitted to the foreign authorities must include a translation of the information on legal remedies. The German authorities have to help to ensure ("darauf hinwirken") that the foreign public concerned is informed of the decision by the competent foreign authorities, § 57 EIA Act (Gesetz über die Umweltverträglichkeitsprüfung, UVPG).

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

The authority must provide the notification as well as other documents that are relevant in the participation process in the language of the neighbouring country, § 55 EIA Act (Gesetz über die Umweltverträglichkeitsprüfung, UVPG). In the same way, foreign authorities and the foreign public have the right to submit their comments in their own language, § 56 (4) UVPG.

The decision can be submitted in German, but a translation has to be provided of the sections that are of particular relevance for the foreign authorities and the foreign public and of the information on legal remedies, § 57 UVPG. According to the law, sections of particular relevance include information on how the likely transboundary environmental effects of the project and the statements of the foreign authorities and the foreign public have been considered in the decisions and what remedial measures have been taken to offset transboundary environmental effects.

9) Any other relevant rules?

Germany has concluded agreements with some of its neighbouring countries to flesh out the requirements of the Espoo Convention and to lay down concrete rules and procedures:


For Poland: [2] Agreement between the Governments of Poland and Germany, 2007 (an amendment will enter into force in 2021).


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[2] For more detailed information in English see Umweltbundesamt, footnote 1, p. 39.
[15] I.e., inter alia, about (formal) administrative decisions (Verwaltungsakte) permitting projects and public law contracts on projects when they are based on legal provisions relating to the environment that are based either on federal law, on state legislation or on directly applicable EU law.
[22] I.e., inter alia, about (formal) administrative decisions (Verwaltungsakte) permitting projects and public law contracts on projects when they are based on legal provisions relating to the environment that are based either on federal law, on state legislation or on directly applicable EU law.
[23] Statistisches Bundesamt (Destatis) (2019) Rechtspflege Verwaltungsgerichte 2018. Fachserie 10 Reihe 2.4., p. 120 f., the numbers relate to all cases except for asylum proceedings.
UmweltWissen – PraxisLabore und Sachverständige im Umweltbereich

Die Umweltverbandsklage in der rechtspolitischen Debatte

Zugang zu Gerichten

Annual Report 2017 Judicial Activity Synopsis of the judicial activity of the Court of Justice and the General Court, pp.121 ff. (123).


[21] Documentation of the process, see Dr. Heiner Geißler. Schlichtung S21 (in German language).

[22] The English website of the Federal Commissioner for Data Protection and Freedom of Information can be retrieved here, an overview of the Commissioners for data protection of the Länder can be found at here. (last accessed 5/05/2020).


[25] An up-to-date list of all environmental organisations recognised on the federal level, including links to the competent Länder authorities for recognition on Länder level, is published by UBA, see Umweltbundesamt. (2020, April 15). Vom Bund anerkannte Umwelt- undNaturschutzvereinigungen.

[26] Foreign NGOs enjoy the privilege of § 2 (2) UmwRG which stipulates that the request to register of a foreign NGO is considered as if it was already granted as long as there is no negative decision to their request.


[28] https://www.resymesa.de/ReSyMeSa/Sachverst/ModulStart?modulTyp=ImmissionsschutzSachverst

[29] Bundesverband Deutscher Sachverständiger und Fachgutachter e.V. Der gerichtliche Sachverständige.

[30] IHK. Welcome to the German nationwide register of experts

[31] To decide to which amount the cost were necessary is also at the discretion of the court, the cost rules of the law on the remuneration of experts, interpreters, translators etc. (Justizvergütungs- und -entschädigungsgesetz, JVG) do not apply.


[35] https://www.resymesa.de/ReSyMeSa/Sachverst/ModulStart?modulTyp=ImmissionsschutzSachverst

[36] Bundesverband Deutscher Sachverständiger und Fachgutachter e.V. Der gerichtliche Sachverständige

[37] IHK. nationwide register of experts

[38] Umweltbundesamt (2020, April 15). Vom Bund anerkannte Umwelt- und Naturschutzvereinigungen.

[39] The WWF has sent a communication to the Aarhus Compliance Committee concerning the non-recognition of the NGO in terms of § 3 UmwRG, ACCC/C/2016/137 Germany, asking the ACCC to examine whether the criterion of § 3 UmwRG which demands that any NGO registering must allow every person to become a member of the organisation with full voting rights is in accordance with the Aarhus Convention, inter alia with Article 9 (2). The case is pending since 2016.

[40] Greenpeace has submitted a case to the Administrative Court of Halle (file number 2 A 583/16 HAL ) about the question of recognition in terms of § 3 UmwRG. The case has been temporarily suspended with approval of all parties involved with regard to the pending case of the WWF before the ACCC, (see footnote above), see Wegener, Zeitschrift für Umweltrecht (ZUR) 2019, p. 3, section XIII.

[41] i.e., inter alia, about (formal) administrative decisions (Verwaltungsakte) permitting projects and public law contracts on projects when they are based on legal provisions relating to the environment that are based either on federal law, on Länder legislation or on directly applicable EU law.

[42] i.e., inter alia, about (formal) administrative decisions (Verwaltungsakte) permitting projects and public law contracts on projects that are based on legal provisions relating to the environment that are based either on federal law, on state law or on directly applicable EU law.


[44] Statistisches Bundesamt (Destatis). (2019). Rechtspflege Verwaltungsgerichte 2018. Fachserie 10 Reihe 2.4. p. 26 and p. 121, the numbers relate to all cases except for the cases of chambers deciding on asylum cases.


[46] Suspensive effect does not pertain when an administrative decision is void. Equally, there is no suspensive effect when the time limit for the appeal has expired before the appeal was lodged, as in this case, the administrative decision is already in force and final and cannot be challenged anymore. 

[47] No. 1.2, and, more specifically also No. 34.4 of the Catalogue of Value in Dispute, see Bundesverwaltungsgericht. Streitwertkatalog 2013


[49] In 2008, the OVG Münster (Higher Administrative Court of North Rhine-Westphalia) ruled in its decision OVG Münster Beschl. v. 30.4.2008 – 8 D 20/08 that an application for legal aid launched by an environmental organisation was unfounded because the organisation had missed to build up a financial reserve for legal purposes in the past and it had the option try to raise funds, in particular for the case that was at stake. The court found that the organisation did not lack funds unless it would have had to use all of its present funds to finance the proceedings. Moreover, according to the court, also the personal wealth of the organisation’s members needs to be taken into consideration before considering to grant legal aid. Based on this judgement where the court applied strict standards when deciding whether the association meets the criterion of ‘lack of resources’, a study on the development of access to justice in environmental matters (Schmidt, A. et al. (2017), Die Umweltverbandsklage in der rechtspolitischen Debatte, p. 217) called into question, whether environmental NGOs will be granted legal aid in practise at all. Up until now there seems to be no further research as to the question if environmental NGOs did apply for and received legal aid.


[54] There is an exception to this in § 17 (3), § 19 (2) Law on the search for and decision on the location of a high-level radioactive waste repository (Gesetz zur Suche und Auswahl eines Standortes für ein Endlager für hochradioaktive Abfälle, StandAG).
Act on Access to Justice with regard to overlong judicial procedures and criminal investigation proceedings (Gesetz über den Rechtsschutz bei überlangen Gerichtsverfahren und strafrechtlichen Ermittlungsverfahren) of 24.11.2011, BGBl. I, S. 2302.

However, for plans and programmes, this is still the case according to §§ 1 (1) (4), § 7 (3) UmwRG, see 2.2. and 2.4.

In its judgment of 15 October 2015, Case C-137/14 where the court found some aspect of the prior national procedural rules regarding access to justice in non-compliance with Germany’s obligations under Article 11 of Directive 2011/92/EU and Article 25 of Directive 2010/75/EU.

Act on Access to Justice with regard to overlong judicial procedures and criminal investigation proceedings (Gesetz über den Rechtsschutz bei überlangen Gerichtsverfahren und strafrechtlichen Ermittlungsverfahren) of 24.11.2011, BGBl. I, S. 2302.

See also case no. C-529/15.


BVerfG, Decision of 23 October 2018 (Az. 1 BvR 2523/13, 1 BvR 595/14).

BVerfG, Decision of 23 October 2018 (Az. 1 BvR 2523/13, 1 BvR 595/14).

However, for plans and programmes, this is the case according to §§ 1 (1) (4), § 7 (3) UmwRG, see 2.2. and 2.4.

In its judgment of 15 October 2015, Case C-137/14 where the court found some aspect of the prior national procedural rules regarding access to justice in non-compliance with Germany’s obligations under Article 11 of Directive 2011/92/EU and Article 25 of Directive 2010/75/EU.
§ 1 (1) sentence 1 no. 5 UmwRG provides for access to justice if the decisions, acts or omissions in question qualify as administrative decisions (Verwaltungsakte) or public law contracts (öffentlichrechtliche Verträge). For all other decisions, acts or omissions, there is no standing except if one can maintain a possible violation of one’s own rights, § 42 (2) VwGO. This is e.g. the case for statutory orders or merely factual acts (Realakte).[1] However, a statutory order may be challenged indirectly by appealing an administrative decision based on said order. In that case, the lawfulness of the statutory order is a prerequisite to the lawfulness of the administrative decision.

It is noteworthy that there is a pending case before the CJEU[2] on the question “whether” and, if so, “how” access to justice in environmental matters concerning product approvals, for example with regard to vehicles, has to be granted.

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?

§ 2 (1) sentence 2 Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz, UmwRG) stipulates that the scope of review for appeals by NGOs is restricted to the infringement of legal provisions that are related to the environment in the meaning of § 1 (4) UmwRG. Legal provisions related to the environment can be procedural as well as substantive.

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

Launching administrative proceedings without success is a prerequisite to the admissibility of judicial proceedings before the court, unless determined otherwise by federal or state law, see § 68 (1) sentences 1 and 2 VwGO, see 1.3.2).

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.?

In the cases described under 2.1, standing does not require participation in the public consultation phase of the administrative procedure.[3]

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

§ 2 (1) sentence 2 UmwRG stipulates that the scope of review for appeals by NGOs is restricted to the infringement of legal provisions that are environment-related according to § 1 (4) UmwRG.

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

The national jurisdiction uses the framework given by the principles of an effective procedure as guaranteed in Article 19 (4) Basic Law (Grundgesetz, GG) to provide for a fair and equitable procedure as required by Article 9 (4) of the Aarhus Convention.

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

The notion of timely is an essential component of the constitutional guarantee for an effective remedy enshrined in Article 19 (4) Basic Law (Grundgesetz, GG).

There are no fixed deadlines for the courts to deliver a judgement. After Germany was criticised by the European Court of Human Rights in November 2011, new legislation was enacted which enables the parties to a court case to warn a court when the procedures are on the verge of taking excessive time, and to claim special damages if the procedure takes too long.[4] The main provisions can be found in §§ 198 et seq. of the Courts Constitution Act (Gerichtsverfassungsgesetz – GVG).

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 according to the general rules, see 1.7.2.6).

9) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court?

What are the safeguards against the costs being prohibitive, and do these include express statutory reference to a requirement that costs should not be prohibitive?

The general rules on costs apply, see 1.7.3.

1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[5]

Please describe only the national SEA procedures and the adjacent administrative or judicial review procedures. Plans and programs that are specifically required by the EU legislation to be prepared will be detailed under subchapter 2.4. If you wish, you can write a more general description here and then add only the specifics under subchapter 2.4.

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?

§ 1 (1) sentence 1 no. 4 Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz, UmwRG) applies to decisions, acts or omissions that potentially require a SEA procedure (a requirement originating in the Strategic Environmental Assessment (SEA) Directive 2001/42/EC). According to § 1 (1) sentence 1 no. 4 clause 2, standing is excluded for plans and programmes adopted by a legislative body.

Individuals have legal standing if they can assert a possible violation of their personal rights, § 42 (2) VwGO, see above, 1.1.3) and 1.4.3). In the case of most plans and programmes it is difficult to demonstrate the infringement of personal rights, which limits the scope of standing for individuals with regard to plans and programmes. Plans and programmes might be challenged indirectly, however, if their lawfulness is a prerequisite to the lawfulness of an appealable administrative decision. However, for air quality plans, following the CJEU’s judgment in the Janecek case, C-237/07, individuals are considered to be affected in their personal rights by courts if no, or no sufficient air quality plan has been established by the authority.[6]

NGOs have standing according to the usual rules, provided they can assert an infringement of legal provisions that are related to the environment in the meaning of § 1 (4) UmwRG. § 2 (1) sentence 2 UmwRG.

The special deadlines in § 2 (3) sentence 1 UmwRG and § 6 UmwRG apply. § 7 (2) sentence 1 UmwRG stipulates that the Higher Administrative Courts are competent in first instance.

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?

§ 2 (1) sentence 2 Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz, UmwRG) stipulates that the scope of review is restricted to the infringement of legal provisions that are related to the environment in the meaning of § 1 (4) UmwRG. Legal provisions related to the environment can be procedural as well as substantive.

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

Launching administrative proceedings without success is a prerequisite for the admissibility of judicial proceedings before the court, unless determined otherwise by federal or state law, see § 68 (1) sentences 1 and 2 VwGO, see 1.3.2).

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.?
For plans and programmes, this is the case according to § 1 (1) sentence 1 no. 4, § 2 (1) sentence 1 no. 3 b), § 7 (3) sentence 1 Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz, UmwRG), except for land-use plans, § 7 (3) sentence 2 UmwRG. Any points that were not put forward during the public consultation when there was the possibility to raise concerns are precluded from the subsequent court procedure.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?
Injunctive relief is available according to the general rules, see 1.7.2 6).

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 on costs apply, see 1.7.3.

1.3. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with the 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[7]

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?
Individuals do not have standing for cases in this category, except if they can assert a possible violation of their own rights, § 42 (2) Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO), see above, 1.1.3) and 1.4.3).
Environmental organisations also have, de lege lata, no standing for the cases described in this category, as they have access to justice exclusively with regard to the subject matters listed in § 1 (sentence 1 no. 1 Environmental Appeals Act (Umwelt-Rechtsbehelfsgesetz, UmwRG), and the cases of this category do not fall into the scope of § 1 (1) sentence 1 no. 4 UmwRG or other cases of § (1) sentence 1 no. 1 UmwRG.
This means, that there is no access to justice with regard to e.g. the designation of conservation areas by legislative decrees and not requiring a SEA. [8]

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?
Not applicable, see above.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
Not applicable, see above.

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.?
Not applicable, see above.

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?
Not applicable, see above.

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?
Not applicable, see above.

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?
National law does not differentiate between plans and programmes required to be prepared under EU environmental legislation. The plans and programmes in question are subject to national implementing legislation for the SEA Directive, the provisions listed above at 2.2 apply.

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)?
The question is about whether there are different locus standi conditions if the plan or program is adopted by legislation, by an individual resolution of a legislative body, or a single act of an administrative body, etc.
According to § 1 (1) sentence 1 no. 4 clause 2, standing is excluded for plans and programmes adopted by a legislative body.

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 provisions listed above at 2.2 apply.

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
The provisions listed above at 2.2 apply.

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.?
The provisions listed above at 2.2 apply.

6) Are there some grounds/arguments precluded from the judicial review phase?
§ 2 (1) sentence 2 UmwRG stipulates that the scope of review for appeals by NGOs is restricted to the infringement of legal provisions that are related to the environment in the meaning of § 1 (4) UmwRG.
For plans and programmes, in order to be able to initiate judicial proceedings, it is a requirement to participate in the public consultation phase of the administrative procedure – i.e. to make comments, participate at the hearing, etc., see § 1 (1) sentence 1 no. 4, § 2 (1) sentence 1 no. 3 b), § 7 (3) sentence 1) UmwRG. Any points not put forward during the public consultation when there was the possibility to raise concerns are excluded from the subsequent court procedure.

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
The national jurisdiction uses the framework given by the principles of an effective procedure as guaranteed in Article 19 (4) Basic Law (Grundgesetz, GG) to provide for a fair and equitable procedure as required in Article 9 (4) of the Aarhus Convention.

8) How is the notion of "timely" implemented by the national legislation?
The notion of timely is an essential component of the general guarantee for an effective remedy enshrined in Article 19 (4) Basic Law (Grundgesetz, GG).
There are no fixed deadlines for the courts to deliver a judgement. After Germany was criticised by the European Court of Human Rights in November 2011, new legislation was enacted which enables the parties to a court case to warn a court when the procedures are on the verge of taking excessive time, and to
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 according to the general rules, see 1.7.2 6).

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 general rules on costs apply, see 1.7.3.

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

These are legislative acts that are supposed to transpose and implement EU environmental laws (to the extent possible, indeed, when talking about Regulations). Other EU regulatory acts are also relevant here if they have implementing national rules. Please focus on the national legislative processes and the related review procedures. When talking about courts, these can be regular courts, the Supreme Court or the Constitutional Court (as appropriate).

Otherwise, the questions are mostly the same as in the previous subchapters.

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedure for adopting or the content of the decision, act or omission of the national regulatory act (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?
In principle, neither individuals nor NGOs have the option to challenge national regulatory acts, except when requesting a “preventive declaratory judgment” to stop an upcoming criminal sanction or where an “incident review” might offer the possibility to challenge the validity of the underlying regulatory act, which is no option if the regulatory act does not require further implementing acts.

Citizens have the option to apply to the Federal Constitutional Court to ascertain whether their constitutional rights have been violated (so-called Verfassungsbeschwerde, i.e. constitutional complaint). However, the jurisdiction of the Constitutional Court is restricted to matters directly touching questions of the constitution. This option is not a regular remedy.

One such extraordinary exception may be the application of the new Admissions Act Preparation Act (Maßnahmenegesetzvorbereitungsgesetz, MgvG) though it has not been used yet, the MgvG provides the legal foundation for adopting a limited and specified number of infrastructure projects (namely 28 road, waterway and railway projects) by way of legislation instead of an administrative act. Legislative approval decisions could later only be challenged in the Federal Constitutional Court within the scope of its jurisdiction. In this regard, if the Act were to be applied, judicial review would be limited when compared to the standard laid out by the UmwRG. While e.g. some constitutional rights can thus far not be invoked by NGOs (such as the right to health), the case for a broader application remains pending. [12]

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?
Not applicable, see above.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
Not applicable, see above.

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.?
Not applicable, see above.

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?
Not applicable, see above.

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?
Not applicable, see above.

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?[18]

In general, when a court is uncertain as to the interpretation or validity of an act adopted by the European Union it will stay the proceedings by analogy with § 94 Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO), and refer the matter to the CJEU to request a preliminary ruling according to Article 267 TFEU. After the decision of the CJEU on the interpretation or the validity of the provisions in question, the national court will continue its own proceedings. Individuals or NGOs cannot initiate a preliminary procedure but they can recommend it.

Nevertheless, individuals or NGOs, in principle, have no standing with regard to executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts, see above.

[3] However, for plans and programmes, this is the case according to §§ 1 (1) sentence 4, § 7 (3) UmwRG, see 2.2. and 2.4.
[5] The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.
[7] 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.
[8] Access to justice with regard to the designation of conservation areas might be judged differently depending on the outcome of the following case: the Federal Administrative Court requested a preliminary ruling of the CJEU pursuant to Article 267 TFEU in its currently running case (BVerwG 4 CN 4.18) as to the question whether EU law requires a SEA, or at least a decision by the Member State on the need for such an assessment, prior to the adoption of a regulation establishing an area of outstanding natural beauty, C-300/20.
This constellation should also be reflected in the light of the CJEU’s decision in the Protect case, C-664/15.

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.

Act on Access to Justice with regard to overlong judicial procedures and criminal investigation proceedings (Gesetz über den Rechtsschutz bei überlangen Gerichtsverfahren und strafrechtlichen Ermittlungsverfahren) of 24.11.2011, BGBl. I, S. 2302.

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.

Whether an NGO has standing before the federal constitutional court challenging the omission of appropriate legal norms and measures against climate change is to be considered by the BVerfG in the ongoing case 1 BvR 2656/18 which was initiated by individuals and, inter alia BUND (Bund für Umwelt und Naturschutz Deutschland e.V.

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

If an authority does not respond to a request to take action within 3 months, the requesting party might take the case to court without having to wait for an administrative decision, § 75 of the Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO). If an administrative decision lacks the necessary information on legal remedies (Rechtsbehelfsbelehrung, see above, 1.7.4 2) and 3) or if this information is incorrect, the deadline to appeal the decision is extended from 1 month to 1 year, § 58 (2) VwGO (see above, 1.7.1. 1). Apart from those “procedural sanctions”, there are no penalties imposed.

According to § 167 (1) VwGO, the rules for non-compliance of the public administration with a judgment of an administrative court follow the special rules in § 172 VwGO instead of the general rules for enforcement of the Code of Civil Procedure (Zivilprozessordnung, ZPO).

According to § 172 VwGO, a financial penalty of up to EUR 10,000 can be imposed if an authority fails to comply with the obligation imposed on it in a judgment or interim order. The financial penalty might be ordered repeatedly, until the relevant authority complies.

Within the scope of the Code of Civil Procedure, however, in cases when the debtor fails to carry out an act, the maximum penalty is EUR 25,000, but also coercive detention is possible, § 888 (1) and (2) of the ZPO.

As can be seen from the preliminary ruling in the CJEU’s air quality case (C752/18), the referring court, the Higher Administrative Court of Bavaria, was in doubt whether it could interpret the national law in a way giving effect to its ruling and make use of the option of coercive detention in a situation where the only other instrument provided by the law, the penalty, had failed several times and representatives of Bavaria, even the Minister-President, declared publicly that they would not comply with court ordered measures for the improvement of air quality.

A recent decision of the Stuttgart Administrative Court 17 K 5255/19 shows that regarding the penalty the higher fine provided by civil law can be made use of by means of interpretation. Further, the court can demand that the fine is to be paid to a public-interest organisation. There are also suggestions that fines could also be made more effective by imposing them for every day of non-compliance.[1]

In another recent decision the Higher Administrative Court of Baden-Württemberg (the "VGH Mannheim") decided[2] that when a concrete case is at stake where the public administration already demonstrated that subtle pressure was not enough to ensure compliance, not § 172 VwGO but § 167 (1) sentence 1 VwGO, § 888 ZPO, i.e. again the general rules for enforcement, should be the basis for enforcing compliance with the judgment.

Furthermore, the court decided that in cases where the state, here the Land Baden-Württemberg, has to pay a fine, it cannot be the recipient as well. Instead a non-governmental public interest organisation has to be chosen as the recipient, which the court is empowered to under § 167 (1) sentence 1 VwGO, § 888 ZPO and, secondarily, § 153a (1) sentence 2 of the German Code of Criminal Procedure (Strafprozessordnung, StPO).[3]


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### Access to justice in environmental matters - Estonia

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
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. Legal order – sources of environmental law

Environmental issues are primarily regulated by acts of Parliament, regulations of the central government and ministerial regulations. Regulations of local governments play a minor role. Environmental law in Estonia has undergone significant codification since accession to the EU in 2004. Since 2014, the General Part of the Environmental Code Act (GPECA) acts as a framework law for the environmental law as whole. Sectoral legal acts (e.g. Water Act, Ambient Air Protection Act, Waste Act, Nature Conservation Act) make reference to the framework law and use the terms defined therein. GPECA also

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

1.1. Legal order – sources of environmental law

1. Access to justice at Member State level


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

includes provisions on procedural (participation) rights related to environmental permits as well as specific provisions on the standing of environmental NGOs in environmental matters.

Environmental issues are within the competence of the Ministry of Environment at the national level. The most important agency within the area of governance of the Ministry is the Estonian Environmental Board, which has various functions in the field of nature protection, environmental protection, resource use and radiation. Importantly, most environmental permits are issued by the Board. The Board also reviews administrative appeals against the permits. The other notable agencies include the Environmental Inspectorate, which is the primary enforcement agency in environmental matters, and the Environmental Agency, which collects, processes and generalises data on Estonian nature, the state of the environment and factors influencing it. Note that the Environmental Inspectorate and the Environmental Board will be merged by January 2021 under the name of the Environmental Board.

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

The Estonian Constitution provides that everyone is obliged to preserve the environment and compensate for damage caused to it (Section 53). Natural resources are considered to be national riches that must be used sustainably according to Section 5. Section 13 stipulates that everyone has the right to be protected by the state and its laws. According to Section 15, everyone has the right to access to justice if their rights and freedoms are being violated. Legislation and different actions may be challenged as unconstitutional as part of any court case and the courts are obliged to review such challenges. Section 24 provides more detailed rules for judicial (court) proceedings.

Court hearings are generally open to the public and decisions are made publicly available. Proceedings cannot be transferred to a court other than that prescribed by the law if one of the parties to a dispute does not agree with it. Everyone has the right to attend court proceedings to which they are a party as well as the right to appeal to a higher court according to conditions provided by legislation.

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

GPECA sets out the definition of "environmental NGO" and specifies special standing of such organisations for administrative matters. The provisions are relevant to all environmental administrative matters. There are very few access to justice provisions that are applicable only to sectoral environmental issues.

For instance, the Environmental Liability Act, which transposes the Environmental Liability Directive, stipulates that administrative review is mandatory before court review. It should also be noted that the Planning Act provides exceptional access to justice with regard to certain spatial plans. The provisions are applicable to planning cases in general, not only to cases that constitute environmental matters. Generally, everyone is entitled to participate in the planning proceedings and, during those proceedings, express their opinion regarding the spatial plan; the law also provides rather wide opportunity to challenge the spatial plans. Anyone can challenge in court all spatial plans except the national spatial plan and county-wide spatial plans on the basis that it is contrary to public interest (not just environmental public interest).

Other than the relatively few specific provisions, the administrative review as well as court proceedings in environmental matters are subject to the general legal regime applicable in all administrative cases. This means that the rules on administrative review are found in the Administrative Procedure Act and rules on review by the courts are found in the Code of Administrative Court Procedure (CACP). In some instances, e.g. on the issue of recusal of judges, types of admissible evidence etc., the CACP refers to the rules of the (more detailed) Code of Civil Procedure.

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

The Supreme Court of Estonia is the highest court in Estonia in all administrative matters, including environmental disputes. Although the court cannot establish new rules as such, it has had and continues to play an important role in interpreting the national laws. Such interpretations should, among others, ensure compliance with international law (e.g. the Aarhus Convention) as well as EU law (e.g. EIA Directive) that relates to access to justice in environmental matters, e.g. RKHo 15.12.2014, 3-3-1-67-14, see 1.7.3.6. In the past, the Supreme Court has applied the Aarhus Convention directly to allow standing of environmental NGOs in administrative cases e.g. RKHo 28.11.2006, 3-3-1-43-06.

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?

As already evidenced by the above, parties to either administrative or court procedure can rely on provisions of international treaties (including the Aarhus Convention on environmental procedural rights), if:

- these are sufficiently precise (provide all necessary details), and
- there is no national legislation on the matter, or
- national legislation contradicts the international agreement.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

The Estonian court system has three levels (lower to higher):

- administrative courts (two courts and four courthouses) and county courts (four courts and 15 court houses)
- circuit courts (Tallinn and Tartu)
- the Supreme Court.

On the lowest level, administrative cases, i.e. cases against activities of public administration (this includes the majority of disputes in environmental matters) are discussed in specialized courts: the administrative courts. Civil and criminal matters are heard by county courts. The circuit courts review judgments of administrative and county courts by way of appeal proceedings. Although circuit courts review all types of matters, the judges are specialized in a specific type of matter (administrative, civil and criminal). The highest-level court - the Supreme Court - reviews district court judgments by way of cassation proceedings. The Court has chambers for different types of matters, including the Administrative Chamber. The Supreme Court also carries out constitutional review of legislation.

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)?

Jurisdiction between administrative courts is decided based on the location of the administrative body or place of work of the public servant against whom a case is brought. If a case is brought against a regional unit of the administrative body, the case should be brought to the court in whose territory the regional unit is located. If the case could be reviewed by multiple courts, the person bringing the case may decide which court to turn to.

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

The courts are the main independent bodies for dispute resolution; there are only a limited number of arbitral tribunals in addition to them. There are no tribunals or other bodies of dispute resolution in environmental matters other than courts.

Regarding the jurisdiction or composition of courts, there are no specific features that would apply to environmental matters - rules that apply to administrative, civil or criminal proceedings - apply as usual. Unlike some other countries, there are no specific environmental tribunals, expert judges or similar mechanisms. However, at least some courts, such as the Tallinn Administrative Court, have internal division of tasks, which effectively results in a certain degree of specialization.
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.

In administrative matters, the judges have a more proactive role than in civil or criminal matters, which have an adversarial nature. The administrative court review is based on principles of disposition, investigation and explanation. The court may only adjudicate a matter to the extent requested in the action or other declaration provided in the law. The filing of such declarations is at the discretion of the participants in the proceedings. The court must, on its own motion, make sure that facts are ascertained that are material to the matter dealt with, where necessary by gathering evidence itself, or by imposing the obligation of presenting evidence on participants of the proceedings. The court interprets and deals with declarations of participants in the proceedings according to the actual intention of the participant who made the declaration. At every stage of the proceedings, the court must provide sufficient explanation to participants in the proceedings to guarantee that no declaration or evidentiary item necessary to protect a participant’s interests remains unrecognized because of the participant’s lack of experience in legal matters and that any defects of form that would prevent a declaration from being heard are resolved. In relation to every issue material to determining the matter, the courts must guarantee participants of the proceedings an effective and equal opportunity to present their views and the grounds for those views, and to contest the other participants’ views or to support the same. Courts may include third parties to the dispute, if they find that the rights of such persons may be impacted by the judgment. Courts may also on their own motion change the deadlines for procedural acts that have to be undertaken by parties (e.g. provide a translation of a document, reply to the action etc.), make an additional judgment that specifies or supplements the initial judgment or apply for injunctive relief.

1.3. Organisation of justice at administrative and judicial level

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

Environmental matters are dealt with by several state and local authorities. Environmental permits (permits for mining, use of water, waste management activities, pollution of ambient air) are issued by the Environmental Board. The Environmental Board is also responsible for management of all state nature conservation areas. Several other state authorities are also responsible for construction permits of infrastructure projects, e.g. Road Authority for construction of state roads, Consumer Protection and Technical Regulatory Authority for railroads etc. Local governments (municipalities) are in charge of all local-level spatial planning and construction permits. The Environmental Inspectorate coordinates and executes supervision regarding the use of natural resources and the protection of the environment by applying the state’s coercive measures on the basis of and to the extent specified by law. The Environmental Inspectorate is an institution dealing with environmental violations and since 1 September 2011 also carries out investigations in criminal cases. On 17 June, the Riigikogu (Parliament of Estonia) passed changes to the law that will result in the merger of the Environmental Board and the Environmental Inspectorate on 1 January 2021. The merged agency will go by the name of the Environmental Board.

The merger of the Environmental Board and the Environmental Inspectorate is part of the national reform plans approved by the government. As regards their everyday work (administrative tasks), both agencies had to follow in general terms the Administrative Procedure Act (APA) and specific terms related to environmental laws and regulations. The administrative challenge procedure is described in the APA and generally foresees the right of a person to file a challenge if his or her freedoms are restricted by an administrative act or in the course of administrative proceedings. The challenge must be filed within thirty days from the day a person becomes or should become aware of the challenged administrative act or measure. Unless otherwise provided for by law, a challenge must be adjudicated within ten days after the challenge is delivered to the administrative authority which reviews the challenge. If a challenge needs to be further examined, an administrative authority which reviews the challenge may extend the term for review of the challenge by up to thirty days. A notice concerning extension of the term must be sent to the person who filed the challenge. A decision on a challenge must be prepared in writing and must indicate the resolution concerning adjudication of the challenge. A decision on a challenge must be delivered to the person who filed the challenge and to third persons. A person whose challenge is dismissed or whose rights are violated in challenge proceedings has the right to file an appeal with an administrative court under the conditions and pursuant to the procedure provided by the Code of Administrative Court Procedure. In some cases, the law provides for a compulsory administrative challenge procedure before the right to go to court also in environmental matters (for example in Environmental Liability Act).

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

Administrative environmental decisions can be appealed before administrative courts; there are no special environmental courts. Rules on standing in administrative courts depend on whether the case is brought by regular individuals (natural and legal persons) or environmental NGOs. Individuals only have standing to defend their subjective rights. The national concept of subjective right is similar with the concept of subjective right under German legal theory. Violation of subjective rights is understood in the light of the protective norm theory. According to this theory, a violation of a public law provision results in a violation of a person’s subjective right only when the violated provision protects the person’s interest. In deciding whether a person has a subjective right, both the aim of the violated norm and the weight of the person’s interest must be considered. The Technical, environmental NGOs also only have standing for the protection of their subjective rights. However, in practice the NGOs have very broad standing as the violation of such rights is presumed provided the organisation meets the national definition of “environmental organisation” (see 1.4.3 for the definition) and the challenged decision is related to the field of activity or environmental goal of the NGO. True actio popularis exists, both for individuals and organisations, only for challenging certain types of spatial plans. There is no set deadline for the delivery of a judgment after challenging administrative decision in court. In practice, environmental cases at the court of first instance may take as little as a few months or as much as several years to process (depending on the complexity of the case as well as workload of the courts).

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

There are no special environmental courts.

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

Administrative review

Administrative review procedures are regulated by the Administrative Procedure Act. The only notable exception specific to environmental matters is the standing of environmental NGOs, which is stipulated by GPECA. An administrative challenge (vaie) is reviewed by the supervisory administrative body of the initial decision-maker. In some cases, the appeals are reviewed by the same body that made the initial decision, namely if: the administrative body is under direct control of a minister, the law does not provide a supervisor to that administrative body.

In environmental matters, most of the relevant decisions are made by the state environmental authority (Environmental Board) – which is supervised by the Minister of Environment - or the local municipalities, which do not have supervisory administrative bodies. Consequently, the same administrative bodies that made the initial decision are typically in charge of administrative review of environmental decisions. The administrative review covers both procedural and substantive legality of the challenged decision. Also “purposefulness” of the challenged decision can be reviewed. (Unlike the court review, which cannot cover “purposefulness” due the principle of separation of powers.)

Court review of administrative decisions
In general, administrative decision can be contested in court without the need to undergo mandatory administrative review. Judicial review covers both procedural and substantive legality of the challenged administrative decision. The courts are not allowed to reconsider value judgments of the administrative authorities. The review of legality by courts, however, also includes the review of whether the discretionary powers were correctly used by the authority (e.g. whether all relevant facts were identified and no manifest errors were made in weighing different interests).

### Appeal against court orders and decisions

If the party to the case or third party is not satisfied with the judgment of the administrative court (1st instance court) it may appeal to the district court (2nd instance). Note that right is conferred upon all entities that are participants of the proceedings (parties and third persons) or could become a party in the appeal case if the judgment of the administrative court affects that person's rights and freedoms which are protected by the law. Thus, the broad standing of NGOs also effectively applies in appeals. The same persons have the right to appeal to the Supreme Court (3rd and final instance) if they are not satisfied with the judgment made by the circuit court. For an appeal, the person filing an appeal must justify it by demonstrating that the lower court has: applied substantive legislation incorrectly, significantly breached rules of the court procedure, or not made proper use of evidence.

In some situations, a court may end the proceedings or decide key issues (including application of injunctive relief, inclusion of third parties to the proceeding) with a court ruling (kohtumäärus) instead of a judgment (kohtuotsus). In such a situation, an appeal on the court ruling may be filed by the person affected by the ruling to the higher level court.


There are no extraordinary ways of appeal that would apply to environmental cases. Preliminary references may be submitted to the CJEU by any court (i.e. courts of any instance). In practice, most references for preliminary ruling are made by the Supreme Court or circuit courts.

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

There are no official out of court conflict resolution mechanisms, e.g. mediation in environmental matters, which of course does not preclude parties to a conflict from trying to find such solutions. In practice, out of court solutions are discouraged by short deadlines for filing claims for review to the administrative court (a case must be brought to the court within 30 days of notification of the applicant to claim the annulment of an administrative decision). At the same time, after the acceptance of an action during preliminary proceedings, judges should ascertain whether it is possible to resolve the matter by compromise or otherwise by mutual agreement and it is possible to initiate conciliation procedure headed by the specially trained and appointed judges.

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

If a person or company has seriously damaged the environment or breached important obligations aimed at protecting the environment (e.g. has illegally handled waste resulting in an environmental danger), criminal charges can be brought by the Prosecutor’s Office. Misdemeanours in the environmental field are handled by various agencies but primarily by the Environmental Inspectorate. These authorities also receive and investigate complaints by individuals.

If a person finds that a legislative act is unconstitutional or some activity, inactivity or omission of a public authority infringes the person’s constitutional rights, the person may also file an application with the Chancellor of Justice (öguskantsler). The Chancellor of Justice reviews the constitutionality of the legislative act or activity of a public authority and it is entitled to make recommendations and proposals aimed at solving the situation.

### 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)?

Environmental administrative decisions may be challenged in administrative courts by both natural persons and legal entities, including environmental NGOs. The difference lies in the grounds of standing – for individuals it would be the breach of subjective rights whereas environmental NGOs can effectively bring actions to protect public interests as well.

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

Rules on standing are the same for all environmental decisions with no sectoral differences.

#### 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.)

Standing rules for court review and administrative review are the same, both for individuals and NGOs.

Standing for natural persons and legal entities is rights-based, i.e. you can only challenge an environmental administrative decision (e.g. air pollution permit) if and to the extent it breaches your individual rights. The courts make an initial assessment of standing based on the presumption that the applicant’s arguments are valid; however, the courts may review the issue of standing up to the moment of issuing a judgment. In administrative review, where deadlines are short, the challenge will be reviewed as a whole within those deadlines. Standing of environmental NGOs is broader for both court proceedings as well as administrative review. An environmental organisation is defined as follows in the GPECA:

### § 31. Non-governmental environmental organisation

1. For the purposes of this Act, a non-governmental environmental organisation (hereinafter environmental organisation) is:

   1) a non-profit association and foundation whose purpose under its articles of association is environmental protection and who promotes environmental protection by its activities;
   
   2) an association that is not a legal person, but that promotes environmental protection and represents the opinions of a significant portion of the local community on the basis of a written agreement between its members.

2. For the purposes of subsection 1 of this section, the promotion of environmental protection also means the protection of the elements of the environment for the purpose of ensuring human health and well-being as well as the research and introduction of the nature and natural cultural heritage.

3. Upon assessment of the promotion of environmental protection, the association’s ability to attain its goals set out in the articles of association must be considered, taking into account the activities of the association to date or, upon absence thereof, its organisation structure, number of members and the requirements of becoming a member as laid down in the articles of association.

Any NGO that meets the definition may effectively challenge environmental administrative decisions for the protection of public interests - a presumption of their standing is made if the challenged decision is related to their field of activity or environmental goals of the NGO.

Note that ad hoc groups that are not registered as legal persons can be environmental NGOs if they satisfy the following conditions:

1. a written contract of partnership has been signed by the members of the group,
2. according to the contract, the partnership aims to promote the protection of the environment, the group represents the opinion of a significant proportion of its community.
The national law does not explicitly stipulate the non-discrimination clause of foreign environmental NGOs. However, there also are no clauses that would prevent foreign NGOs from relying on the same provisions on standing as national NGOs. The national law also does not explicitly stipulate that access to justice provisions need to be interpreted consistently with the objective of giving the public concerned wide access to justice. If one disregards the overall purpose of the regulation, then the abstract wording of the national provisions may be interpreted restrictively. For instance, an NGO has standing if it can demonstrate that the challenged administrative act is related to their field of activity or environmental goals. It could be argued that a Swedish NGO dedicated to protecting the grey wolf in Sweden would not have standing to challenge wolf hunting permits in Estonia as these two wolf populations are not connected. In other words, the implementation of the national law requires courts to recognize the special status of NGOs in defending public environmental interest. In general, the national courts have not interpreted standing restrictively but the court practice is limited. e.g. there is no practice on recognizing standing of foreign environmental NGOs.

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

Court proceedings are carried out only in Estonian, means that all documents and statements must normally be translated or interpreted. Exceptionally, you may make statements in another language without translation or interpretation if you do not speak Estonian and all other parties and the court understand your statements.

If you present a written statement or a document in a foreign language, the court will require it to be translated by you or for you to arrange for its translation. The court will not require you to translate the document if it is unreasonably complicated or impossible. If translation is required and you fail to provide a translation by the due date set by the court, the document or written statement may be disregarded. You may also ask the court to arrange for the translation. If possible, court translators are used. For their services, you must pay a state fee.

If you do not speak Estonian, the court will include an interpreter in the proceedings on your application or on its own motion. If this cannot be done immediately, the court will require you to find an interpreter or a representative that speaks Estonian. If you do not do so within the due date set by the court, your action may be disregarded. If this is unreasonably complicated or impossible, the court may look for an interpreter itself. In any case, you will have to pay for the associated costs.

If the court organizes interpretation of proceedings, court translators are used, if possible.

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?

The administrative court review is based on the principle of investigation. The court must, on its own motion, make sure that facts are ascertained that are material to the matter dealt with, where necessary by gathering evidence itself, or by imposing the obligation of presenting evidence on participants of the proceedings.

In administrative environmental matters, all rules on evidence applicable to other administrative matters apply, without any distinctive features. In principle, any evidence relevant to arguments of the parties can be submitted and will be evaluated by the courts. If the courts find that there is not enough evidence, they may either ask you to provide it or gather it on their own. In principle, no type of evidence is preferred by the court. Also, parties may not limit the types of evidence admissible or give priority to some type of evidence.

Courts may request a party to the proceedings or its employee, any public authority, insurance company or credit institution (e.g. bank, investment fund) to provide information that is necessary for solving the dispute and is presumed to be in the hands of that person. This can be done based on an application of a party to the proceedings or on the court's own motion. Courts will set a deadline and the persons are obliged to provide information within that time. If they breach that obligation, the court may impose a fine.

2) Can one introduce new evidence?

New evidence, i.e. evidence not gathered or used in the administrative proceedings, may be introduced in the administrative courts. Such evidence is evaluated in a similar manner to evidence gathered or used in the administrative proceedings.

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

If you want to use an expert opinion in court proceedings as evidence you may contract an expert and provide his/her opinion as documentary evidence. Alternatively, you may also ask the court to organize an expert opinion in the preliminary proceedings (before the court hearing). Courts may ask for an expert opinion to determine an issue that is important for the case and requires expert knowledge. The court will use either experts working in a state forensic institution, officially certified experts or other persons with expert knowledge on the issue as experts. If no expert-certified expert is available, other persons are appointed as experts only in exceptional cases, where there is some good reason to do so. A list of officially certified experts is available here.

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

Expert opinions are treated as all other types of evidence, i.e. they are evaluated together with other relevant information to determine whether an argument has been proven or not. Therefore, they are not directly binding on judges.

3.2) Rules for experts being called upon by the court

Experts are treated in a similar manner, regardless of who applied for their inclusion in the proceedings. As a rule, they are obliged to give an expert assessment. The latter is, as a rule, a written document, in which the expert describes in detail the studies made, the results of studies and provides answers to the questions posed by the court. The expert may also be called to the hearing of the case, where they are obliged to provide answers to the questions of the parties and the court.

3.3) Rules for experts called upon by the parties

Experts are treated in a similar manner, regardless of who applied for their inclusion in the proceedings. As a rule, they are obliged to give an expert assessment. The latter is, as a rule, a written document, in which the expert describes in detail the studies made, the results of studies and provides answers to the questions posed by the court. The expert may also be called to the hearing of the case, where they are obliged to provide answers to the questions of the parties and the court.

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

Expert's hourly fees are limited by a Regulation of the Government. As a rule, the hourly fee should be between 10 and 40 times the minimum hourly wage (as of March 2020 – 3.48 €/h). The court will decide upon the exact fee. Expert fees have to be paid only based on a claim by the expert, after the expert assessment has been given. As a rule, the expert fees must be paid by the losing party. If a prepayment is necessary, this will have to be paid by the party who applied for the inclusion of the expert or by both parties in equal sums, if the expert was included on the court's own motion.

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

In environmental administrative matters, anyone is entitled to represent themselves in the court if they wish to, i.e. it is not mandatory to engage a professional lawyer to represent you. However, if you do wish to be represented by a lawyer, you may contract someone with the following qualifications: advocates (advokaat) who belong to the Estonian Bar Association.
persons with higher legal education, i.e. persons who have obtained at least a Masters’ degree in Law or equal qualification

Only sworn advocates may represent you in the highest court – Supreme Court of Estonia.

There are no registries of lawyers specialised in the environmental field, but most of the prominent law offices also list environmental law as a field in which they offer legal services and employ lawyers with relevant experience, including:

- Estonia Raidla
- Sorainen
- Cobalt
- TGS Baltic
- Derling
- PW Legal Estonia
- Nove
- Fort

Legal assistance (including representation) in environmental matters is also provided by the Estonian Environmental Law Centre which is a public interest NGO. Therefore, it does not provide legal assistance in cases where this would be contrary to public interests.

1. Existence or not of pro bono assistance

In recent years, the Ministry of Justice has organised for limited availability of pro bono and low-cost legal assistance in all legal matters. Legal assistance has been provided by private companies that have successfully competed in the tender proceedings for such assistance. Currently (until 2021) such aid is offered by HUGO.legal (previously known as Eesti Õigusbüroo).

Several private law firms offer pro bono assistance as part of their corporate social responsibility (CSR) activities in practice; however, the availability and extent of the assistance is subject to their discretion only.

Pro bono legal assistance is also given by 2nd and 3rd year legal students under the guidance of the Estonian Lawyers Union. Ad hoc legal aid days are arranged regularly in Tallinn in cooperation with the city government.

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.)?

To apply for the state-sponsored pro bono legal assistance, you would have to fill in the contact form found on the web page of HUGO.legal. According to the scheme, any individual living in Estonia whose monthly total income is below €1,700 may apply for pro bono assistance and will receive legal advice in the amount of 2 hours for free. After the first two hours, the next 3 hours of legal aid would be €20/h and after these anyone is still entitled to 10 more hours of assistance with the hourly fee of €40/h. In practice, such volume of free and subsidised legal aid would be sufficient to only clarify legal remedies available. In the simplest of cases, the time may be sufficient to also prepare a draft claim to be submitted to the court. Several of the lawyers that offer such pro bono assistance also do it in English. However, none of the lawyers is member of the bar association. Also, none of them is specialised in environmental law.

1.3 Who should be addressed by the applicant for pro bono assistance?

Queries for pro bono assistance offered under the scheme subsidised by the Ministry of Justice should be made to the service provider – HUGO.legal.

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

A list of officially certified experts that can be used as expert witnesses in court proceedings is available here.

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

There are a number of national and local environmental NGOs. On the national level, the Estonian Council for Environmental NGOs (EKO) is an umbrella organisation for some of the largest and most active environmental organisations. In addition to members of EKO, Eesti Metsa Abiks is currently an active and fast-growing citizens’ movement mostly dealing with issues related to protection of forests. Estonian Society for Nature Conservation also is a national umbrella organisation, with local chapters of varying degree of activity.

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

International environmental NGOs are not active in Estonia, although several Estonian organisations are either members of international networks or in close cooperation with them (e.g. Estonian Green Movement is a member of FoEE, Estonian Ornithological Society a member of BirdLife, Estonian Fund for Nature cooperates with the WWF etc.).

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)

Administrative review

According to the Administrative Procedure Act, administrative challenges must be brought within 30 days of the day when the person either became aware or should have become aware of the challenged administrative act or measure.

Judicial review

Different time limits are applied to different actions that can be brought to the administrative court against environmental decisions. Annulment of an administrative environmental decision must be filed within thirty days after the date on which the administrative act was notified to the applicant. Notification within this context can also refer to public notification of issuing the environmental act. If the administrative decision was not notified to the applicant, yet the applicant learns of the administrative act in some other way, it should be challenged without unreasonable delay. What constitutes unreasonable delay will be decided on a case-by-case basis by the court. Usually it is up to 2 months from the learning of the existence of administrative decision.

If the option of administrative review was used before judicial review, you have 30 days from announcement of the review decision to challenge both the decision of the administrative review as well as the initial administrative decision in the administrative court.

Exceptionally, the deadline in which you can file an action is three years, if:

you seek compensation for damages caused by an administrative body,
you seek elimination of illegal effects of an administrative act,
you wish the administrative act to be declared illegal (without its annulment).

A prohibition action may be filed without a time-limit.

2) Time limit to deliver decision by an administrative organ

Administrative review decisions must be made within 10 days of delivery of the challenge. This term may be extended by up to thirty days if the challenge needs to be further examined.

3) Is it possible to challenge the first level administrative decision directly before court?
Generally, yes. The administrative review procedure is optional as a rule; i.e. administrative decisions may be challenged directly in court. However, there can be exceptions to that rule, for example the administrative review is obligatory before filing a court case in environmental liability issues that pertain to the national law transposing the ELD. Note that administrative decisions in Estonia do not have ‘levels’.

4) Is there a deadline set for the national court to deliver its judgment?
There is no general deadline set for courts to deliver their judgment, i.e. a deadline that would apply to the whole of court proceedings, beginning with bringing of the action by a party. However, as a rule, a judgment should be made and pronounced within 30 days after holding the last court hearing (or the due date for submissions if written proceedings are used). In practice this means that after the case has been studied and heard by the court, the judgment follows rather quickly.

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

Administrative review
Due to the short time limits for making a decision (10 days + option to extend it by up to 30 days) and relatively low level of formality, there are no internal deadlines for administrative review procedures.

Judicial review
The most important time limit during the procedures concerns the submission of evidence. As a rule, the court of first instance should set the final deadline for bringing new evidence. If this has not been set, the deadline to bring any new evidence is the same as bringing any new arguments, i.e. 7 days before the court hearing or 7 days before the due date for submissions. In any case, all evidence and factual claims should be brought as early in the proceedings as possible.

The time limit for bringing the appeal to circuit courts (2nd instance) and bringing the cassation action to the Supreme Court (3rd and final instance) is 30 days from the pronouncement of the judgment of the court of lower instance.

1.7.2. Interim and precautionary measures, enforcement of judgments

1) When does the appeal challenging an administrative decision have suspensive effect?
None of the appeals to administrative decisions have an automatic suspensive effect. To suspend the validity and performance of administrative acts, injunctive relief must be applied for.

2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?
During the administrative review procedures, the administrative authority may decide to suspend the validity of the decision being challenged on its own motion according to the general provisions of the administrative procedure act.

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?
A request for injunctive relief may be made by the person who has brought the administrative challenge to the administrative court also during administrative review procedures. In that case the court will decide whether to suspend the validity of the decision, but the legality of the decision will still be decided by the administrative authority carrying out the review procedures.

4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?
Without the introduction of injunctive relief, all administrative decisions remain valid and may be executed according to the decision irrespective of the appeals. As an exception to this rule, the administrative decision itself may foresee certain restrictions to the validity or performance of rights. In practice, this is very rare: in most cases, environmental administrative decisions become valid and may be acted upon immediately after proper notification.

5) Is the administrative decision suspended once challenged before court at the judicial phase?
Not automatically. In order to suspend the validity of the decision, injunctive relief must be provided by 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?
Courts may provide injunctive relief in different forms, including suspending the validity or enforcement of the decision challenged, prohibiting the addressee of the decision from engaging in the activity regulated in the decision (e.g. construction of a building, logging, mining etc.). Injunctive relief may be granted either based on the court’s own motion or based on the application of one of the parties.

Courts must assess whether injunctive relief is truly necessary for the protection of the applicant’s rights or to achieve the aim of the action, weigh different interests affected by injunctive relief measures and should apply only such measures that are proportional. However, there are no financial obligations attached to applying for injunctive relief (no deposit or similar instruments) and no claims for damages may be brought against a person who has applied for injunctive relief even if they lose the case.

Injunctive relief decisions are court orders, which can be appealed in higher courts. The deadline for appealing a court order is 15 days from the delivery of the court order. Only the state fee in the amount 15 euros is applied to the application of the injunctive relief.

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.

Administrative review
Administrative review is a no-cost or low-cost procedure. There are no administrative fees imposed on administrative challenges, nor will there be costs imposed to the challenger related to experts, other parties’ lawyers or anything else. On the other hand, if you use a lawyer to represent or assist you in administrative review procedures, you cannot ask those costs to be paid by the administrative authority or any other party, i.e. you must pay for them yourself even if the challenge is found to be justified. Neither can you be compensated for expenditures during the administrative review proceedings if you win the case at the next stage - in court.

Judicial review
If you bring an action to the administrative court, there are several costs that may be involved. Possible costs are divided into two general groups: court expenses (kohhtukulud) and extrajudicial expenses (kohvtuvalised kulud).

Court expenses are costs that are essential for hearing the matter: state fee (rigilõiv). These are very low in administrative matters, e.g. €15 for submitting an annulment action and €15 for application of injunctive relief, security for bringing cassation procedures in the Supreme Court (€25), and costs essential to the proceeding (e.g. costs related to witnesses, experts, interpreters and translators, obtaining evidence etc.). These can vary to a large degree, depending on the case. The costs may be substantial but usually the costs are modest.

Extrajudicial costs include costs that are not essential for hearing the matter, e.g.:
fees for legal advisers and contractual representatives,
those of the court the party...
In most cases, fees for contractual representatives (lawyers' fees) are the largest cost that may arise in environmental matters. Depending on the complexity of case, amount of evidence etc., lawyers' fees may be from around a five hundred euros to tens of thousands of euros in the court of first instance. According to the general court practice, compensated costs of the appeal and cassation proceedings cannot be higher than those in the first level proceedings.

2) Cost of injunctive relief/interim measure, is a deposit necessary?
If you apply for injunctive relief, a state fee of €15 must be paid. No deposit is required for applying for injunctive relief.

3) Is there legal aid available for natural persons?
In addition to pro bono legal aid subsidised by the Ministry of Justice (see 1.6.), state legal assistance (provided by members of the Bar association) is awarded to those natural persons who would not otherwise be able to afford legal aid. Whether the person is able to afford legal aid or would be subject to state legal assistance is decided by a court ruling, based on an application of the person asking for assistance. There are certain conditions for qualifying for assistance, based on the financial status of the person. The conditions for assistance are rather restrictive. For instance, the aid is not provided if the applicant could bear the costs of legal services at the expense of their existing property that can be sold without any major difficulties, except at the expense of certain assets specified in law. State assistance is also not provided if there are sufficient reasons to believe that the person’s participation in the court proceedings will not be successful.

Application for state legal assistance should include: proceedings for which exemption is applied for, applicant’s role in these proceedings as well as their main claims, basis for applicant’s claim or objection.

Natural persons also need to include a statement on their financial situation (as well as their family’s) and other documents proving that statement.

State legal assistance is not always for free; depending on the financial situation of the person, they may be required to partially cover the costs and/or cover the costs in instalments.

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?
In addition to natural persons, environmental NGOs (either from Estonia or other EU countries) may also receive state legal aid provided that: they apply for the aid in relation to their field of activity and aims, they would be unable to cover the costs on their own or do so in full amount.

Applying for and deciding if and to what extent the aid is given is similar to natural persons. Instead of statements of financial situation, a copy of the statute of that organization and the certified copy of the previous year’s annual report should be added to the application.

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

No.

6) Does the ‘loser party pays’ principle apply? How is it applied by courts, are there exceptions?
In principle, the ‘loser pays’ principle is applied. However, in administrative matters the courts generally do not require the costs of the administrative authority to be paid because the authority is expected to be able to handle typical disputes by itself using its own resources. Thus, if an administrative authority were to use attorneys from private law offices for representation, their costs would be in most cases ineligible. Only if the case is not related to the main field of activity and is very complicated can the costs of legal representation be imposed on the losing applicant. Nonetheless, the legal fees of third persons have to be borne. Typically, the addressee of an environmental decision (the developer) is a private company, which participates in the proceedings by way of a legal representative. If a natural person or an environmental NGO loses the case, they would have to, in principle, pay the legal fees and other court expenditures of the developer.

Administrative courts have discretionary powers to decide, which cost are “reasonable”. The court also may reduce the cost if bearing the cost would be manifestly unreasonable or unjust for the losing party. The national provisions do not specifically refer to environmental matters. However, the Supreme Court has ruled (starting with the judgment in case 3-3-1-67-14) that this discretion must be used, bearing in mind the obligations arising from Art 9(4) of the Aarhus Convention and relevant EU legislation (e.g. the EIA Directive). Case 3-3-1-67-14 concerned the mining of shale oil. The court found that it would be unjust to require full compensation of the legal fees of the developer by natural persons who challenged the administrative decision. This would also constitute a barrier to access to justice. According to the court, the individuals requested a court review of an act that intensively interferes with their basic rights (right to property, right to respect to private life and home, right to health), the individuals did not act in bad faith and the complaints were not manifestly unfounded. Mining activities have a significant impact on the environment and developers of such activities must ‘bear the necessity of the court review of environmental administrative acts’ RKHKO 15.12.2014, 3-3-1-67-14.

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 addition to state legal aid, administrative courts can exempt you from paying state fees and security as well as costs essential for the proceedings (e.g. costs related to witnesses, experts, obtaining evidence etc.). You can be exempted from these costs as a whole or only partially. Another option is that you do not have to pay them in advance at once (as is the rule), but can pay for them in instalments.

Applications for such exemption from costs and their review by courts is similar to applications for state legal assistance.

Cost-capping or similar instruments that would pre-emptively limit the amount of costs awarded to the winning side are not available in Estonia.

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?
National rules on environmental access to justice are mostly found in the Administrative Procedure Act, the Code of Administrative Court Procedure and the General Part of the Environmental Code Act, available in the online State Gazette.
Easy-to-read information on how to access judicial review procedures in administrative matters (including environmental matters) is available on the web page of Estonian Courts. Several other organisations also have materials and guidance available, including the provider of subsidised pro bono legal aid HUGO legal and NGO Estonian Environmental Law Centre.

2) During different environmental procedures how is this information provided? From whom should the applicant request information?
Both administrative authorities as well as administrative courts are obliged to assist individuals and organisations if this would be necessary for protection of their rights. For example, if a person is making claims that the court considers ineffective for the achievement of their objective, the court may suggest making differing claims. In practice, courts limit their guidance and assistance if applicants use professional legal aid.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?
The rules on information regarding access to justice are not specific to such sectors.

4) Is it obligatory to provide access to Justice Information in the administrative decision and in the judgment?
Both in administrative decisions as well as judgments (other than judgments of the Supreme Court) a reference to the ways and due dates for appeal must be indicated.

5) Is translation, interpretation provided to foreign participants? What are the rules applicable?
The language of administrative proceedings is Estonian. Participants in proceedings may request involvement of an interpreter or translator at their own expense unless an administrative authority resolves that they do not have to bear the cost. The administrative authority may establish a condition that the right granted to the person by an administrative act does not arise before the costs of involvement of the interpreter or translator are paid. In oral communication with officials a foreign language may be used by agreement of the parties. If an application, request or other document is submitted in a foreign language, the agency has the right to require translation. In principle, the agency has to respond in Estonian to the document in a foreign language. The reply is translated at the request of the person who submitted the document at the expense of the person. On agreement, the response to the document may be given in a foreign language understood by both parties.

Court proceedings are carried out only in Estonian, this means that all documents and statements must normally be translated or interpreted. Exceptionally, you may make statements in another language without translation or interpretation if you do not speak Estonian and all other parties understand your statements, if the court accepts it.

If you present a written statement or a document in a foreign language, the court will require it to be translated by you or arrange for its translation. Court will not require you to translate the document if it is unreasonable or complicated or impossible. If translation is required and you fail to provide a translation by the due date set by the court, the document or written statement may be disregarded. You may also ask the court to arrange for the translation (in that case you would still have to pay for the translation). If possible, court translators are used. For their services, you must pay a state fee.

If you do not speak Estonian, the court will include an interpreter in the proceedings on your application or on its own motion. If this cannot be done immediately, the court will require you to find an interpreter or a representative that speaks Estonian. If you do not do so within the deadline set by the court, your action may be disregarded. If this is unreasonable or complicated or impossible, the court may look for an interpreter itself. In any case, you will have to pay for the associated costs. If the court organizes interpretation of proceedings, court translators are used, if available.

1.8. Special procedural rules


Country-specific EIA rules related to access to justice

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

EIA screening decisions (i.e. decisions whether to carry out an EIA or not) is considered to be a "procedural act" (menetlustöiming) in a permitting procedure. Possibilities to bring an action against procedural acts is severely limited. In general, such acts can only be challenged together with the administrative act issued at the end of administrative procedure (e.g. environmental permit). Standalone challenges to procedural acts can exceptionally be brought if: it independently infringes your substantive rights (e.g. right to protection of health or property), or

the unlawfulness of the procedural act would inevitably lead to an administrative act that infringes your rights.

EIA screening decisions do not, as a rule, fall under these exceptions. According to the case law of the Supreme Court, the screening decisions cannot be independently challenged in the court of law as they do not bring about independent infringement of rights nor would inevitably lead to an administrative act. The effect that the screening decision had on anyone’s rights should be evaluated together with the final administrative decision. Consequently, generally there is no standing to challenge screening decisions independently.

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

Similar to EIA screening decisions, scoping decisions are procedural acts and cannot be challenged independently.

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

Administrative decisions on environmental projects can be challenged if these are considered to be administrative acts, i.e. individual (final) decisions that create, alter or end rights and obligation of persons. In a permitting procedure, where an EIA would be carried out, this would mean that decisions can be challenged after the permit has been issued – all of the decisions made within the permitting procedures can be questioned in such an action.

Regular deadlines apply for challenging administrative acts to which EIA requirements are applied. Administrative challenges must be brought within 30 days of the day when the person either became aware or should have become aware of the challenged administrative act or measure. Different time limits are applied to different actions that can be brought to the administrative court against environmental decisions. Annulment of an administrative environmental decision must be filed within thirty days after the date on which the administrative act was notified to the applicant. Notification within this context can also refer to public notification of issuing the environmental act. If the administrative decision was not notified to the applicant, yet the applicant learns of the administrative act in some other way, it should be challenged without unreasonable delay. What constitutes unreasonable delay will be decided on a case-by-case basis by the court but usually it is up to 2 months from the moment of getting information about the administrative decision.

If the option of administrative review was used before judicial review, you have 30 days from announcement of the review decision to challenge both the decision of the administrative review as well as the initial administrative decision in the administrative court. Exceptionally, the deadline in which you can file an action is three years, if:

you seek compensation for damages caused by an administrative body,
you seek elimination of illegal effects of an administrative act,
you wish the administrative act to be declared illegal (without its annulment).

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

Final authorisations can be challenged. In principle, only final authorisations may be challenged (procedural decisions made during the course of the administrative procedures prior the final decisions can be independently challenged on a very limited grounds). Conditions to challenge such a final authorisation (e.g. environmental permit) are the same as for all environmental administrative acts.

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

Judicial review of EIA-related decisions covers both substantive as well as procedural legality. However, the courts do not independently re-evaluate the conclusions of EIA experts. If a judge or a panel of judges have doubts about the conclusions presented in the EIA report, they can include an expert in the proceedings, either on the application of parties or on their own motion. Courts are not allowed to change the claims or arguments brought by the parties on their own motion, however they are obliged to draw parties’ attention to situations where they make claims that are not coherent with their objectives or fail to make claims that would be necessary for reaching such objectives. Sometimes courts do interpret unclear claims but in these cases the court asks the parties to confirm the court’s interpretation.

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

Decisions, acts or omissions are, as a rule, challengeable together with the final administrative act (e.g. permit), after this has been issued.

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

No, administrative review is usually optional and only in few cases law provides it before the right to court proceedings is granted.
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?

No. Participation in administrative procedures is not a precondition to have standing to challenge the administrative act in national courts.

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

General requirements apply. In administrative matters, the judges have a more proactive role than in civil or criminal matters, which have an adversarial nature. The administrative court review is based on principles of disposition, investigation and explanation. The court may only adjudicate a matter to the extent requested in the action or other declaration provided in the law. The resolution of such declarations is in the discretion of participants of the proceedings. The court must, on its own motion, make sure that facts are ascertained that are material to the matter dealt with, where necessary by gathering evidence itself, or by imposing the obligation of presenting evidence on participants of the proceedings. The court interprets and deals with declarations of participants in the proceedings according to the actual intention of the participant who made the declaration. At every stage of the proceedings, the court must provide sufficient explanation to participants in the proceedings to guarantee that no declaration or evidentiary item necessary to protect a participant’s interests remains unrecognized because of the participant’s lack of experience in legal matters and that any defects of form that would prevent a declaration from being heard are resolved. In relation to every issue material to determining the matter, the courts must guarantee participants of the proceedings an effective and equal opportunity to present their views and the grounds for those views, and to contest the other participants’ views or to support the same.

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

There are no specific rules in the national legislation to ensure that judicial remedies are “timely” in EIA cases. In essence, the rather wide margin of discretion given to the judges in administrative matters to carry out procedures should ensure that the procedures are carried out with as little time and cost as possible, while at the same time ensuring proper review of challenged decisions, acts and omissions. In practice, the timeliness of judicial review is dependent on the workload of judges and their use of the discretion awarded by the Administrative Court Procedure Act. The court has a general obligation noted in law to deal the administrative matter within a reasonable period of time.

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 according to rules that are generally applicable to administrative court procedures; no special rules apply to EIA-related court cases.

Request for injunctive relief may be made by the person who has brought the administrative challenge to the administrative court also during administrative review procedures. In that case the court will decide whether to suspend the validity of the decision, but the legality of the decision will still be decided by the administrative authority carrying out the review procedure. Courts may provide injunctive relief in different forms, including suspending the validity or enforcement of the decision challenged, prohibit the addressee of the decision to engage in the activity regulated in the decision. Injunctive relief may be granted either based on the court’s own motion or based on the application of the applicant.

Courts must assess whether injunctive relief is truly necessary for the protection of the applicant’s rights or to achieve the aim of the action, weigh different interests affected by injunctive relief measures and should apply only such measures that are proportional. There are no financial obligations attached to applying for injunctive relief (no deposit or similar instruments) in administrative court procedure (here is a difference with the civil procedure) and no claims for damages may be brought against a person who has applied for injunctive relief even if they lose the case.

Injunctive relief decisions are court orders, which can be appealed in higher courts. The deadline for appealing a court order is 15 days from the delivery of the court order.

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

There are no rules on access to justice in Estonia that would be specific and unique to the decisions made under the IPPC/IED Directives. Therefore, all of the rules applicable to environmental decisions apply.

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?

Standing rules for IPPC/IED cases are the same as for any other environmental decisions.

Standing rules for court review and administrative review are the same, both for natural and legal persons. Standing is rights-based, i.e. you can only challenge an environmental administrative decision if and to the extent it breaches your individual rights. Standing of environmental NGOs is also technically based on the violation of subjective rights of the environmental NGO but the violation is presumed provided the contested administrative decision is related to the environmental protection goals or the current environmental protection activities of the NGO. See 1.4.3 for the national definition of “environmental NGO”.

It should be noted that as a rule only the final decision (issuing of the integrated environmental permit) can be challenged. Procedural steps preceding the permits may not be individually challenged. Instead, the legality of procedural steps is assessed in the administrative or judicial review of the final decision.

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

Screening decisions are considered to be a “procedural acts” (menetlustöiming) in a permitting procedure. Possibilities to bring an action against procedural acts is limited. In general, such acts can only be challenged together with the administrative act issued at the end of administrative procedure (permit). Standalone challenges to procedural acts can exceptionally be brought if:

- it independently infringes your substantive rights (e.g. right to protection of health or property), or
- the unlawfulness of the procedural act would inevitably lead to an administrative act that infringes your rights.

Screening decisions do not, as a rule, fall under these exceptions. According to the case law of the Supreme Court, the screening decisions cannot be independently challenged in the court of law as they do not bring about an independent infringement of rights nor would inevitably lead to an administrative act. The effect that the screening decision had on anyone’s rights should be evaluated together with the final administrative decision. Consequently, generally there is no standing to challenge screening decisions independently.

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

Scoping decisions are procedural acts in a permitting procedure. Possibilities to bring an action against procedural acts is limited. In general, such acts can only be challenged together with the administrative act issued at the end of administrative procedure (permit). Standalone challenges to procedural acts can exceptionally be brought if:

- it independently infringes your substantive rights (e.g. right to protection of health or property), or
- the unlawfulness of the procedural act would inevitably lead to an administrative act that infringes your rights.

Scoping decisions do not, as a rule, fall under these exceptions.

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

In most cases, the public can challenge the administrative decisions after they are finalized. General deadlines apply. Administrative challenges must be brought within 30 days of the day when the person either became aware or should have become aware of the challenged administrative act or measure. Different time limits are applied to different actions that can be brought to the administrative court against environmental decisions.
administrative environmental decision must be filed within thirty days after the date on which the administrative act was notified to the applicant. Notification within this context can also refer to public notification of issuing the environmental act. If the administrative decision was not notified to the applicant, yet the applicant learns of the administrative act in some other way, it should be challenged without unreasonable delay. What constitutes unreasonable delay will be decided on a case-by-case basis by the court.

If the option of administrative review was used before judicial review, you have 30 days from announcement of the review decision to challenge both the decision of the administrative review as well as the initial administrative decision in the administrative court. Exceptionally, the deadline in which you can file an action is three years, if:

- you seek compensation for damages caused by an administrative body,
- you seek elimination of illegal effects of an administrative act,
- you wish the administrative act to be declared illegal (without its annulment).

6) Can the public challenge the final authorisation?

General rules apply. The final authorisation can be challenged. In principle, only the final authorisation may be challenged (procedural decisions made during the course of the administrative procedures prior the final decisions can be independently challenged on very limited grounds).

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?

Judicial review of IPPC/IED-related decisions covers both substantive as well as procedural legality. The permit may be annulled both for significant procedural errors as well as if it breaches substantive legal norms.

Courts are not allowed to change the claims or arguments brought by the parties on their own motion, however they are obliged to draw parties’ attention to situations where they make claims that are not coherent with their objectives or fail to make claims that would be necessary for reaching such objectives.

8) At what stage are these challengeable?

As a rule, only final decisions may be challenged. Procedural steps (acts and omissions) can usually be challenged together with the final decision and will be reviewed together with the latter.

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

No, administrative review is optional.

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?

No. Participation in administrative procedures is not a precondition to have standing to challenge the administrative act in national courts.

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

General requirements apply. In administrative matters, the judges have a more proactive role than in civil or criminal matters, which have an adversarial nature. The administrative court review is based on principles of disposition, investigation and explanation. The court may only adjudicate a matter to the extent requested in the action or other declaration provided in the law. The filing of such declarations is at the discretion of participants in the proceedings. The court must, on its own motion, make sure that facts are ascertained that are material to the matter dealt with, where necessary by gathering evidence itself, or by imposing the obligation of presenting evidence on participants of the proceedings. The court interprets and deals with declarations of participants in the proceedings according to the actual intention of the participant who made the declaration. At every stage of the proceedings, the court must provide sufficient explanation to participants in the proceedings to guarantee that no declaration or evidentiary item necessary to protect a participant’s interests remains unrecognized because of the participant’s lack of experience in legal matters and that any defects of form that would prevent a declaration from being heard are resolved. In relation to every issue material to determining the matter, the courts must guarantee participants of the proceedings an effective and equal opportunity to present their views and the grounds for those views, and to contest the other participants’ views or to support the same.

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

There are no specific rules in the national legislation to ensure that judicial remedies are “timely” in IPPC/IED cases. In essence, the rather wide margin of discretion given to the judges in administrative matters to carry out procedures should ensure that the procedures are carried out with as little time and cost as possible, while at the same time ensuring proper review of challenged decisions, acts and omissions. In practice, the timeliness of judicial review is dependent on the workload of judges and their use of the discretion awarded by the Administrative Court Procedure Act. The court has a general obligation noted in law to deal the administrative matter within reasonable period of time.

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, general rules apply. Request for injunctive relief may be made by the person who brought the administrative challenge to the administrative court also during administrative review procedures. In that case the court will decide whether to suspend the validity of the decision, but the legality of the decision will still be decided by the administrative authority carrying out the review procedures. Courts may provide injunctive relief in different forms, including suspending the validity or enforcement of the decision challenged, prohibit the addressee of the decision to engage in the activity regulated in the decision. Injunctive relief may be granted either based on the court’s own motion or based on the application of the applicant. Courts must assess whether injunctive relief is truly necessary for the protection of the applicant’s rights or to achieve the aim of the action, weigh different interests affected by injunctive relief measures and should apply only such measures that are proportional. However, there are no financial obligations attached to applying for injunctive relief (no deposit or similar instruments) and no claims for damages may be brought against a person who has applied for injunctive relief even if they lose the case.

Injunctive relief decisions are court orders, which can be appealed in higher courts. The deadline for appealing a court order is 15 days from the delivery of the court order.

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

No special arrangements have been made to provide information on access to justice for IPPC/IED cases. National rules on environmental access to justice are mostly found in the Administrative Procedure Act, the Code of Administrative Court Procedure and the General Part of the Environmental Code Act, available in the online State Gazette.

Easy-to-read information on how to access judicial review procedures in administrative matters (including environmental matters) is available on the web page of Estonian Courts. Several other organisations also have materials and guidance available, including the provider of subsidised pro bono legal aid HUGO.legal and NGO Estonian Environmental Law Centre.

1.8.3. Environmental liability

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?
Decisions made under the ELD rules may be challenged like any other environmental decisions. Standing rules for court review and administrative review are the same, both for natural and legal persons. Standing is rights-based, i.e. you can only challenge an environmental administrative decision if and to the extent it breaches your individual rights. Standing of environmental NGOs is also technically based on the violation of subjective rights of the NGO but the violation is presumed provided the contested administrative decision is related to the environmental protection goals or the current environmental protection activities of the NGO. See 1.4.3 for the national definition of “environmental NGO”.

2) In what deadline does one need to introduce appeals?
General deadlines apply. Administrative challenges must be brought within 30 days of the day when the person either became aware or should have become aware of the challenged administrative act or measure. Different time limits are applied to different actions that can be brought to the administrative court against environmental decisions. Annulment of an administrative environmental decision must be filed within thirty days after the date on which the administrative act was notified to the applicant. Notification within this context can also refer to public notification of issuing the environmental act. If the administrative decision was not notified to the applicant, yet the applicant learns of the administrative act in some other way, it should be challenged without unreasonable delay. What constitutes unreasonable delay will be decided on a case-by-case basis by the court. If the option of administrative review was used before judicial review, you have 30 days from announcement of the review decision to challenge both the decision of the administrative review as well as the initial administrative decision in the administrative court. Exceptionally, the deadline in which you can file an action is three years, if:
- you seek compensation for damages caused by an administrative body,
- you seek elimination of illegal effects of an administrative act,
- you wish the administrative act to be declared illegal (without its annulment).

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 specific requirements as to the content of request for action. The request should include ‘relevant information’ on environmental damage or threat of damage. The national law does not define the information further.

4) Are there specific requirements regarding ‘plausibility’ for showing that environmental damage occurred, and if yes, which ones?
No, there are no specific requirements regarding plausibility of the request for action.

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 Environmental Board must notify the person who requested action immediately of their justified decision on the request and include a copy of its decision. The generally applicable time limit for making such a decision is 30 days from receiving a request. If this time limit cannot be followed because the authority has not received a necessary expert assessment or similar (objective) reason, the Board will notify the person who requested action of the delay, including information on what steps have been taken to review the request and when the decision will be made and communicated.

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?
Action may be requested both in case of damage as well as imminent threat of damage. The same rules apply to both the requests as well as how they are handled by the competent authority.

7) Which are the competent authorities designated by the MS?
The Environmental Board (Keskkonnaamet) is the competent authority as regards rules for environmental liability.

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?
According to the Environmental Liability Act, an administrative challenge must be submitted to the Ministry of Environment before an action can be brought in the administrative court. The Ministry has 30 days to review the challenge. In other aspects, general rules for administrative review procedures apply, see 1.7. for the details of the general rules.

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?
Based on the non-discrimination principle provided in EU law, Estonian rules on access to justice on environmental matters do not discriminate against natural or legal persons from other EU countries. This means that essentially the same rules apply as regards standing – both personal (who can challenge) as well as material (which decisions and when can be challenged) for other countries. (For more information on standing, see 1.4.). Special rules apply to notifying the other countries in the case of projects subject to EIA that may have significant transboundary effects. In such a case, the affected country’s authorities will be notified by the Ministry of Environment and if the affected country deems it necessary, details of public participation will be agreed upon. In the case of projects that are subject to integrated environmental permits (under the IED Directive) and have transboundary effects, the affected state’s government has to be notified and consulted.

As a rule, only administrative acts, i.e. final decisions such as environmental permits, may be challenged. Therefore, administrative decisions made in the course of administrative proceedings, such as the decisions regarding the EIA procedures, may be challenged only together with the final decision.

2) Notion of public concerned?
The notion of “public concerned” is applied to natural and legal persons from other countries in the same manner as they are applied to Estonian natural and legal persons. Essentially that means that administrative procedures are either open to everyone (in case of open proceedings) or at least those persons whose rights or obligations would be affected by the administrative decision must be included in the proceedings.

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)?
Foreign NGOs have standing against decisions made by Estonian authorities in Estonian administrative courts (as the 1st instance). The standing of NGOs, including foreign NGOs, that meet the national definition of environmental NGO is presumed if the decision is related to their environmental aims or field of activity. See 1.4.3 for the national definition of “environmental NGO”.
An action should be brought to the administrative courts within 30 days of the delivery of the administrative act (or without unreasonable delay if the act was not delivered but the NGO learnt of its existence in some other way).
Legal aid, injunctive relief and pro bono assistance to foreign NGOs are available according to the same conditions that would be applicable to Estonian NGOs, see 1.7.2 and 1.7.3.

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 have standing against decisions made by Estonian authorities in Estonian administrative courts (as the 1st instance) if the decision breaches their individual rights (e.g. right to ownership, protection of health or similar).
Procedural assistance is according to the same rules as it is available to Estonian citizens, see 1.4. Additionally, residents of other countries wishing to be provided with state legal aid, must provide a statement of their last three years’ income from a competent authority of the country of their residence (unless it cannot be reasonably acquired, in which case the court may decide on the provision of state legal aid without the statement).

5) At what stage is the information provided to the public concerned (including the above parties)?
According to the national EIA rules, the country concerned is informed by the scoping phase of the procedure by the Estonian Ministry of the Environment. The national law is based on the presumption that the involvement of the public of another country and the specific arrangements for the involvement are within the discretion of the other country. The public of another country will not be involved if the other country informs the Ministry that it does not intend to participate or the country does not respond. If the other country gives notice of the intention to participate, then the Ministry of Environment is required to reach an agreement on:
- the procedure and actual schedule of the consultations,
- provision of information to the public and agencies of the affected state and allowing them sufficient time for the submission of opinions on the environmental impact assessment programme and report,
- the time when the proposals, objections and questions received in the course of the environmental impact assessment are submitted to the affected state for obtaining an opinion,
- the drafts of the decisions which must be submitted to the affected state for obtaining an opinion.

6) What are the timeframes for public involvement including access to justice?
The national law does not specify the timeframes for public involvement of another country because the national law is based on the presumption that the specific arrangements for the involvement are within the discretion of the other country. Note, however, that the national law stipulates that the agreement with the other country on consultations has to foresee sufficient time to the public of the affected state for submission of opinions on the environmental impact assessment programme and report. It should also be noted that anyone can participate in the relevant national EIA procedures, including members of the public of another country.

The national law does not set out access to justice rules specific to cross-boundary impact assessment. In principle, members of the public of another country have standing on the same grounds as members of the public of Estonia, see 1.4.

7) How is information on access to justice provided to the parties?
There are no special rules nor practice on providing information on access to justice to foreign parties. As a general rule, any administrative act must also include a reference to how it can be challenged either by means of administrative review or in courts.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?
The national law does not specifically regulate translation and interpretation in the context of cross-boundary impact assessment. According to the general rules the language of administrative proceedings is Estonian. Participants in proceedings may request involvement of an interpreter or translator at their own expense unless an administrative authority resolves that they do not have to bear the costs. The administrative authority may establish a condition that the right granted to the person by an administrative act does not arise before the costs of involvement of the interpreter or translator are paid. In oral communication with officials a foreign language may be used by agreement of the parties. If an application, request or other document is submitted in a foreign language, the agency has the right to require translation. In principle, the agency has to respond in Estonian to the document in a foreign language. The reply is translated at the request of the person who submitted the document at the expense of that person. On agreement, the response to the document may be given in a foreign language understood by both parties. According to the representative of the Ministry of the Environment, relevant documents are translated in cross-border EIA in practice (into English, Latvian or Russian).

Court proceedings are carried out only in Estonian, this means that all documents and statements must normally be translated or interpreted. Exceptionally, you may make statements in another language without translation or interpretation if you do not speak Estonian and all other parties understand your statements and the court permits it.

If you present a written statement or a document in a foreign language, the court will require it to be translated by you or arrange for its translation. Court will not require you to translate the document if it is unreasonably complicated or impossible. If translation is required and you fail to provide a translation by the due date set by the court, the document or written statement may be disregarded. You may also ask the court to arrange for the translation (in that case you would still have to pay for the translation). If possible, court translators are used. For their services, you must pay a state fee.

If you do not speak Estonian, the court will include an interpreter in the proceedings on your application or on its own motion. If this cannot be done immediately, the court will require you to find an interpreter or a representative that speaks Estonian. If you do not do so within the deadline set by the court, your action may be disregarded. If this is unreasonably complicated or impossible, the court may look for an interpreter itself. In any case, you will have to pay for the associated costs. If the court organizes interpretation of proceedings, court translators are used, if possible.

9) Any other relevant rules?
There are no other relevant rules.

[1] Note that references to the Supreme Court decisions begin with capital letters RK (meaning the Supreme Court, Riigikohus in Estonian) followed by a certain combination of capital letters, which denote the Chamber that made the decision. For instance, the decisions of the Administrative Chamber are referred to as RKHK.
[2] 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 Directive[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?
Standing rules are the same for administrative review and administrative court review and for all environmental decisions, regardless of which exact legal act was the basis for the decision. Spatial planning (including challenges to the SEAs related to such plans) is an exception. Certain spatial planning decisions may be challenged by anyone on the grounds of being contrary to public interests (actio popularis). The plans include local (municipal level) spatial plans as well as the national designated plans. The latter type is used for building construction work, which has significant spatial impact and whose chosen location or whose functioning elicits significant national or international interest. A national designated spatial plan is prepared, above all, to express interests which transcend the boundaries of individual counties in the fields of national defence and security, energy supply, the transport of gas, waste management or for the expression of such interests in public water bodies and in the exclusive economic zone.

The general standing rules can be summarized as follows:

**Standing of natural persons and private legal entities other than environmental NGOs, e.g. regular NGOs, companies etc.** Standing is based on violation of subjective rights including the right to an environment that meets health and well-being needs, as provided by the General Part of the Environmental Code Act.

**Standing of environmental NGOs, i.e. the NGOs that meet the national definition.** Standing is based on the violation of subjective rights but the violation is presumed provided the contested administrative decision is related to the environmental protection goals or the current environmental protection activities of the NGO, see 1.4.3 for the national definition of “environmental NGO”.

**Ad hoc groups (groups that are not legal entities).** In general, ad hoc groups do not have standing. However, certain ad hoc groups qualify as environmental NGOs, see 1.4.3 for the national definition of “environmental NGO”.

**Foreign NGOs.** General criteria apply, that is, the criterion is violation of subjective rights but the violation of rights is presumed if the NGO meets the national definition of environmental NGO and provided that the contested administrative decision is related to the environmental protection goals or the current environmental protection activities of the organisation.

**Other.** State authorities may not challenge the activity of other state authorities, as they are not separate legal entities. However, local municipalities may challenge activities of other public authorities if their rights are violated. The same applies to other legal persons under public law, e.g. universities, public foundations etc.

General deadlines apply. Administrative challenges must be brought within 30 days of the day when the person either became aware or should have become aware of the challenged administrative act or measure. Different time limits are applied to different actions that can be brought to the administrative court against environmental decisions. Annulment of an administrative environmental decision must be filed within thirty days after the date on which the administrative act was notified to the applicant. Notification within this context can also refer to public notification of issuing the environmental act. If the administrative decision was not notified to the applicant, yet the applicant learns of the administrative act in some other way, it should be challenged without unreasonable delay. What constitutes unreasonable delay will be decided on a case-by-case basis by the court.

If the option of administrative review was used before judicial review, you have 30 days from announcement of the review decision to challenge both the decision of the administrative review as well as the initial administrative decision in the administrative court. Exceptionally, the deadline in which you can file an action is three years, if:

- you seek compensation for damages caused by an administrative body,
- you seek elimination of illegal effects of an administrative act,
- you wish the administrative act to be declared illegal (without its annulment).

Access to national courts is effective if the national law is applied by reviewing bodies in a manner which takes into account the principles (e.g. non-discrimination) and the overall purpose of the regulation. In practice, the complexity of the environmental cases and the cost of legal representation are significant hurdles for typical members of the public and environmental NGOs.

### 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? General rules apply. Both administrative review as well as judicial review cover procedural and substantive legality of challenged decisions, acts or omissions. The administrative review also covers “purposefulness” of the challenged decision. The courts are not allowed to reconsider value judgments of the administrative authorities. The review of legality by courts, however, also includes the review of whether the discretionary powers were correctly used by the authority (e.g. whether all relevant facts were identified and no manifest errors were made in weighing different interests).

### 3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? As a general rule, administrative review procedures are not compulsory, i.e. they are not required to be exhausted before filing an action in the court.

### 4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.? Participation in the administrative procedures is not a precondition to have standing in national courts.

### 5) Are there some grounds/arguments precluded from the judicial review phase? As noted above, judicial review of discretionary decisions is limited. The court cannot start to use the discretion given to authorities by laws but can only check whether these discretionary powers were used lawfully. This means that if significant mistakes in using discretion were made, the court cannot rectify this and make a new, fair and lawful decision itself. The court is also barred from re-evaluating value judgments of authorities.

### 6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction? General rules apply. In administrative matters, the judges have a more proactive role than in civil or criminal matters, which have an adversarial nature. The administrative court review is based on principles of disposition, investigation and explanation. The court may only adjudicate a matter to the extent requested in the action or other declaration provided in the law. The filing of such declarations is in the discretion of participants in the proceedings. The court must, on its own motion, make sure that facts are ascertained that are material to the matter dealt with, where necessary by gathering evidence itself, or by imposing the obligation of presenting evidence on participants in the proceedings. The court interprets and deals with declarations of participants in the proceedings according to the actual intention of the participant who made the declaration. At every stage of the proceedings, the court must provide sufficient explanation to participants in the proceedings to guarantee that no declaration or evidentiary item necessary to protect a participant’s interests remains unrecognized because of the participant’s lack of experience in legal matters and that any defects of form that would prevent a declaration from being heard are cured. In relation to every issue material to determining the matter, the courts must guarantee participants of the proceedings an effective and equal opportunity to present their views and the grounds for those views, and to contest the other participants’ views or to support the same.

### 7) How is the notion of “timely” implemented by the national legislation? There are no rules specific to the decisions, acts or omissions concerning specific activities falling within the scope of EU environmental legislation outside the scope of the EIA and IED Directives. In essence, the rather wide margin of discretion given to the judges in administrative matters to carry out procedures should ensure that the procedures are carried out with as little time and cost as possible, while at the same time ensuring proper review of challenged decisions, acts and omissions. In practice, the timeliness of judicial review is dependent on the workload of judges and their use of the discretion awarded by the Administrative Court Procedure Act. The court has a general obligation noted in law to deal the administrative matter within reasonable period of time.
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, general rules apply. Request for injunctive relief may be made by the person who brought the administrative challenge to the administrative court also during administrative review procedures. In that case the court will decide whether to suspend the validity of the decision, but the legality of the decision will still be decided by the administrative authority carrying out the review procedures. Courts may provide injunctive relief in different forms, including suspending the validity or enforcement of the decision challenged, prohibit the addressee of the decision to engage in the activity regulated in the decision. Injunctive relief may be granted either based on the court’s own motion or based on the application of the applicant.

Courts must assess whether injunctive relief is truly necessary for the protection of applicant’s rights or to achieve the aim of the action, weigh different interests affected by injunctive relief measures and should apply only such measures that are proportional. However, there are no financial obligations attached to applying for injunctive relief (no deposit or similar instruments) and no claims for damages may be brought against a person who has applied for injunctive relief even if they would lose the case.

Injunctive relief decisions are court orders, which can be appealed in higher courts. The deadline for appealing a court order is 15 days from the delivery of the court order.

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

General rules apply. Administrative review is a no-cost or low-cost procedure. Everyone bears their own costs. For instance, if you use a lawyer to represent or assist you in administrative review procedures you must pay for the service yourself even if the challenge is found to be justified.

If you bring an action to the administrative court, there are several costs that may be involved. Possible costs are divided into two general groups: court expenses (kohtukulus) and extrajudicial expenses (kohtulised külad). In practice, the greatest expense are fees for legal advisers and contractual representatives (which are classified as extrajudicial expenses). The loser pays principle applies. There is no cost capping. There is no express statutory reference to a requirement that cost should not be prohibitive. In administrative matters the courts generally do not require the costs of the administrative authority to be paid because the authority is expected to be able to handle typical disputes by itself using its own resources. Also, the courts also may reduce the cost of third parties (e.g. permit holder) that have to be compensated. For more details on the general rules, see 1.7.3.

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

Standing (both for administrative review as well as judicial review) related to procedures subject to the SEA Directive depends on the nature of the plan or programme for which the SEA was carried out:

If the SEA was carried out for a local (municipal) spatial plan or national designated spatial plan, anyone can challenge the spatial plan adopted together with its SEA on the grounds that it contravenes public interests (actio popularis);

In all other cases, the plan or programme and its SEA can only be challenged if a) the decision is considered to be an individual administrative act, i.e. it creates, terminates or changes subjective rights, and b) it breaches the right of the person bringing the challenge (breach of rights is presumed for environmental NGOs). The overwhelming majority of plans and programmes outside the above-mentioned spatial plans that are subject to SEA are not individual administrative acts and therefore cannot be challenged in administrative review or judicial review procedures.

Challenging omissions to adopt a plan or programme that is an administrative act follows a different logic. In such cases, the standing is firstly dependent on whether the omission could have breached a subjective right – this may also be theoretically relevant as regards those plans and programmes which are not administrative acts. Secondly, standing would depend on whether the authority had a clear obligation to act (or act in a certain manner).

General deadlines apply. Administrative challenges must be brought within 30 days of the day when the person either became aware or should have become aware of the challenged administrative act or measure. Different time limits are applied to different actions that can be brought to the administrative court against environmental decisions. Annulment of an administrative environmental decision must be filed within thirty days after the date on which the administrative act was notified to the applicant. Notification within this context can also refer to public notification of issuing the environmental act. If the administrative decision was not notified to the applicant, yet the applicant learns of the administrative act in some other way, it should be challenged without unreasonable delay. What constitutes unreasonable delay will be decided on a case-by-case basis by the court.

If the option of administrative review was used before judicial review, you have 30 days from announcement of the review decision to challenge both the decision of the administrative review as well as the initial administrative decision in the administrative court. Exceptionally, the deadline in which you can file an action is three years, if:

- you seek compensation for damages caused by an administrative body;
- you seek elimination of illegal effects of an administrative act;
- you wish the administrative act to be declared illegal (without its annulment).

Access to national courts is effective to the extent that the plans are administrative acts and provided that the national law is applied by reviewing bodies in a manner which takes into account the principles (e.g. non-discrimination) and the overall purpose of the regulation. In practice, the complexity of the environmental cases and the cost of legal representation are significant hurdles for typical members of the public and environmental NGOs.

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?

General rules apply. Both administrative review as well as judicial review cover procedural and substantive legality of challenged decisions, acts or omissions. The administrative review also covers “purposefulness” of the challenged decision. The courts are not allowed to reconsider value judgments of the administrative authorities. The review of legality by courts, however, also includes the review of whether the discretionary powers were correctly used by the authority (e.g. whether all relevant facts were identified and no manifest errors were made in weighing different interests).

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

As a general rule, administrative review procedures are not compulsory, i.e. they are not required to be exhausted before filing an action in the court.

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

Participation in the administrative procedures is not a precondition to have standing in national courts.

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, general rules apply. Request for injunctive relief may be made by the person who has brought the administrative challenge to the administrative court also during administrative review procedures. In that case the court will decide whether to suspend the validity of the decision, but the legality of the decision will still be decided by the administrative authority carrying out the review procedures. Courts may provide injunctive relief in different forms, including suspending the validity or enforcement of the decision challenged, prohibit the addressee of the decision to engage in the activity regulated in the decision. Injunctive relief may be granted either based on the court’s own motion or based on the application of the applicant. Courts must assess whether injunctive relief is truly necessary for the protection of applicant’s rights or to achieve the aim of the action, weigh different interests affected by injunctive relief measures and should apply only such measures that are proportional. However, there are no financial obligations attached to applying for injunctive relief (no deposit or similar instruments) and no claims for damages may be brought against a person who has applied for injunctive relief even if they would lose the case.

Injunctive relief decisions are court orders, which can be appealed in higher courts. The deadline for appealing a court order is 15 days from the delivery of the court order.

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

General rules apply. Administrative review is a no-cost or low-cost procedure. Everyone bears their own costs. For instance, if you use a lawyer to represent or assist you in administrative review procedures you pay for the service yourself even if the challenge is found to be justified.

If you bring an action to the administrative court, there are several costs that may be involved. Possible costs are divided into two general groups: court expenses (kohtukulud) and extrajudicial expenses (kohtuvälised kulud). In practice, the greatest expense are fees for legal advisers and contractual representatives (which are classified as extrajudicial expenses). The loser pays principle applies. There is no cost capping. There is no express statutory reference to a requirement that cost should not be prohibitive. In administrative matters the courts generally do not require the costs of the administrative authority to be paid because the authority is expected to be able to handle typical disputes by itself using its own resources. Also, the courts may reduce the cost of third parties (e.g. permit holder) that have to be compensated. For more details on the general rules, see 1.7.3.

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

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?

Standing related to administrative and judicial review of adopted plans and programmes depends on the nature of the plan or programme:

For plans and programmes that are considered administrative acts, i.e. which create, terminate or change the individual rights of any person, standing is awarded to those persons whose individual subjective rights have been breached (breach of rights is presumed for environmental NGOs). Plans and programmes may also be considered to be administrative acts only in part. Plans and programmes related to environment belonging to this category include spatial plans for small areas (detailed spatial plans) which are not subject to SEAs and protection rules for conservation areas, for example. The following questions and answers are relevant only for this category of plans and programmes.

The majority of plans and programmes that are subject to Article 7 of the Aarhus Convention are not considered administrative acts but internal administrative documents. As these plans and programmes do not have a direct effect on anyone’s rights, they can also not be challenged either by means of administrative or judicial review. Therefore, the following questions and answers are not relevant to this category.

Challenging omissions to adopt a plan or programme that is an administrative act follows a different logic. In such cases, the standing is firstly dependent on whether the omission could have breached a subjective right – this may also be theoretically relevant as regards those plans and programmes which are not administrative acts. Secondly, standing would be dependent on whether the authority had a clear obligation to act (or act in a certain manner).

General deadlines apply. Administrative challenges must be brought within 30 days of the day when the person either became aware or should have become aware of the challenged administrative act or measure. Different time limits are applied to different actions that can be brought to the administrative court against environmental decisions. Annulment of an administrative environmental decision must be filed within thirty days after the date on which the administrative act was notified to the applicant. Notification within this context can also refer to public notification of issuing the environmental act. If the administrative decision was not notified to the applicant, yet the applicant learns of the administrative act in some other way, it should be challenged without unreasonable delay. What constitutes unreasonable delay will be decided on a case-by-case basis by the court (usually up to two months).

If the option of administrative review was used before judicial review, you have 30 days from announcement of the review decision to challenge both the decision of the administrative review as well as the initial administrative decision in the administrative court. Exceptionally, the deadline in which you can file an action is three years if: you seek compensation for damages caused by an administrative body; you seek elimination of illegal effects of an administrative act; you wish the administrative act to be declared illegal (without its annulment).

Access to national courts is effective to the extent that the plans are administrative acts and provided that the national law is applied by reviewing bodies in a manner which takes into account the principles (e.g. non-discrimination) and the overall purpose of the regulation. In practice, the complexity of the environmental cases and the cost of legal representation are significant hurdles for typical members of the public and environmental NGOs.

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?

General rules apply. Both administrative review as well as judicial review cover procedural and substantive legality of challenged decisions, acts or omissions. The administrative review also covers “purposefulness” of the challenged decision. The courts are not allowed to reconsider purposefulness and value judgements of the administrative authorities. The review of legality by courts, however, also includes the review of whether the discretionary powers were correctly used by the authority (e.g. whether all relevant facts were identified and no manifest errors were made in weighing different interests).

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

As rule, administrative review procedures are not compulsory, i.e. they are not required to be exhausted before filing an action in the court.

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

Participation in the administrative procedures is not a precondition to have standing in national courts.

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, general rules apply. Request for injunctive relief may be made by the person who has brought the administrative challenge to the administrative court also during administrative review procedures. In that case the court will decide whether to suspend the validity of the decision, but the legality of the decision will still be decided by the administrative authority carrying out the review procedures. Courts may provide injunctive relief in different forms, including suspending the validity or enforcement of the decision challenged, prohibit the addressee of the decision to engage in the activity regulated in the decision. Injunctive relief may be granted either based on the court’s own motion or based on the application of one of the applicant.

Courts must assess whether injunctive relief is truly necessary for the protection of applicant’s rights or to achieve the aim of the action, weigh different interests affected by injunctive relief measures and should apply only such measures that are proportional. However, there are no financial obligations except state fee 15 euros attached to applying for injunctive relief (no deposit or similar instruments) and no claims for damages may be brought against a person who has applied for injunctive relief even if they would lose the case.

Injunctive relief decisions are court orders, which can be appealed in higher courts. The deadline for appealing a court order is 15 days from the delivery of the court order.

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

General rules apply. Administrative review is a no-cost or low-cost procedure. Everyone bears their own costs. For instance, if you use a lawyer to represent or assist you in administrative review procedures you must pay for the service yourself even if the challenge is found to be justified.

If you bring an action to the administrative court, there are several costs that may be involved. Possible costs are divided into two general groups: court expenses (kohtukulud) and extrajudicial expenses (kohtuvalised kulud). In practice, the greatest expense are fees for legal advisers and contractual representatives (which are classified as extrajudicial expenses). The loser pays principle applies. There is no cost capping. There is no express statutory reference to a requirement that cost should not be prohibitive. In administrative matters the courts generally do not require the costs of the administrative authority to be paid because the authority is expected to be able to handle typical disputes by itself using its own resources. Also, the courts also may reduce the cost of third parties (e.g. permit holder) that have to be compensated. For more details on the general rules, see 1.7.3.

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

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?

For plans and programmes that are considered administrative acts, i.e. which create, terminate or change the individual rights of any person, standing is awarded to those persons whose individual subjective rights have been breached (breach of rights is presumed for environmental NGOs). Plans and programmes may also be considered to be administrative acts only in part. Plans and programmes that are not administrative acts do not have a direct effect on anyone’s rights. Such plans and programmes cannot be challenged. Therefore, the following questions and answers are not relevant for this category.

Challenging omissions to adopt a plan or programme that is an administrative act follows a different logic. In such cases, the standing is firstly dependent on whether the omission could have breached a subjective right – this may also be theoretically relevant as regards those plans and programmes which are not administrative acts. Secondly, standing would be dependent on whether the authority had a clear obligation to act (or act in a certain manner). Note that the obligation may arise also from the Community law, as was provided by CJEU in case C-237/07 (Janecek).

General deadlines apply. Administrative challenges must be brought within 30 days of the day when the person either became aware or should have become aware of the challenged administrative act or measure. Different time limits are applied to different actions that can be brought to the administrative court against environmental decisions. Annulment of an administrative environmental decision must be filed within thirty days after the date on which the administrative act was notified to the applicant. Notification within this context can also refer to public notification of issuing the environmental act. If the administrative decision was not notified to the applicant, yet the applicant learns of the administrative act in some other way, it should be challenged without unreasonable delay. What constitutes unreasonable delay will be decided on a case-by-case basis by the court.

If the option of administrative review was used before judicial review, you have 30 days from announcement of the review decision to challenge both the decision of the administrative review as well as the initial administrative decision in the administrative court. Exceptionally, the deadline in which you can file an action is three years, if:

- you seek compensation for damages caused by an administrative body;
- you seek elimination of illegal effects of an administrative act;
- you wish the administrative act to be declared illegal (without its annulment).

Access to national courts is effective to the extent that the plans are administrative acts and provided that the national law is applied by reviewing bodies in a manner which takes into account the principles (e.g. non-discrimination) and the overall purpose of the regulation. In practice, the complexity of the environmental cases and the cost of legal representation are significant hurdles for typical members of the public and environmental NGOs.

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)?

The form for the plan or programme is immaterial. According to the long-established case law of the Supreme Court, classification of decisions as administrative acts is not dependent on what the act is called by the authorities but depends on their legal effects. As a practical example, detailed protection rules for nature conservation areas are adopted in the form of a Regulation (i.e. secondary legislative act), but they are considered to be at least in part administrative acts and can be challenged as such in courts or by means of administrative review.

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 rules apply. Both administrative review as well as judicial review cover procedural and substantive legality of challenged decisions, acts or omissions. The administrative review also covers “purposefulness” of the challenged decision. The courts are not allowed to reconsider value judgments of the administrative authorities. The review of legality by courts, however, also includes the review of whether the discretionary powers were correctly used by the authority (e.g. whether all relevant facts were identified and no manifest errors were made in weighing different interests).

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

As rule administrative review procedures are not compulsory, i.e. they are not required to be exhausted before filing an action in the court.

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

Participation in the administrative procedures is not a precondition to have standing in national courts.

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

Judicial review of discretionary decisions is limited. The court cannot exercise the discretion instead of the public authorities but can only check whether these discretionary powers were used lawfully. This means that if significant mistakes were made, the court cannot rectify this and make a new, fair and lawful decision itself. The court is also barred from re-evaluating value judgments of authorities.
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 to the applicants' position also leads to constitutional review by the Supreme Court.

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?

3) Are there special rules applicable to each sector apart from the general national provisions?

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.?

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, general rules apply. Request for injunctive relief may be made by the person who has brought the administrative challenge to the administrative court also during administrative review procedures. In that case the court will decide whether to suspend the validity of the decision, but the legality of the decision will still be decided by the administrative authority carrying out the review procedures. The courts may provide injunctive relief in different forms, including suspending the validity or enforcement of the decision challenged, prohibit the addressee of the decision to engage in the activity regulated in the decision. Injunctive relief may be granted either based on the court’s own motion or based on the application of the applicant. Courts must assess whether injunctive relief is truly necessary for the protection of applicant’s rights or to achieve the aim of the action, weigh different interests affected by injunctive relief measures and should apply only such measures that are proportional. However, there are no financial obligations attached to applying for injunctive relief (no deposit or similar instruments) and no claims for damages may be brought against a person who has applied for injunctive relief even if they would lose the case. Injunctive relief decisions are court orders, which can be appealed in higher courts. The deadline for appealing a court order is 15 days from the delivery of the court order.

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

General rules apply. Administrative review is a no-cost or low-cost procedure. Everyone bears their own costs. For instance, if you use a lawyer to represent or assist you in administrative review procedures you must pay for the service yourself even if the challenge is found to be justified. If you bring an action to the administrative court, there are several costs that may be involved. Possible costs are divided into two general groups: court expenses (kohtukulud) and extrajudicial expenses (kohtuvälised kulud). In practice, the greatest expense are fees for legal advisers and contractual representatives (which are classified as extrajudicial expenses). The loser pays principle applies. There is no cost capping. There is no express statutory reference to a requirement that cost should not be prohibitive. In administrative matters the courts generally do not require the costs of the administrative authority to be paid because the authority is expected to be able to handle typical disputes by itself using its own resources. Also, the courts also may reduce the cost of third parties (e.g. permit holder) that have to be compensated. For more details on the general rules, see 1.7.3.

7) Is it possible to bring a legal challenge before a national court concerning any related EU regulatory act with a view to a validity reference under Article 267 TFEU, and if so how?[6]

Legal challenges cannot be brought directly against EU regulatory acts to national courts. However, if reaching a judgment in the case brought against a national measure would be dependent on first determining the validity of acts adopted by the institutions, bodies, offices or agencies of the Union, a request for preliminary ruling may be made by national courts. Making such a request and its contents are in any case at the discretion of the national court; although any party of the proceeding can apply for such a request to be made, there is no mechanism to force the court to do so.

[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 fail 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

Inactivity of the administration

Inactivity of the administration may be challenged both by means of administrative as well as judicial review. In both cases, a challenge can only be brought against an authority if the authority has a statutory obligation to act. If the obligation to act is subject to discretion, only cases where the rules on exercise of discretion have been breached may be challenged.

Personal standing rules are the same as for any other administrative or judicial review procedure, i.e. only those persons whose rights are being breached have a standing to challenge the silence, whereas standing is presumed for environmental NGOs in cases related to their previous activity or aims.

A complaint to initiate an administrative review should be brought against silence of the administrative authority within 30 days of the knowledge of the inactivity. An action against passivity can be brought to an administrative court within 1 year of the statutory deadline set for the authority to act; or if no statutory deadline exists for this specific activity, within 2 years of the application to act made by the person bringing an action to court.

If the passivity of the administration has resulted in material or immaterial damages, an action to compensate the damages can also be brought to the administrative court.

The deadline for bringing such a case is 3 years from the date of learning about the damage.

Penalties for failing to provide effective access to justice

If the administrative authority fails to properly carry out the administrative review procedures, the decision can be reviewed and revoked by the administrative court. In addition to overturning the administrative review decision together with the initial administrative decision (e.g. an environmental permit) by the court, the administrative authority also risks claims for damages created by lack of effective access to justice.

Penalties for contempt of court

Failure to carry out an administrative court decision by either a private person or administrative body may result in a fine of up to €32,000. This penalty may be applied multiple times if the contempt of court continues even after a fine has been imposed.

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Access to justice in environmental matters - Ireland

To find out more about access to justice in environmental matters in Ireland, please take a look at:

1. Access to justice at Member State level
3. Other relevant rules on appeals, remedies and access to justice in environmental matters

1. Access to justice at Member State level

Ireland’s Parliament - the Oireachtas - is the national legislature empowered to make laws for the State. The Oireachtas consists of two Houses (Dáil Éireann (the lower house) and Seanad Éireann (the upper house)) plus the President of Ireland.

New primary legislation begins as a Bill. Bills are normally initiated by the government, although opposition bills - called Private Members’ Bills - are also possible, albeit less likely to make it onto the statute book.

A Bill may be commenced in either the Dáil or the Seanad but it must be passed by both Houses to become law. Before a government Bill is introduced to the Oireachtas, the contents of the Bill are approved by the government. Often there will be a consultation process with government departments and groups likely to be affected by the Bill. Once a Bill has successfully passed the parliamentary process, the Bill must then be signed by the President before it becomes an Act of the Oireachtas. Ireland’s Constitution (Bunreacht na hÉireann) provides the President with the power to refer certain Bills to the Supreme Court for a determination as to whether the Bill or any provision thereof is repugnant to the Constitution.

As well as primary legislation, Ireland also relies heavily on secondary legislation or ‘statutory instruments’ in the field of environmental law. Secondary legislation must be consistent with, and based on, legislation adopted by the Oireachtas. Thus, each statutory instrument will have a preamble citing its ‘enabling powers’, that is, the provision(s) of primary legislation under which the statutory instrument is made. Statutory instruments can take the form of orders, regulations, rules, etc. Hundreds are issued each year, in contrast to a much smaller number of Bills/Acts. If EU law requires transposition by Ireland, this is implemented by primary legislation or more usually by secondary legislation (statutory instrument) under the European Communities Act 1972.

If the government wishes to change the Constitution, it must first introduce the proposal to amend the Constitution as a Bill, which must pass the Oireachtas. Then the proposed change must be approved by way of a popular referendum allowing citizens to approve or reject the proposal by way of a majority vote.

Finally, local authorities are empowered to make bye-laws relating to anything within their remit by virtue of the Local Government Act 2001. Such bye-laws are not a prominent feature of environmental law in Ireland, which tends to be dominated by EU law, Acts of the Oireachtas, and statutory instruments, some of which are of course made in fulfilment of obligations under international law. Since Article 29.6 of Ireland’s Constitution provides that no international agreement forms part of the domestic law of the State except as may be determined by the Oireachtas, legislation must be put in place in order to give effect to international agreements in the domestic legal system.

Numerous pieces of UK legislation remain in force in Ireland dating from before the foundation of the Irish State in 1922, albeit again these are not a prominent feature in the environmental law field. Many of the pre-1922 laws which had no ongoing relevance to Ireland were repealed by the Statute Law Revision Acts 2005-2016. Further information on how laws are made in Ireland can be found here.

Texts of primary legislation (Acts of the Oireachtas) and secondary legislation are available via the Irish Statute Book website. The website generally carries the original text of the legislation as made, with subsequent amendments to each piece of legislation listed. In some cases the website provides a revised/consolidated version.

Bills (i.e. draft primary legislation) are available via the Oireachtas website.

Since Ireland has a common law system, in which both legislation and judicial decisions make up the national law, it is typically necessary to consult case law in addition to legislation in order to determine the current state of the law. Much case law can be found on the Courts Service’s website or on the websites of the Irish Legal Information Initiative (IRLII) and British and Irish Legal Information Institute (BAILII), though some judgments - particularly older judgments - are accessible only from subscription services or in hard copy.

Main elements of the fact sheet:

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

Environmental policy in Ireland is heavily influenced by EU law and international law, of course, with implementation and enforcement being the responsibility of various public authorities, including for example, central government, the EPA, the Gardaí (police) and local authorities (county councils, city councils). The Minister currently responsible for environmental issues (including matters relating to the Aarhus Convention, which Ireland ratified in 2012) is the Minister of the Environment, Climate and Communications. Several other Ministers have significant environmental responsibilities, including for instance the Minister of Housing, Local Government and Heritage (marine environment, water, planning, landscape, biodiversity and nature conservation), and the Minister of Agriculture, Food and the Marine (Common Agricultural Policy implementation, sea fisheries and aquaculture).

The Environmental Protection Agency (EPA) is responsible for inter alia environmental research development, monitoring, certain licensing regimes (e.g. Integrated Pollution Control (IPC) and Industrial Emissions (IED); waste; waste water discharges; genetically modified organisms (both contained use and deliberate release); emissions trading; volatile organic compounds; and dumping at sea). It also performs enforcement functions in certain areas of environmental law, alongside a wide range of other bodies, including other government agencies and local government.

There are over 30 national environmental NGOs in Ireland covering a wide range of policy areas, plus a number of regional and local organisations. Ireland’s national NGOs include, for example, An Taisce, The National Trust for Ireland (the oldest eNGO in Ireland, established in 1948), BirdWatch Ireland, Friends of the Earth Ireland, Friends of the Irish Environment, and the Irish Wildlife Trust. There are two complementary ‘umbrella organisations’ of environmental NGOs in Ireland: the Environmental Pillar and the Irish Environmental Network, the latter of which disburses core funding from the government.

Relatively broad standing rules (the rules on access to courts) exist for individuals and NGOs in Ireland. See the Supreme Court’s decision in Grace and Sweetman v An Bord Pleanála [2017] IESC 10 and the High Court’s decision in Conway v An Bord Pleanála [2019] IEHC 525 for a recent summary and discussion of the situation relating to individuals (more below).
The environmental rights of individuals and NGOs include the right to access environmental information which is held by or for public authorities, and such public authorities have a statutory duty, subject to the provisions of the [European Communities (Access to Information on the Environment) Regulations 2007 (S.I. 133 of 2007, as amended)](https://www.legislation.gov.ie/en/acts/1958-1998/1998/1998-A2240.html) (the AIE Regulations), to provide information and guidance to those seeking access to environmental information. There are also rights of early and effective public participation in environmental decision-making including around planning permission matters and licensing decisions (such as EPA decisions to grant waste and other licences), including the right to access all information relevant to the decision-making procedure and the right to be promptly informed of environmental decisions.

Individuals and NGOs also have the right to seek a review of decisions that have been made which may affect the environment, or regarding their right to access environmental information, including an administrative appeal (where this is available) and/or by way of judicial review (following an application for leave to bring proceedings) via the courts. The courts may make an order to quash a decision, to prohibit a body from taking certain actions, or more rarely, to require it to take specific actions, or to require a body to act where it has failed to do so.


The potential for litigants to be exposed to high litigation costs has proven one of the main barriers to accessing environmental justice in Ireland. The introduction of special costs rules in 2010/11 has certainly improved access to justice (more below), although progress in this regard has been gradual over the past decade as a result of uncertainty regarding the scope of these rules and resulting ‘satellite’ litigation to determine the scope. This form of cost protection does not, in any event, apply to all environmental litigation (discussed further below), and concerns also remain over the effectiveness of judicial remedies, and potential time delays for judgments, as noted in the [Environmental Governance Assessment on Ireland and the related country fiche](https://www.eea.europa.eu/publications/iee-assessment). For example, in November 2020 the Aarhus Convention’s Compliance Committee found in ACCC/C/2016/141 that by failing to put in place measures to ensure that the Office of the Commissioner for Environmental Information and the courts decide appeals regarding environmental information requests in a timely manner, Ireland fails to comply with the requirement in Article 9(4) of the Aarhus Convention to ensure timely procedures for the review of environmental information requests; and by maintaining a system whereby courts may rule that information requests fall within the scope of the [AIE Regulations](https://www.legislation.gov.ie/en/acts/1958-1998/1998/A2240.html) without issuing any directions for their adequate and effective resolution thereafter, Ireland fails to comply with the requirement in Article 9(4) of the Convention to ensure adequate and effective remedies for the review of environmental information requests.

In addition to the [Department of the Environment, Climate and Communications’](https://www.environnment.ie/) webpages on the Aarhus Convention, the Citizens’ Information website (a government initiative) has a [page on the Aarhus Convention](https://www.citizensinformation.ie/articles/29629) which describes the broad requirement for access to justice, including the judicial review process. This page directs readers to the [website of the Courts Service “for information on the court fees payable”](https://www.courts.ie/fee_charts/index.html). These court fees (e.g. stamp duty when a case commences) are however only a very small element of the costs of litigation in Ireland, and should not be confused with the legal fees that may be payable to an applicant’s own legal team and potentially the costs also payable to the opposing litigant in the event that the applicant’s case is unsuccessful.

The Citizens’ Information’s [Judicial review page](https://www.citizensinformation.ie/articles/29629) is probably the best currently available reference source for the public to consult regarding the potential costs of environmental litigation in practice and potential ways to ameliorate these costs (e.g. by way of ‘no win, no fee’ arrangements with lawyers) in order to provide improved access to justice. This said, the webpage’s summary of the special cost protection rules in s.50B PDA 2000 should now be read in light of the High Court’s judgment in [Heather Hill v. IEHC 186](https://www.iecourts.ie/ie/decisions/2019/IEHC_186.pdf), which extended cost protection in practice in the field of planning law (NB. this judgment has been appealed to the Court of Appeal).

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

The [Constitution of Ireland](https://www.senate.ie/ie/scrutiny/ourwork/constitutions/constitution.html) (Bunreacht na hÉireann), dating from 1937, does not contain any reference to the environment or to environmental rights. The European Convention on Human Rights (ECHR), to which Ireland is a Party, has effect in the domestic legal order via primary legislation, namely the European Convention on Human Rights Act 2003. The European Court of Human Rights has determined that a State’s positive obligations under Article 2 (right to life) ECHR may be violated with respect to environmental risks, and that Article 8 ECHR (the right to respect for the home, private and family life) may be engaged in respect of environmental pollution that impacts on enjoyment of the home. Article 6 (the right to a fair hearing) and Article 13 (right to an effective remedy) of the ECHR are also potentially relevant in the environmental protection context, as well as Articles 1 of the First Protocol to the ECHR (the right to property), for example. These rights also find expression in the Irish Constitution.

The fundamental rights of the citizen are guaranteed in Articles 40 to 44 of the Constitution. Article 40 provides that all citizens are to be held equal before the law and obliges the State to vindicate the personal rights of the citizen, including the right to life. The term “personal rights”, as interpreted by the courts, has led to the recognition and vindication of several rights not expressly provided for in the text of the Constitution. These ‘unenumerated rights’ include the right to bodily integrity, among others. In July 2020, in [Friends of the Irish Environment v Government of Ireland & Ors. [2020] IESC 49](https://www.iecourts.ie/ie/decisions/2020/IESC_49.pdf), the Supreme Court held that there is no unenumerated or derived constitutional right to a healthy environment in Ireland. There is no express (or explicit) right of access to justice in the Irish Constitution, but the courts have recognised an ‘unenumerated’ constitutional right of access to the courts, and a constitutional right to litigate: [Macauley v Minister for Posts and Telegraphs](https://www.iecourts.ie/ie/decisions/1966/IR_345.pdf) [1966] IR 345. The right to litigate is not absolute, however, and the State may place objectively justifiable and proportionate limitations on this right (e.g. by setting reasonable time limits within which proceedings must be brought). Parties to litigation are entitled to fair procedures, often described as “constitutional justice”, which has also been recognised by the courts as an unspecified constitutional right.

There is no express constitutional right to legal aid. However, the courts have recognised a constitutional right to legal aid where an accused is facing a serious criminal charge and is unable to fund legal representation from their own resources. As regards legal aid in civil cases, the courts have accepted that a constitutional right to civil legal aid may arise in limited circumstances as an aspect of the constitutional right of access to the courts and the right to fair procedures, where a plaintiff is not in a position to fund legal representation from their own resources. In [O’Donoghue v. Legal Aid Board & Others [2004 IEHC 413](https://www.iecourts.ie/ie/decisions/2004/IEHC_413.pdf)], for instance, the High Court found that the plaintiff’s constitutional right to civil legal aid had been infringed by the very long delay in granting her a certificate for legal aid. However, the precise parameters of any such rights have yet to be fully determined. Although the Legal Aid Scheme maintained by Ireland does, in principle, permit aid to be provided for environmental cases, in practice legal aid is only extremely rarely, if ever, provided for environmental litigation (see the Supreme Court at para 2.20 of [Conway v Ireland, the Attorney General & Ors [2017] IESC 13](https://www.iecourts.ie/ie/decisions/2017/IESC_13.pdf)). In the Conway case, the Supreme Court raised the possibility of an entitlement to legal aid pursuant to the Aarhus Convention and/or the Public Participation Directive (Directive 2003/35/EC), but the point did not fall to be determined on the facts of the case.

Article 29.6 of the [Constitution](https://www.senate.ie/ie/scrutiny/ourwork/constitutions/constitution.html) provides that no international agreement forms part of the domestic law of the State except as may be determined by the Oireachtas (meaning Ireland has what is known as a dualist legal system). This means that legislation must be put in place in order to give effect to international agreements in the domestic legal system. Ireland ratified the Aarhus Convention in June 2012 and the Convention entered into force for Ireland
in September 2012. As Ireland has a dualist legal system, it was necessary to transpose all provisions of the Convention into national law prior to ratification. In addition to specific transposition of the provisions of the Convention, section 8 of the Environment (Miscellaneous Provisions) Act 2011 provides that judicial notice must be taken of the Aarhus Convention.

3) Acts, Codes, Decrees, etc. - main provisions on environment and access to justice, national codes, acts
As noted above, due to Ireland’s dualist legal system, specific implementation measures were required to give effect to the Aarhus Convention in the domestic legal system. An implementation table totalling some 56 pages was completed on ratification of the Convention, listing the legislation used to implement the Convention in Ireland. The sheer volume of legislation cited makes the framework complex, lacking in clarity in certain respects, and difficult when it comes to public engagement with and understanding of the rules. Certain additional measures that have since been enacted are listed here on the Department of the Environment, Climate and Communications’ website.

For the access to information pillar the situation is relatively simple, in that Ireland has introduced one main statutory instrument – the European Communities (Access to Information on the Environment) Regulations 2007-2018 (S.I. 133 of 2007, as amended: consolidated version) – to transpose obligations under the AIE Directive (Directive 2003/4/EC). Ireland lists an additional eight pieces of transposing legislation in its notification of implementing measures to the European Commission.

On access to justice, the situation is more complex, not least because there is no horizontal EU access to justice directive. The two most significant pieces of national legislation in this area are section 50B of the Planning and Development Act 2000, and Part 2 of the Environment (Miscellaneous Provisions) Act 2011, both of which introduced new costs rules to apply in certain environmental cases, as well as (in the case of the 2011 Act) a requirement that judicial notice be taken of the Aarhus Convention, as noted above.

In terms of the public participation pillar under the Aarhus Convention, multiple pieces of legislation have been used to transpose the Public Participation Directive (Directive 2003/35/EC) into Irish law, including the integration of its requirements into Irish planning law and into legislation governing other environmental consents. Indeed, Ireland notified the European Commission of 71 separate pieces of legislation as its national transposition of the Directive. For example, in the planning system, members of the public may submit observations on planning applications and may appeal planning decisions to the An Bord Pleanála (Ireland’s Planning Appeals Board).

4) Examples of national case-law, role of the Supreme Court in environmental cases
As Ireland has a common law system (where both legislation and judicial decisions make up the national law), case law is highly relevant to the access to justice provisions of the Aarhus Convention. Many judgments can be found on the Courts Service’s website or on the websites of the Irish Legal Information Initiative (IRLII) and the British and Irish Legal Information Institute (BAILII), though some judgments - particularly older judgments - are accessible only from subscription services or in hard copy. A list of judgments related to access to information on the environment can be found here. The list below outlines a number of relevant rulings since the ratification of the Aarhus Convention by Ireland but is by no means comprehensive. More recent rulings have tended to be preferred here as they better represent the current state of the law and often discuss earlier jurisprudence:

- North East Pylon Pressure Campaign Ltd. & anor v An Bord Pleanála & ors (No.5) [2018] IEHC 622: interpretation of the special cost protection rules in section 50B of the Planning and Development Act 2000 and Part 2 of the Environment (Miscellaneous Provisions) Act 2011; conclusion that these provisions do “not fully give effect to the not-prohibitively-expensive principle that applies in all national environmental challenges within fields covered by EU environmental law”.
- Coffey and others v Environment Protection Agency [2013] IESC 31: on protective costs orders, including the question of the costs of a hearing to determine if a protective costs order will apply.
- Conway v Ireland, the Attorney General & ors [2017] IESC 13: reference to the Aarhus Convention Compliance Committee’s decisions; reference to a potential requirement for legal aid pursuant to the Aarhus Convention.
- Friends of the Irish Environment v Legal Aid Board [2020] IEHC 454: whether an environmental NGO that is a company is eligible for legal aid (answer: no). This judgment has been appealed to the Court of Appeal.
- Electricity Supply Board v Commissioner for Environmental Information & Lar Mc Kenna [2020] IEHC 190: meaning of environmental information.
- Right to Know CLG v Department of An Taoiseach [2018] IEHC 372: access to cabinet documents under access to information on the environment provisions.

Currently there are no specialist administrative or environmental courts in Ireland, and environmental cases are dealt with across the different courts, up to the level of the Supreme Court. However, the Programme for Government (2020) contains a commitment to establish a new Planning and Environmental Law Court managed by specialist judges, and to review and reform the judicial review system while adhering to EU law obligations under the Aarhus Convention.

The Supreme Court has the following functions:
- It hears appeals from the Court of Appeal if the Supreme Court is satisfied that: the decision involves a matter of general public importance, or in the interests of justice it is necessary that there is an appeal to the Supreme Court.
- It hears appeals directly from the High Court (called a “leapfrog appeal”) if the Supreme Court is satisfied that there are exceptional circumstances that call for a direct appeal to it. The Supreme Court must be satisfied that the decision involves a matter of general public importance, and/or
it is in the interests of justice.
It is a constitutional court, as it is the final decision-maker in interpreting the Constitution of Ireland.
It can end the President’s term of office, if five Supreme Court judges or more decide that a President has become permanently incapacitated.
It can check the constitutionality of a legislative Bill passed by both Houses of the Oireachtas where the Bill is referred to the Court by the President in accordance with Article 26 of the Constitution.
In the latter two functions, the Supreme Court has original jurisdiction, rather than appellate jurisdiction. Further information on the Supreme Court is available here.
In Ireland, consistency of jurisprudence is maintained through the doctrine of ‘stare decisis’, meaning that a court is generally bound by its own previous decisions and that lower courts are bound by the decisions of the higher courts.
The decisions of the Supreme Court (the final court of appeal in all civil and constitutional matters) bind all lower courts, including the High Court and Court of Appeal. In the Supreme Court, the doctrine of stare decisis is not rigidly applied, but the Court will not depart from a previous Supreme Court decision unless there are compelling reasons for doing so (and not simply because the current Supreme Court favours a different conclusion).
The general position is that an order of the Supreme Court is final and conclusive. However, where exceptional circumstances are established, the Supreme Court has jurisdiction to intervene and to interfere with its own order: Re Greendale Developments (No 3) [2000] 2 IR 514 and Abbeydrive Developments Ltd v An Bord Pleanála [2010] IESC 8.
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?
As discussed above, Article 29.6 of the Constitution provides that no international agreement forms part of the domestic law of the State except as may be determined by the Oireachtas. This provision means that legislation must be put in place in order to give effect to international agreements in the domestic legal system.
Given this dualist legal system, it was necessary for Ireland to give effect to all provisions of the Aarhus Convention in national law prior to ratification in 2012. In addition to the transposition of specific provisions, section 8 of the Environment (Miscellaneous Provisions) Act 2011 provides that judicial notice must be taken of the Aarhus Convention.
1.2. Jurisdiction of the courts
1) Number of levels in the court system
In Ireland, there are five distinct types of court, which operate in a hierarchy: the District Court, the Circuit Court, the High Court, the Court of Appeal and the Supreme Court. Each court deals with specific types of cases. When the Circuit Court deals with criminal matters it is known as the Circuit Criminal Court, and the High Court is known as the Central Criminal Court when it exercises its criminal jurisdiction. There is also a Special Criminal Court that deals with criminal cases that cannot adequately be dealt with by the ordinary courts (e.g. terrorist and organised crime cases). Information on the Irish courts system is accessible via the Citizens’ Information website, as well as on the Courts Service of Ireland’s website.
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)?
Articles 34 to 37 of Ireland’s Constitution deal with the administration of justice in general and outline the structure of the court system. Article 34.1 states that “Justice shall be administered in Courts established by law.” The Constitution outlines the structure of the court system as comprising a court of final appeal (the Supreme Court), a Court of Appeal, and courts of first instance which include a High Court (with original full jurisdiction in all criminal and civil matters) and courts of local and limited jurisdiction (the Circuit Court and the District Court) which are organised on a regional basis and deal with both criminal and civil matters.

Matterson (2010) explained that “Jurisdiction is a question of whether a court has a right to decide a particular case. As such, jurisdiction must be considered alongside competence, to ensure that a court has the right to deal with a case on both a formal and substantive level.”

In many cases, the only mechanism by which to challenge the decision of a public authority is by way of judicial review proceedings in the High Court. The High Court does not have regional divisions, though it hears certain types of actions (not judicial review) in several provincial locations at certain times of the year, and sits in provincial venues to hear appeals from the Circuit Court in civil and family law matters.

There is a doctrine that one must generally exhaust administrative remedies before leave will be granted by the High Court to pursue judicial review proceedings (for a discussion, see Simons 2014). While it is possible for an applicant to pursue judicial review proceedings in the High Court without first exhausting administrative appeal possibilities, often an applicant would be advised to pursue the administrative route first owing to the risk of being refused leave to bring the action for judicial review (or ultimately refused relief by the court exercising its discretion) for failing to exhaust administrative remedies before resorting to court.

However, if the available administrative review procedure is not capable of addressing the particular issue(s) arising, then there is nothing to prevent a litigant from proceeding directly to judicial review.
3) Specialities as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges
Criminal prosecutions in the environmental context are brought in the ordinary courts, in practice usually in the District Court for the area in which the offence was allegedly committed, with more serious offences being tried on indictment in the Circuit Court. The High Court exercising its criminal jurisdiction is known as the Central Criminal Court.
All civil planning and environmental litigation is dealt with by the ordinary courts. As such, there are currently no specialised environmental courts in Ireland, albeit the Programme for Government (2020) contains a commitment to establish a new Planning and Environmental Law Court managed by specialist judges.
In order to speed up the hearing of certain planning permission cases, the Commercial Planning and SID (Strategic Infrastructure Development) List of the High Court (the SID List) is responsible for hearing: (a) judicial reviews in relation to development defined as “strategic infrastructure development” or “strategic housing development”, and (b) planning cases admitted to the Commercial List. Cases in this SID List are subject to a special case management procedure before a judge who specialises in dealing with this list.

Practice Direction HC103). Planning law cases which do not fall within the definition of strategic infrastructure/strategic housing may be admitted to the Commercial List (and hence the SID List) provided that they meet the thresholds and criteria for entry to that List (set out in Order 63A of the Rules of the Superior Courts), including payment of a fee of £5,000. The size of this fee means that planning cases normally enter the Commercial List at a developer’s behest rather than at an individual’s or NGO’s.
Regarding the issue of judicial expertise, the recent Environmental Governance Assessment on Ireland noted that, from a brief review of relevant cases, the level of knowledge on planning issues is high, although there is less evidence of specific knowledge in wider environmental cases. As Ryall (2013)
noted, in judicial review proceedings the High Court reviews the legality of decisions, and under Irish law there is very limited judicial review of the substance or merits of planning and environmental decisions: see the discussion of judicial review on the basis of unreasonableness/irrationality in 1.2(4) below. The Governance Assessment cited [1993] 1 IR 39, which applies where the review is of a decision of a technical or skilled professional decision maker in the area of that special technical or skilled knowledge (see Denham J in the Supreme Court in Meadows v Minister for Justice, Equality and Reform [2010] 2 IR 701). Under this O’Keeffe test, the onus is on an applicant for judicial review to establish that the public authority decision-maker had “no relevant material” (cf. the mention of the Haipin case in 1.2(3) above) before it to support its decision and in default of the applicant so establishing, the court cannot reach a conclusion that the decision was unreasonable/irrational.

It has been determined in a number of cases that a greater level of scrutiny than O’Keeffe may potentially apply in planning/environmental cases, albeit accommodated within the existing judicial review regime: see Sweetman v An Bord Pleanála [2007] 2 ILRM 328, at 6.16 and 6.21; Klohn v An Bord Pleanála [2008] 2 ILRM 435, paras 18 and 19. In cases relating to fundamental rights, the courts apply a proportionality test (see Meadows v Minister for Justice, Equality and Reform [2010] 2 IR 701 and AAA & anor v Minister for Justice & ors [2017] IESC 80), providing for a more intensive form of review.

1.3. Organisation of justice at administrative and judicial level

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

There are a number of Government Departments responsible for the formation of policy and the development of legislation, including for example the Department of Housing, Local Government and Heritage, and the Department of the Environment, Climate and Communications. The implementation of planning and environmental law in Ireland is a matter for national bodies which have been established for that purpose. Planning authorities (i.e. local authorities) and An Bord Pleanála (ABP) are responsible for determining planning applications and, in the case of planning authorities, the preparation of development plans and forward planning.

ABP is responsible for the determination of planning appeals as well as the determination of applications for strategic housing development and strategic infrastructure development including major road and railway cases. It is also responsible for a range of other functions, a full list of which can be found here.

The EPA is an independent public body established under the Environmental Protection Agency Act 1992. The EPA is organised across five Offices: the Office of Environmental Sustainability; the Office of Environmental Enforcement; the Office of Evidence and Assessment; the Office of Radiological Protection and the Office of Communications and Corporate Services. On 1 August 2014, the Radiological Protection Institute of Ireland (RPii) merged with the EPA and the Office of Radiological Protection was established. The EPA is responsible for licensing waste facilities, including landfill sites, incinerators, waste transfer stations; large scale industrial activities such as pharmaceutical, cement manufacturing, power plants; some forms of intensive agriculture; the contained use and controlled release of Genetically Modified Organisms (GMOs); sources of ionising radiation; large petrol storage facilities; waste water discharges; and dumping at sea activities.

In terms of enforcement, the EPA is responsible for conducting an annual programme of audits and inspections of EPA licensed facilities; overseeing local authorities’ environmental protection responsibilities; supervising the supply of drinking water and enforcing urban wastewater licences in plants managed by Irish Water; working with local authorities and other agencies to tackle environmental crime by co-ordinating a national enforcement network (NIECE), targeting offenders and overseeing remediation; prosecuting those who breach certain environmental laws; promoting compliance and enforcing producer responsibility Regulations such as Waste Electrical and Electronic Equipment (WEEE) and batteries; enforcing Regulations such as chemicals (REACH, mercury & detergents), paints, hazardous substances (RoHS, PCBs & POPs), fluorinated greenhouse gases and ozone depleting substances; and coordinating the implementation of the National Hazardous Waste Management Plan.
The Commissioner for Environmental Information determines appeals relating to decisions by public authorities on requests for access to environmental information. The role was established by the European Communities (Access to Information on the Environment) Regulations 2007-2018. Similarly, administrative appellate bodies exist in other fields such as planning (ABP, mentioned above), aquaculture licensing, forestry, and in respect of certain nature conservation decisions - see 1.3(4) below.

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

There is a doctrine that one must generally exhaust administrative remedies before leave will be granted by the High Court to pursue judicial review proceedings (for a discussion, see Simons 2014). While it is possible for an applicant to pursue judicial review proceedings without first exhausting administrative appeal possibilities, often an applicant would be advised to pursue the administrative route first owing to the risk of being refused leave to bring the action for judicial review (or ultimately refused relief by the court exercising its discretion) for failing to exhaust administrative remedies before resorting to court.

However, if for example the available administrative review procedure is not capable of addressing the particular issue(s) arising, then there is nothing to prevent an applicant from proceeding directly to judicial review.

The European Communities (Access to Information on the Environment) Regulations 2007-2018 allow for an appeal to the High Court but only on a point of law and following an internal review by the public body at first instance and a subsequent appeal to the Commissioner for Environmental Information, which must be initiated no later than one month after the internal review decision (this may be extended in certain circumstances). It may also be possible to judicially review the public body or indeed the Commissioner if there is a breach of fair procedures or the request concerns a point of constitutional or EU law although an objection may be raised that there has been a failure to exhaust remedies: see, for example, Right to Know CLG v An Taoiseach [2020] IEHC 228. The Commissioner may refer any question of law arising in an appeal before him to the High Court for determination and must postpone making a decision until after the determination of the court proceedings.

The Wildlife Acts 1976 to 2018 provide that certain administrative decisions of the Minister may be appealed to the District Court. A person aggrieved by a refusal of the Minister to grant or renew a licence to hunt and kill with firearms may appeal the refusal (section 29). A person may appeal a decision of the Minister to refuse to grant or renew a wildlife dealer’s licence (section 48). Any person who is aggrieved by a seizure and detention under the Wildlife Act may also make an appeal (section 77).

The timeframe for a final ruling by the court is difficult to define precisely as it will depend on the length of time the court takes before hearing the case and delivering judgment and then whether that judgment is appealed, and if appealed from the High Court whether directly to the Court of Appeal or by way of a “leapfrog” appeal to the Supreme Court. Whether a reference to the Court of Justice of the European Union is made will also be relevant, of course: this adds around 15.5 months on average. The Courts Service’s latest statistics reveal the following:

In the High Court, judicial review cases in 2019 lasted on average 392 days from issue to disposal (p.100). (In the Commercial List, where cases are expedited, 1 week to 6 months for a hearing in the High Court from the first return date.)

In the Court of Appeal, in 2019 the average wait from when the appeal was entered in the court list to the hearing was 20 months (p.110). There is then of course a wait after the hearing for judgment.

In the Supreme Court, in 2019 the average wait from the determination of the leave application to the hearing of the appeal was 55 weeks (p.110). There is then of course a wait after the hearing for judgment.

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

There is no dedicated environmental court in Ireland, although as noted above the Programme for Government (2020) has committed to establish a new Planning and Environmental Law Court managed by specialist judges.

In order to speed up the hearing of certain planning permission cases, the Commercial Planning and SID (Strategic Infrastructure Development) List of the High Court (the SID List) is responsible for hearing: (a) judicial reviews in relation to development defined as “strategic infrastructure development” or “strategic housing development”, and (b) planning cases admitted to the Commercial List. Cases in this SID List are subject to a special case management procedure before a judge who specialises in dealing with this list (Practice Direction HC103). Planning law cases which do not fall within the definition of strategic infrastructure/strategic housing may be admitted to the Commercial List (and hence the SID List) provided that they meet the thresholds and criteria for entry to that List (set out in Order 63A of the Rules of the Superior Courts), including payment of a fee of €5,000. The size of this fee means that planning cases normally enter the Commercial List at a developer’s behest rather than at an individual’s or NGO’s.

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

Many environmental consent regimes in Ireland do not provide for an administrative appeal, such that the only recourse is to challenge a decision by way of judicial review in the High Court.

There is a right of appeal from a local authority’s planning permission decision to An Bord Pleanála (ABP) - Ireland’s independent Planning Appeals Board - where the decision is a planning decision under the Planning and Development Act 2000 (s.37 PDA 2000). Decisions on access to environmental information requests may be appealed to the Commissioner for Environmental Information, an independent appellate body at the national level (Article 12 of the European Communities (Access to Information on the Environment) Regulations 2007-2018).

Agriculture licensing decisions can be appealed to the Forestry Appeals Committee, a body appointed by the Minister for Agriculture (s.14A Agriculture Appeals Act 2001; and the Forestry Appeals Committee Regulations 2020, S.1. 418/2020).

Regulation 37 of the European Communities (Birds and Natural Habitats) Regulations 2011 provides that a person, who has an interest in land that is affected by an order of the Minister to restrict activities that could damage a Natura 2000 site, or by a decision by the Minister not to permit a derogation from such an order, may appeal the decision to an independent Appeals Officer. Further, a person affected by a decision of the Appeals Officer or the Minister may appeal to the High Court on a point of law from the decision within 28 days of receiving the decision of the Appeals Officer. There is no right of administrative appeal in respect of IED licences granted by the EPA. However, the EPA is required to issue a proposed determination whereby objections may be made followed by a final determination, and the EPA’s decision may be judicially reviewed.

In terms of enforcement, decisions of the District Court may be appealed to the Circuit Court for a full de novo hearing and decisions of the Circuit Court may be appealed to the High Court for a full de novo hearing. While most areas of environmental law attract an automatic right of appeal from the High Court to the Court of Appeal, judicial review decisions of the High Court in respect of planning law matters may only be appealed to the Court of Appeal if the High Court certifies that its decision involves a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken (section 50A, PDA 2000). This jurisdiction is strictly construed and both limbs of the test must be satisfied. Since the 33rd amendment to the Constitution, establishing the Court of Appeal in 2014, a “leapfrog appeal” application may be made by a party directly to the Supreme Court after the High Court proceedings. For leave to be granted, the Supreme
Court must be satisfied that there are exceptional circumstances warranting a direct appeal to it, and a precondition for the Supreme Court being so satisfied is the presence of either or both of the following factors: the decision involves a matter of general public importance or the interests of justice. These criteria are determined by a panel of three judges of the Supreme Court based on papers lodged seeking leave to appeal and any notice of response. As the Supreme Court noted in Grace & Sweetman v An Bord Pleanála & ors [2017] IESC 10, it is possible to envisage that there might be a case where the High Court quite correctly refused a certificate to appeal to the Court of Appeal (applying its “and” test) but the Supreme Court, without in any way disagreeing with the High Court, found that the constitutional threshold had been met (applying its “either or both” test). As the Supreme Court noted, the thresholds are not the same and the High Court’s certificate threshold is undoubtedly somewhat higher.


Some Acts and statutory instruments provide for referring a point of law or for an appeal on a point of law from an administrative body or tribunal to the High Court. For example, section 50(1) of the Planning and Development Act 2000 provides that An Bord Pleanála can refer a question of law to the High Court, and the AIE Regulations provide for an appeal on a point of law to the High Court. In addition, the District Court and Circuit Court may refer issues of law by way of a case stated procedure with, respectively, the High Court and the Court of Appeal.

There are no other extraordinary ways or means of appeal Apart from the restriction in s.50A(7) of the Planning and Development Act 2000, which requires - as an exception to the general automatic right of appeal to the Court of Appeal - that leave be obtained for appeals from the High Court in planning judicial review applications.

There are no separate or distinct national rules or practice directions on when the national courts should make preliminary references to the Court of Justice of the European Union (CJEU) under Art. 267 of the Treaty on the Functioning of the European Union. In the past, applicants have sought clarity regarding whether, for example, it is permissible in a planning judicial review for the High Court to decline to make a preliminary reference then decline to grant leave for an appeal.

Ireland’s courts have in recent years shown an increasing tendency to refer questions to the CJEU in the area of environmental law. See, for example: NEPPC (C-470/16), Grace & Sweetman v An Bord Pleanála (C-164/17), Klohn (C-167/17), People Over Wind & Sweetman v Coillte (C-323/17), Holohan v An Bord Pleanála (C-461/17), Friends of the Irish Environment CLG v An Bord Pleanála (C-254/19), Friends of the Irish Environment v Commissioner for Environmental Information (C-470/19).

In Holohan & Ors. v An Bord Pleanála [2017] IESC 268, it was held by the High Court that if a question of EU law which is not acte clair arises, there may be some reasons for considering that it might be more appropriate for it to be referred by the High Court rather than by an appellate court.

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

There is the option to pursue both mediation and arbitration in Ireland and these may be used as alternative dispute resolution mechanisms for environmental disputes and conflicts. Mediation is regulated by the Mediation Act 2017 and there are court rules for mediation in the District Court, Circuit Court and High Court. The Court may issue an invitation to consider mediation of its own motion in any civil proceedings to which the 2017 Act applies, on any occasion on which such proceedings are before the Court and where, following an invitation by the Court, the parties decide to engage in mediation, the Court may, having heard the parties, make such orders in accordance with section 16(2) of the 2017 Act as it considers appropriate.

Commercial arbitration is regulated under the Arbitration Act 2010 and may arise where there is a commercial agreement such as an asset purchase agreement or share purchase agreement or lease agreement where a covenant, or warranty or indemnity relating to environmental law has been breached. Mediation and arbitration as options for dispute resolution are generally agreed between the parties and do not involve the court system although court proceedings may be adjourned sine die pending the outcome of mediation or arbitration. There is also an option for an arbitrator to state a point of law to the High Court and there is a dedicated High Court judge to deal with arbitration matters.

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

The Director of Public Prosecutions (DPP) has a role in prosecuting environmental crime. For example, certain waste offences may be prosecuted on indictment in the Circuit Court by the DPP. The penalty on conviction on indictment is a fine not exceeding €15,000,000 or imprisonment for a term not exceeding ten years, or to both such fine and such imprisonment.

The Commissioner for Environmental Information has a role in determining appeals under the European Communities (Access to Information on the Environment) Regulations 2007-2018. The role of the Commissioner is to carry out independent reviews of decisions made by public authorities on requests for environmental information.

Ireland’s Ombudsman can investigate complaints about public service providers. However, its website listing of those it can investigate misses out several relevant bodies (e.g. Bord na Móna (semi-State peat company) and the EPA). The website does however note that the list is not exhaustive; that said, the fact that a body is not listed may make it less likely that this route is used to seek redress in respect of such bodies.

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)?

In general terms those with standing are split into two groups. Firstly, those people who made a submission during the administrative process and who have a sufficient interest in the proceedings (participation in the process will undoubtedly confer standing, albeit having made a submission is not always a necessary precondition: see Grace & Sweetman v An Bord Pleanála [2017] IESC 10). All persons, irrespective of location or interest or any other qualifying criteria can make a submission. An assessment of whether a particular party has a sufficient interest will depend on the factors present in each case. The courts will look at factors such as the degree of impact on the individual from the proposed development, the degree of involvement they have had in the decision-making process, their motives in seeking to review a decision and the stage in the process in respect of which a decision is sought to be challenged in deciding whether they have standing to challenge the decision.

Secondly, NGOs whose aims and objectives relate to the promotion of the environment and who have pursued that objective over the previous 12 months have a right of standing in the case of development subject to EIA. Currently there are no rules in terms of the numbers of members or other criteria for NGOs in order to qualify under this general standing right. There is equally no distinction drawn between NGOs that are incorporated as a legal entity and those that are unincorporated associations.

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

The standing rules outlined above are generally applicable to challenges that involve the EIA, IED, Habitats/Birds and SEA Directives, etc. However, depending on the nature of the activity, all litigation is funnelled through one of two distinct legislative streams: development (planning permission) and non-development activity (i.e. waste, water, IED etc.).

In the case of development (planning permission) challenges, a litigant will only be granted leave if the court is satisfied both that the litigant has a sufficient interest in the matter (which may be deemed in the case of NGOs, as described above) and that there are “substantial grounds” for contending that the decision or act concerned is invalid or ought to be quashed (s.50A PDA 2000). This requirement to demonstrate substantial grounds does not apply outside the field of planning permission.
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.)

For individuals, as a rule, participating in the administrative procedure will confer standing. The Supreme Court in Grace and Sweetman v An Bord Pleanála [2017] IESC 10 held that a failure to participate in the permission granting process does not of itself preclude a person from having standing but that it may be a factor which can, in an appropriate case, be taken into account. In that context the Court emphasised that participation in the process will undoubtedly confer standing. On the facts, standing was accorded to Ms. Grace even though she had not participated at all in the administrative process. It should be noted, however, that she lived within 1 km of the proposed development, had a long history of activism in relation to the development and was certainly directly affected. The decision of the Court should not therefore be regarded as authority for the proposition that the prior participation rule has been dispensed with. That said, the Court indicated that had Mr. Sweetman (the other challenger, who did not live near to the wind farm in question) participated in the permission granting process or given the Court some cogent explanation for non-participation, it would have been much easier to resolve the standing question in his favour (ultimately the Court did not find it necessary to reach a final determination on the question of Mr. Sweetman’s standing).

Subsequently, the High Court held in Conway v An Bord Pleanála [2019] IEHC 525 that there is nothing in Article 11 of the EIA Directive or in C-263/08 Djugården or C-137/14 Commission v. Germany which would preclude a national court, as a matter of EU law, from considering as among the factors to be taken into account in determining standing, the non-participation by the applicant in the prior administrative or planning process which led to the impugned decision and any explanation (factors which, as the Supreme Court in Grace and Sweetman confirmed, can be considered under Irish national standing rules). Indeed, the Court held, C-664/15 Protect Natura suggests that a prior participation requirement may not infringe the right of access to effective judicial mechanisms, at least under Article 9 of the Aarhus Convention and potentially also under Article 11 of Directive 2011/92. However, the Court did not reach a definitive conclusion on that point. Subsequently, in January 2021, the CJEU in Case C-826/18 Stichting Varkens in Noord held that Article 9(2) of the Aarhus Convention precludes a prior participation requirement in respect of proceedings within the scope of Article 9(2) brought by eNGOs which are part of the “public concerned”. The CJEU further held that Article 9(3) of the Convention does not preclude a prior participation requirement, unless the applicant cannot reasonably be criticised, in light of the circumstances of the case, for not having intervened in the earlier procedure. In order to have standing, an individual must demonstrate that they have a sufficient interest in the decision. That interest does not need to relate to a financial or land-based interest but some degree of physical proximity or impact is one of the elements assessed. Equally, a Court will look at the reasons for the individual seeking judicial review of the administrative decision. Courts will generally look to identify either a personal and proximate interest and/or a genuine environmental concern and give standing if those factors are present. If, on the other hand, the proposed development does not engage any personal interest of the individual, they are not directly impacted and the Court perceives that a professed environmental concern is simply a proxy to interfere in the development process, standing may be refused. The absence of any definition of “sufficient interest” makes predicting in advance whether an individual will have standing a difficult exercise, particularly where the individual has not participated in the earlier procedure. As the Supreme Court emphasised in Grace and Sweetman, participation in the earlier process will undoubtedly confer standing.

Finally, although not strictly a standing issue, as described above an individual will not pass the initial threshold for judicial review in a planning permission case unless they can demonstrate “substantial grounds” as to why the decision should be set aside. This requires that they demonstrate to the Court on an ex parte basis the legal reasons that they say mean that the decision should be set aside. Those legal reasons must satisfy a Court that there is at least a serious prima facie case being made and the applicant should be allowed to litigate the claim at full hearing. NGOs must also demonstrate substantial grounds to the same standard in planning permission cases, and must generally demonstrate a “sufficient interest” in order to have standing. However, they do not need to demonstrate a sufficient interest in a decision subject to EIA. In other words, in EIA cases they are entitled to participate as of right once they have aims or objectives “which relate to the promotion of environmental protection” and had pursued those aims during the previous 12 months prior to the date of the application for development or a licence. It is unclear whether this 12 month requirement refers to a necessity for constant activity over that period or whether a single intervention or activity by the NGO during the previous 12 months will suffice. This 12 month requirement precludes NGOs from being set up after an application has been submitted in order to function as a litigation vehicle with deemed standing for subsequent proceedings. Provision is made in legislation for the authorities to prescribe additional requirements for NGOs to satisfy in order to be granted standing rights but that power has not been exercised to date.

Given that numerous Irish statutory provisions have been made to give eNGOs deemed standing in certain specific situations, it would be prudent to proceed on the basis that outside these specific statutory regimes/situations it will be necessary for eNGOs to demonstrate a sufficient interest rather than expecting that they will effectively be deemed in practice to have standing in all environmental/planning cases. It is worth noting that the State will litigate standing points against eNGOs; e.g. in 2020 the Government successfully argued before the Supreme Court that Friends of the Irish Environment, as a corporate body, did not have standing to vindicate personal constitutional rights or human rights under the ECHR; see Friends of the Irish Environment v Government of Ireland & Ors. [2020] IESC 49.

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

The general rules of Court apply. All cases must be in one of the official languages of the State, i.e. English or Irish. Regarding interpretation, Order 120 of the Rules of the Superior Courts provides that there shall be such number of interpreters as the Chief Justice and the President of the High Court respectively may from time to time, by requisition in writing addressed to the Minister for Justice, request, and such interpreters shall attend the Courts and the Offices of the Superior Courts and be available to attend those Courts as required for the hearing of any cause or matter. The Courts Service’s Annual Report 2020 states that funding of €1.5m was provided for interpretation services in the courts in 2019, and contains a table listing the most common languages interpreted in court.

Any foreign language documents to be used in litigation must be translated by a suitably qualified translator into English or Irish. The costs of this exercise must be borne by the party which seeks to rely upon those documents. Affidavits can be sworn in a foreign language once duly sworn and accompanied by a verified translation and an affidavit(s) from the translator and interpreter confirming that the translation is accurate and that the interpreter read accurately to the deponent the contents of the foreign language affidavit (Order 40 of the Rules of the Superior Courts).

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?

Judicial procedures in Ireland are common law adversarial procedures. Generally speaking, outside of injunctive or enforcement proceedings, the primary procedure available in the environmental sphere is judicial review of an administrative decision that has already been made. That involves an assessment by a court of the legality of the decision made. The Irish courts tend to defer to the technical expertise of planning and environmental decision-makers on the basis that the courts are not generally experts on planning and environmental matters, and the relevant legislation has given the task of making decisions to these expert administrative bodies (see Ryall [2013]). The court’s review is therefore generally confined to ensuring that the administrative authorities have correctly discharged the legal and administrative requirements – e.g. that any statutory duties have been fulfilled, that public participation has occurred,
that proper regard has been had to submissions, that all required environmental assessments have been completed to the necessary standard, and that all the administrative steps have been discharged - and that the body has not acted "unreasonably" or "irrationally" (on which see 1.2(4) above).

That limitation means that once a Court is assessing an administrative decision it is assessing only the evidence that was before (and which was considered by) the administrative body. As the Court has no role in revisiting the merits of the conclusion reached by that body (other than in the limited sense of reviewing the reasonableness or rationality of the decision on O’Keeffe/Keegan grounds – see section 1.2(4)), it has no jurisdiction or power to request new evidence.

In a recent judgment in the planning permission context the High Court emphasised its longstanding position on curial deference but nevertheless concluded that there was no material before An Bord Pleanála (ABP) (Ireland’s Planning Appeals Board) capable of supporting ABP’s decision under challenge, despite ABP having concluded that such material was before it: see [2020] IEHC 218. ABP sought to appeal this decision to the Court of Appeal on the basis that the High Court is not entitled to “drill down” into its reasoning in this way, but ABP was refused leave by the High Court.

2) Can one introduce new evidence?

An individual or NGO is entitled to place whatever expert evidence it wishes before the administrative decision maker. Once a judicial review procedure has commenced both sides are, in theory at least, entitled to produce any new evidence they wish in sworn form. However, as a Court does not reassess the merits of the substantive conclusions reached by the administrative body on the evidence that was before it (other than in the limited sense of reviewing the reasonableness or rationality of the decision on O’Keeffe/Keegan grounds – see section 1.2(4)) any new evidence is, by definition, unlikely to be relevant to the judicial review process. However, despite this difficulty, both the applicant/objector and the developer will nevertheless sometimes submit new evidence to the Court.

On the applicant/objector side this expert evidence is generally designed to demonstrate that the administrative authorities could not have reached particular conclusions and/or to demonstrate that the scientific basis for those conclusions was erroneous. On the developer side affidavits are frequently sworn by the authors of expert reports that were considered by the administrative authorities. These affidavits generally purport to explain the type and scale of the scientific assessments which were undertaken by the developer with a view to supporting the legality of the decision to grant planning permission.

Finally, the administrative authority that took the decision will, almost invariably, be the primary respondent to any judicial review proceedings. These authorities have a limited role in seeking new evidence prior to any decision on an application for development or a licence. Once a decision has been made the administrative authorities will ordinarily swear affidavits verifying the steps taken in reaching that decision and identifying how and where statutory obligations were discharged. However, those affidavits will not, by definition, be composed of additional evidence that was not considered in advance of the impugned decision having been taken justifying the decision taken.

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

The commissioning of expert evidence, notwithstanding the very limited role of any evidence that was not before the administrative body, is a matter entirely at the discretion of the party seeking to rely upon it. It is up to a party seeking expert evidence to approach an individual or organisation with the necessary expertise and agree the scope and terms of that evidence with them.

While Ireland does not have an official accrediting body for expert witnesses, Round Hall (publisher) compiles the Expert Witness Directory of Ireland, a reference-checked list of expert witnesses in over 1,000 areas of expertise. To be permitted to use the associated logo "Expert Witness Directory of Ireland Irish Checked", a witness listed in this Directory has to establish that they meet the requirements of the Expert Witness Directory of Ireland Code of Conduct. There is no statutory listing of requirements (such as qualifications or professional experience) for evidence to be regarded as “expert”. However, any such expert evidence will include an attestation as to the author’s qualifications, experience and particular expertise. Given the small size of the jurisdiction and the limited number of environmental topics that are ordinarily subject to litigation on a more than occasional basis, in practice the pool of experts is generally familiar to all sides; otherwise, experts may be identified by way of the Directory described above or by word of mouth, searching on the internet, etc. Ireland’s Law Reform Commission produced a report on Consolidation and Reform of Aspects of the Law on Evidence in 2016, which deals extensively with the issue of experts.

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

Expert evidence (whether from the developer or from the objectors) which was before the administrative body is not binding on that administrative body. These bodies exercise an independent decision-making function and are specifically entrusted to assess and reach independent conclusions in respect of the evidence placed before them.

However, once they have formed that view and made a decision to grant or refuse the application that opinion (and the decision made on foot of it) are regarded as presumptively correct for the purposes of any subsequent judicial review proceedings: Kelly v An Bord Pleanála (Aldi Laytown) [2019] IEHC 84. They may only be varied by a Court if they are predicated upon an error of law or an error of jurisdiction made by the administrative authority. In practice it is very difficult to successfully challenge any substantive conclusion reached by an administrative body in respect of the evidence placed before it. A party seeking to do so must demonstrate that the decision is fundamentally at variance with reason and common sense (general test) or that there was no evidence to support the conclusion (the narrower test that applies where the review is of a decision of a technical or skilled or professional decision maker in the area of that special technical or skilled knowledge) (see 1.2(4) above). It does not matter, therefore, if a Court thinks that the decision was inadvisable or that the evidence available inclined to a different conclusion.

This said, in a recent judgment in the planning permission context the High Court emphasised its longstanding position on curial deference but nevertheless concluded that there was no material before An Bord Pleanála (ABP) (Ireland’s Planning Appeals Board) capable of supporting ABP’s decision under challenge, despite ABP having concluded that such material was before it: see Halpin v An Bord Pleanála [2020] IEHC 218. ABP sought to appeal this decision to the Court of Appeal on the basis that the High Court is not entitled to “drill down” into its reasoning in this way, but ABP was refused leave by the High Court. Curial deference does not apply in relation to the legal requirements which have to be discharged. Those are matters, such as statutory interpretation, which the Court is clearly expert in. This means that, in practice, challenges to grants of permission or licences are overwhelmingly concerned with legal requirements rather than the substance of an application and in respect of which independent expert evidence is generally produced. The scope for expert evidence is therefore much more limited in the Irish system than may be the case in inquisitorial proceedings.

3.2) Rules for experts being called upon by the court

In the Irish system there is no scope for experts to be called by the Court on its own motion. The Court can suggest that certain evidence may be useful for it to hear but it has no power to compel the production of that evidence.

3.3) Rules for experts called upon by the parties

In the majority of civil actions, but not environmental judicial review, expert evidence is submitted via expert reports, affidavits or letters in a broadly similar standard form. This standard form is to ensure that the expert is independent of the party which commissioned the evidence and includes an express
undertaking that the expert’s primary obligation is to the Court and not to that party. In general these reports are drafted directly by the experts themselves with minimal intervention by lawyers. These experts may be called to give evidence during the proceedings and may be subjected to cross-examination by lawyers for the opposing parties.

In environmental judicial review proceedings, there is no strict obligation on the expert to attest to that primary obligation to the Court or to the independence of the expert, although as a matter of practice the expert will ordinarily identify their relevant experience. In addition, this evidence tends to be drafted with significant input from lawyers.

Environmental judicial review proceedings are almost always conducted without any expert evidence being given orally in Court and consequently without cross-examination.

### 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 for expert evidence as such. Any expert evidence which is sought to be adduced is in the form of affidavit evidence. There are de minimis administrative costs for the swearing (€10 + €2 for each document exhibited) and filing (€20) of these affidavits. However, they are precisely the same costs in respect of all affidavits and no distinction is drawn on the basis that they are expert evidence.

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

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<tr>
<th>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</th>
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<tr>
<td>It is not compulsory for litigants to be represented by lawyers. However, litigants would normally be well advised to seek such legal representation in order to ensure an equality of arms. The legal profession in Ireland is divided between solicitors and barristers. Solicitors are qualified legal professionals who provide expert legal advice and support to clients on contentious and non-contentious business. Barristers do not handle clients’ funds, they do not provide safe custody of original documents, nor do they provide the normal non-contentious administrative services which a client would expect from a firm of solicitors. Solicitors seek the expert assistance of barristers on issues that they feel require further opinion and in the preparation and conduct of litigation. Solicitors tend to call on the services of barristers to present their clients’ cases in the higher courts, mainly because of barristers’ expertise in oral advocacy and court procedure. Normally a client must have a solicitor in order to access the services of a barrister. Certain professional bodies (and their members), if approved by the Bar of Ireland, may have direct professional access to barristers to seek legal opinion in non-contentious matters. In litigation, a client will typically be represented by a firm of solicitors and two (sometimes three, rarely four) barristers: a junior counsel (rarely two) and a senior counsel (sometimes two). The Law Society of Ireland maintains a directory of solicitors. This contains basic contact details for individual solicitors and firms and does not enable clients to identify specialized environmental lawyers. Solicitors are however allowed to advertise their services (e.g. on their website), subject to strict rules, which for example prevent solicitors from advertising that they will take cases on a “no win, no fee” basis. For more information about solicitors, see here. The Bar of Ireland maintains a directory of barristers <a href="https://ien.ie/our-members/">here</a>. This is searchable by area of specialisation as well as name, allowing one to identify barristers specializing in the fields of planning and environmental law. Again, special advertising rules apply. For more about barristers, see <a href="https://environmentalpillar.ie/our-members/">here</a>. Clients typically contact lawyers by email or phone, and in practice word of mouth tends to operate to inform potential clients of lawyers who specialise in the fields of planning/environmental law, and of those solicitors and barristers who may be willing to take cases on a “no win, no fee” basis.</td>
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<th>1.1. Existence or not of pro bono assistance</th>
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<td>Some non-contentious advisory work is undoubtedly done by many lawyers on a pro bono basis, but this is often ad hoc and often unseen. There are a number of free legal advice centres in Ireland, though they have not tended to do environmental law work. Recently, however, Community Law &amp; Mediation hired an environmental justice lawyer — a first for the free legal advice sector in Ireland. In addition, two large corporate law firms in Dublin hired a lawyer (each) to work full-time on pro bono matters outside the firms’ normal areas of practice. In November 2020, the Pro Bono Pledge, an initiative of the Public Interest Law Alliance (PILA) and FLAC (Free Legal Advice Centres), launched in Ireland — signatories commit to a minimum aspirational target of 20 pro bono hours per lawyer per year and there is a mechanism to benchmark progress through annual reporting of anonymous pro bono data. The Bar of Ireland operates a voluntary assistance scheme for NGOs, charities, etc. Litigation in the field of environmental law does not tend to be done on a pro bono basis by solicitors or barristers. Rather, lawyers may be willing to take cases on a “no win, no fee” basis, meaning the lawyers are not paid if the client’s case is unsuccessful but if it is successful then the lawyers would expect to recover their fees (in full or part) from the losing litigant.</td>
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<tr>
<th>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.)?</th>
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<tbody>
<tr>
<td>As mentioned under 1.1, most pro bono assistance in the field of environmental law would be ad hoc, established by the client simply making direct contact with the lawyer(s) in question and the lawyer(s) agreeing to help. Information about how to apply for assistance from the Bar of Ireland’s Voluntary Assistance Scheme is available <a href="https://environmentalpillar.ie/our-members/">here</a>.</td>
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<th>1.3 Who should be addressed by the applicant for pro bono assistance?</th>
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<td>Please see answer to 1.2.</td>
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2) **Expert registers or publicly available websites of bars or registries that include the contact details of experts**

While Ireland does not have an official accrediting body for expert witnesses, Round Hall (publisher) compiles the Expert Witness Directory of Ireland, a reference-checked list of expert witnesses in over 1,000 areas of expertise. This is available in hard copy only.

In terms of online resources, this searchable UK-based directory lists experts in Ireland as well as the UK, but is not comprehensive. A list of expert engineers is available [here](https://ien.ie/our-members/). Otherwise, experts may be identified based on word of mouth, searching on the Internet, etc.

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

The websites of the two complementary umbrella organisations for eNgo — the Irish Environmental Network and the Environmental Pillar — contain lists of their eNGo members with links to websites:

- [https://ien.ie/our-members/](https://ien.ie/our-members/)
- [https://environmentalpillar.ie/our-members/](https://environmentalpillar.ie/our-members/)

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

Friends of the Earth has an Irish branch: Friends of the Earth Ireland. Friends of the Irish Environment recently partnered with ClientEarth to bring a case relating to the Common Fisheries Policy before the Irish High Court. Otherwise, eNgo in Ireland tend to be national, albeit with links to and/or membership of international networks such as the EEB, BirdLife International, etc.

### 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 for a statutory appeal will depend on the decision-making regime. In the case of appealing planning decisions to ABP, this is four weeks (s. 37 PDA 2000). In the case of an appeal to the Commissioner for Environmental Information, the appeal must be brought within one month after receipt of the decision following the internal review (or where no decision was notified within one month from the time when the decision was required to be notified) (Article 12 of the European Communities (Access to Information on the Environment) Regulations 2007-2018). In the case of an appeal against an aquaculture licensing decision, the period is one month from the date of publication of the decision (s.40 of the Fisheries (Amendment) Act 1997 (as amended)). In the case of various consents related to forestry, the deadline for appealing to the Forestry Appeals Committee is 28 days from the date of the Minister’s decision (Article 5 of the Forestry Appeals Committee Regulations 2020, S.I. 2020/418). The time limit for appeals Regulation 37 of the European Communities (Birds and Natural Habitats) Regulations 2011 (referred to in section 1.3 above) is not later than 28 days after notice of the Decision or the decision was given. Unlike court applications for judicial review, where the court has discretion to extend time, statutory time limits generally cannot be extended.

2) Time limit to deliver decision by an administrative organ
Planning authorities must generally issue decisions within eight weeks, though this period can be extended by a further four weeks where further information is requested or by a further eight weeks where further information is requested in a case requiring EIA or an appropriate assessment under the EU Habitats Directive (s.34(8) PDA 2000). An Bord Pleanála has the objective of reaching decisions on appeals within 18 weeks (s.126) and decisions on applications for strategic infrastructure (s.37), although decisions on strategic housing development applications must be made within 16 weeks where no oral hearing is held (s.9 of the Planning and Development (Housing) and Residential Tenancies Act 2016).

Forestry: the relevant legislation does not record a deadline for the Minister to reach afforestation licensing decisions or for the Forestry Appeals Committee to determine appeals. A review of the afforestation approval process published in 2019 recorded that less than 40% of afforestation applications were decided in less than 70 days in 2019, while almost half of the applications took more than 99 days to decide. In 2018, 26 of the 66 appeals decided by the Forestry Appeals Committee took over 53 weeks to determine – almost 40% of the total.

IED: the EPA must issue its proposed determination within 8 weeks (s.87(3) Environmental Protection Agency Act 1992; and the Environmental Protection Agency (Industrial Emissions) (Licensing) Regulations 2013 (S.I. 137/2013)). There is no administrative appeal mechanism akin to an appeal to ABP in the planning context; however, as set out above, the proposed determination may be objected to, and the EPA’s decision may be judicially reviewed before the High Court. The EPA’s decision must be given “as expeditiously as may be” (s.85).

Aquaculture licensing: the Minister must endeavour to determine licence applications within four months (Fisheries (Amendment) Act 1997). On appeal, the Aquaculture Licences Appeals Board must endeavour to ensure that appeals are dealt with within four months.

3) Is it possible to challenge the first level administrative decision directly before court?
There is a doctrine that one must generally exhaust administrative remedies before leave will be granted by the High Court to pursue judicial review proceedings (for a discussion, see Simons 2014). While it is possible for an applicant to pursue judicial review proceedings without first exhausting administrative appeal possibilities, often an applicant would be advised to pursue the administrative route first owing to the risk of being refused leave to bring the action for judicial review (or ultimately refused relief by the court exercising its discretion) for failing to exhaust administrative remedies before resorting to court.

However, if for example the available administrative review procedure is not capable of addressing the particular issue(s) arising, then there is nothing to prevent an individual/NGO from proceeding directly to judicial review.

4) Is there a deadline set for the national court to deliver its judgment?
There is no deadline on national courts to deliver judgments and delays can be an issue in practice, e.g. before the Court of Appeal where there have been lengthy backlogs.

The Courts Service must maintain a register of civil judgments that are outstanding pursuant to section 46 of the Court and Court Officers Act 2002 (as amended). If a judgment is not delivered within 2 months from the date on which it was reserved, the President of the Court will list the proceedings before the judge who reserved judgment, and that judge should then specify the date on which he or she proposes to deliver judgment in the proceedings (s.46(4)). However, the delivery of a judgment is a matter for the trial judge and it is not uncommon for the delivery of judgment to be adjourned on a number of occasions.

In the recent case of Keaney v Ireland (Application no. 72060/17), the European Court of Human Rights (ECtHR) found that Ireland had breached Art. 6 of the ECHR because of delays in determining legal proceedings (not relating to environmental law) at the national level. The domestic proceedings in question took more than 11 years in total from first instance to the Supreme Court’s judgment. The ECtHR also found that Ireland was in breach of Art. 13 ECHR (right to an effective remedy) because there was no effective remedy provided in Ireland in respect of such delays. Further, in November 2020 the Aarhus Convention’s Compliance Committee found in ACCC/C/2016/141 that Ireland fails to comply with the requirement in Article 9(4) of the Aarhus Convention to ensure timely procedures for the review of environmental information requests – this conclusion applies inter alia to judicial procedures.

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

The general rule in environmental judicial review is that the applicant has three months to apply for leave from the date when grounds for the application first arose (Order 84 of the Rules of the Superior Courts). In planning law and IED actions for judicial review, the period is 8 weeks.

Once an action for judicial review has commenced with a grant of leave and service of the applicant’s statement of grounds and grounding affidavit (exhibiting evidence), Order 84 of the Rules of the Superior Court then requires respondents to deliver opposition papers (statement of opposition and-replying affidavit) in the normal judicial review list within three weeks, but this rarely happens in practice.

Beyond the applicant’s exhibition of evidence at leave stage, and the respondent’s reply affidavit (exhibiting evidence in reply), which must in principle be filed within 3 weeks (as noted above), there are no time limits in judicial review proceedings for parties to submit additional evidence. Where a party wishes to submit further evidence on affidavit, leave of the court is required (Order 84, rule 23). If a case is admitted to the Commercial Planning and SID (Strategic Infrastructure Development) List in the High Court, directions will be agreed or made by the court.

ADMINISTRATIVE PROCEDURE

The time limit for a statutory administrative appeal will depend on the decision-making regime. In the case of appealing planning decisions to ABP, this is four weeks (s.37 PDA 2000). In the case of an appeal to the Commissioner for Environmental Information, the appeal must be brought within one month after receipt of the decision following the internal review (or where no decision was notified within one month from the time when the decision was required to be notified) (Article 12 of the European Communities (Access to Information on the Environment) Regulations 2007, S.I. 133 of 2007, as amended), which can be extended by the Commissioner under Article 12(4)(b). In the case of an appeal against an aquaculture licensing decision, the period is one month from the date of publication of the decision (s.40 of the Fisheries (Amendment) Act 1997 (as amended)). In the case of various consents related to forestry, the
1.7.2. Interim and precautionary measures, enforcement of judgments

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

Where a decision is made by a planning authority to grant planning permission, the grant itself may not be made until the period for an appeal expires (\textit{s. 34(11) PDA 2000}). If the decision is appealed, the grant of permission may not be made until the determination or withdrawal of the appeal. The same situation pertains in respect of aquaculture licences: \textit{s.14 of the Fisheries (Amendment) Act 1997}. Whether an appeal of a forestry consent decision has suspensive effect is unclear from the legislation.

The initiation of judicial review proceedings in respect of any decision by the appellate body does not have automatic suspensive effect. This early stage is done on an \textit{ex parte} basis (where the administrative authority and the beneficiary of the decision are not on notice or present for the initial hearing).

However, an applicant can apply at that stage for an interim Order known as a ‘stay’. This is not an injunction but is a temporary judicial order preventing any steps being taken in pursuit of the challenged licence or application until (a) either the first time that the matter is returned to Court and all parties are present or (b) indefinitely until the substantive proceedings are resolved.

In the case of (a) the beneficiary of the decision (i.e. the developer and not the administrative authority) may indicate that it wishes to have the stay removed. If it wishes to do so then it must bring an application by way of notice of motion grounded on an affidavit. That will take the form of a relatively brief subsequent hearing as to whether the stay should be lifted such as to allow the developer to take steps to develop the project pending the determination of the proceedings. In resolving any such application a Court will generally try and balance the degree of prejudice to both sides and/or whether irreversible damage (environmental or otherwise) will occur in the interim.

In the case of (b) the developer will be given the right to seek to have the stay lifted at any time on the basis of the considerations above. In practice, it is very unusual for developers to seek to proceed with developments which are subject to judicial review and/or to seek to have a stay lifted. A developer in that situation will generally seek to have the matter entered into the Commercial List of the High Court, on payment of a fee of €5,000, which allows for rigorous case management and an expedited hearing as a way to have the matter heard as quickly as possible.

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

The benefit of a decision to grant planning permission or a licence does not vest in the beneficiary of a decision until an appeal has been determined. There is therefore generally no requirement or scope for any injunctive proceedings at the administrative stage.

It should be noted in the Irish system that the administrative authorities do not themselves institute appeals against first instance decision makers. The model is rather an adversarial one where an applicant applies for permission or to be awarded a licence. That application will be subject to public participation.

Whatever decision is reached at first instance can be appealed by the proposed developer or (as explained above) the participants in the application process, provided an administrative appeal exists (this is not always the case – e.g. certain EPA licences can be challenged only by way of judicial review).

The same parties can, in turn, seek to institute judicial review proceedings (and, if appropriate, seek injunctive relief) in respect of any decision by the appellate body. Generally neither the first instance nor appellate bodies themselves intervene in order to appeal a decision or to seek injunctive relief. However, very rarely a first instance decision-maker may intervene to challenge by way of judicial review the decision that the appellate body reaches on appeal: for a recent example, see \textit{Dublin City Council v An Bord Pleanála} [2020] IEHC 557.

Furthermore, in general, administrative decision-making authorities in Ireland have no power to grant an injunction. That remedy is only available from the High Court, or in certain limited circumstances the Circuit Court, and is therefore typically only sought (if at all) once the appellate tribunal has made its decision and recourse for an aggrieved party is open for the initiation of court proceedings. It is worth noting that in certain cases the power to seek an injunction is given to the Minister: e.g. Regulation 38 of the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. 477/2011, as amended), provides for the relevant Minister to apply to a court of competent jurisdiction for an injunction requiring the taking of action or the refraining from taking of action, for the purposes of ensuring compliance with the Habitats or Birds Directives. A ‘court of competent jurisdiction’ means either the Circuit Court for the circuit in which the relevant lands or part of the relevant lands are situated or the High Court.

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?

For the reasons explained above, there is no possibility of an injunction being either sought or granted during the administrative procedure.

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

A decision from a first-instance decision maker automatically does not take effect if there is an appeal by any person (including the applicant in the case that they have been unsuccessful with their application at first instance). If the applicant has been successful and they have been granted permission or the licence requested and there is no appeal then the rights and obligations that accrue from that decision will accrue automatically on the day after the period for an appeal has expired.

In respect of a decision by the appellate body: if the applicant for development consent or a licence has been successful on appeal, the rights pursuant to that decision will accrue automatically on the day after the appropriate period for commencing a challenge has expired, where there is no challenge. Where there is such a challenge by way of judicial review then the rights pursuant to that decision will still accrue on the same day subject to any stay or interim injunctive relief having been granted by the Court in the course of the initial application stage.

If any such stay or application has been sought the Court may grant it on an interim short term basis or until the hearing of the substantive proceedings. Alternatively, the Court may grant no injunctive relief but allow to the applicant for judicial review the opportunity to apply for injunctive relief with representation from all sides. If this is the route taken this hearing is normally convened shortly after the initiation of the judicial review proceedings.

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

No. An applicant for judicial relief may apply for injunctive relief during the judicial phase. That application is determined on the basis of entirely different criteria from those that are used to assess the legality of the substantive decision.

First, the Court will consider whether it has been established that there is a fair question to be tried. If there is a fair issue to be tried the court will consider how best to strike a balance between the parties pending the hearing of the action, which involves a consideration of the balance of convenience and the balance of justice, including the degree of prejudice to both sides if relief is granted or refused and its assessment of the motivations and conduct of the parties. Both of these elements arise in environmental cases in a similar manner to the circumstances in which they might arise in commercial or general civil disputes.

However, the thirdly assessed factor in commercial disputes is whether damages would be an adequate remedy. That factor does not sit easily in the vast majority of environmental cases that are taken by community groups, private individuals or NGOs that typically do not have the resources to provide an undertaking as to damages in the event that they are unsuccessful – i.e. that the substantive proceedings are lost and loss or damage is caused to the
beneficiary of the decision. The issue has not arisen substantively to date and the general practice of the Courts when determining the question of whether to grant injunctive relief is ordinarily determined by reference to the first two issues and to disregard the third in light of the decision of the CJEU in Case C-530/11 Commission v United Kingdom and/or by reference to public interest concerns (whether in favour of granting or refusing injunctive relief).

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?

Neither first instance nor appellate bodies may provide injunctive relief as described above. A Court, upon application for judicial review, may do so on whatever conditions it deems fit. This is a discretionary remedy in which the Court has a very broad latitude to grant or refuse.

As described above, there is ordinarily provision for an undertaking to pay any damages that might accrue if an injunction is granted but the proceedings are ultimately unsuccessful but that does not tend to factor in applications for injunctive relief in environmental cases. If applied it would preclude, in almost all cases, the grant of injunctive relief in environmental cases. Apart from that (at the time of writing) theoretical possibility, there is no scope for a deposit or other financial payment by applicants for judicial review.

In the event that an application for injunctive relief is refused or granted in the context of judicial review proceedings it is possible to appeal this decision to the Court of Appeal.

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.

Under section 150 of the Legal Services Regulation Act 2015 legal practitioners must as soon as practicable provide their clients with a notice written in clear language setting out what legal costs will be incurred in relation to the matter. There are specific obligations as to what the notice must contain in respect of litigation, including the likely costs of each stage – see here. Each barrister must provide a section 150 notice to their instructing solicitor.

Administrative review

Administrative fees: For a member of the public or NGO to participate at first instance before a planning authority costs €20, and to appeal a grant of planning permission to An Bord Pleanála costs €220. There is a reduced fee to appeal of €110 for certain prescribed bodies, including one NGO: An Taisce. To make a submission or observation on appeal (e.g. if you are not an appellant) costs €50 (certain bodies are exempt from this charge, including An Taisce). To request an oral hearing costs €50, and An Bord Pleanála’s practise is to retain these €50 request fees even where it decides not to hold an oral hearing.

For a member of the public or NGO to appeal an aquaculture licence decision costs €152, plus €76 if a request is made to hold an oral hearing. Again, the Aquaculture Licences Appeals Board’s stated practice is to not refund this request fee even where it decides not to hold an oral hearing.

In the case of forestry applications, to participate at first instance costs €20 plus €200 to appeal.

Legal fees: To draft an appeal document (with no oral hearing), the cost of legal representation could range from zero (entirely pro bono - rare) to say €5,000 (ex VAT) or more. The latter figure based on a lawyer with 5 years of post-qualification experience charging say €250 per hour (ex VAT) and spending 20 hours drafting an appeal.

To draft an appeal and represent a party at an oral hearing, the cost of legal representation could range from expenses only (i.e. travel costs, hotel costs, food costs, other outlay – this would be rare) to over €100,000 (see example below). This would depend to some extent on the complexity of the case and the length of the oral hearing. Oral hearings can last a day to several weeks. A lawyer could easily charge €1,000-1,500 (ex VAT) per day to attend an oral hearing, in addition to preparatory work, expenses, outlays. To attend a seven day oral hearing could therefore give rise to costs of about €10,000 to €15,000 (including VAT) – this would cover fees (for one lawyer) and outlays.

An Bord Pleanála will almost never award any costs to an appellant in a normal (i.e. not strategic infrastructure/housing) planning appeal, despite typically awarding costs to itself and other parties after an oral hearing, and this even where the appellant succeeds with its appeal after a lengthy oral hearing. It is therefore typically not possible for NGOs to find lawyers willing to act on a “no win, no fee” basis at oral hearings at the administrative review stage.

In “strategic infrastructure” cases An Bord Pleanála has in a small number of cases been willing to award some costs to appellants or third parties. Such examples give an idea of the scale of costs involved in oral hearings: e.g. in Case reference PA0003, which related to a planning application for a container terminal in Cork, An Bord Pleanála’s oral hearing ran for 15 days. An Bord Pleanála awarded itself costs of €176,272 (the cost of the Inspector’s report was €88,309). It ordered that €48,617 be paid to the solicitors for the Cork Harbour Environmental Protection Association, which was successful in securing the refusal of permission for the development, but this was only a fraction of the €129,923 in legal costs that were incurred for the 15-day hearing (see the Inspector’s Report 1 and Order 1 in PA0003). As above, this relatively large costs award to an appellant is very much the exception rather than the rule at the administrative review stage.

Experts’ fees: Depending on the nature of the report, an expert could charge in the range of €1,000 to €3,000 per report. In a complex case, there might be between 3 and 5 reports.

If there is an oral hearing, the NGO’s expert(s) will likely have to attend and give evidence, including sitting through the opposing side’s expert evidence on the relevant issue. So in addition to the cost of producing a written report, the expert(s) may charge a fee for appearing at the oral hearing and giving evidence. This could be (say) €500-1000 per day plus travel and subsistence expenses.

Outlay costs: in particular photocopying, could be from tens of euros to several hundred euros for an oral hearing where the NGO/individual is represented by a lawyer.

Judicial review

Court fees: are about €350 in each of the High Court, Court of Appeal and Supreme Court (so about €1,150 if a case goes all the way to the Supreme Court). As described above, a fee of €5,000 is payable where a case is admitted to the Commercial List of the High Court; as such, this route is rarely pursued by individuals/NGO applicants.

Legal fees: by way of examples: in July 2011, the Taxing Master heard a claim for fees in a case taken by the Usk Residents Association against An Bord Pleanála and the Attorney General. The respondents challenged the costs claimed after they were awarded by the court to the applicant. This is therefore an example of the legal costs of the applicant, which were payable by the losing respondents. The fees included a brief fee of €60,000 for the senior counsel and €40,000 for the junior counsel, plus €4,000 per day in court for the senior and €2,666.66 a day for the junior. The Taxing Master allowed these fees, and allowed a solicitor’s instruction fee of €225,000. Garrett Simons (now a High Court judge) highlighted that these judicial review proceedings were very complex and had been at hearing for approximately eight days in the Commercial List of the High Court. He went on to contrast these fees with those payable in what he described as a “common-or-garden” (i.e. ordinary) judicial review, where an individual - Mr. Klohn - fell liable to pay €86,000 to An Bord Pleanála under the ‘loser pays’ rule, plus his own legal costs of €32,550, giving a total liability of >€118,000. This case ended in a judgment of the CJEU relating to prohibitive expense: C-167/17 Klohn.

These levels of legal fees are no doubt an important factor for applicants who seek out “no win, no fee” representation in planning/environmental litigation in Ireland.
Experts’ fees: as discussed in section 1.5(2), because the Court does not reassess the merits of the substantive conclusions reached by the administrative authority on the evidence that was before it (other than in the limited sense of reviewing the reasonableness or rationality of the decision on O’Keeffe/Keegan grounds – see section 1.2(4)), any new evidence is, by definition, unlikely to be relevant to the judicial review process. However, despite this difficulty, parties will nevertheless sometimes submit new expert evidence to the Court. Depending on the nature of the expert evidence, an expert could charge in the range of €1,000 to €3,000 per report. As mentioned above, environmental judicial review proceedings are almost always conducted without any expert evidence being given orally in court.

Outlay costs: these would include outlay expenses such as photocopying and stationery for producing documentation for court, serving that documentation on other litigants, couriers, taxis to/from court with boxes of documents, etc. These costs can be considerable and depend on various factors – e.g. the complexity, whether the court will permit electronic exchange of exhibits, etc. For an action for judicial review at first instance (High Court) with one affidavit exhibiting evidence, it is estimated that there would be outlay expenses of about €350 to obtain leave, and about €1,000 (including the earlier €350) by the time ‘books’ (i.e. folders of materials) are produced for the hearing. In a complex action for judicial review the outlay costs could be as high as €5,000 or more before each court (so a multiple of this for cases that go on appeal). Such costs will naturally increase where the case continues on appeal to the Court of Appeal and/or Supreme Court, and will depend in part on the number of parties and the number of judges who require copies of books.

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

As a condition for granting leave for judicial review in a planning law matter in Ireland, the court may require the applicant to give an undertaking as to damages (s.50A(6) PDA 2000). The considerations to be taken into account in this regard are not specified in the legislation. One might look, by analogy, to cases regarding undertakings required under what is now Order 84, rule 20(7) of the Rules of the Superior Courts, which remains the applicable rule in judicial review contexts other than planning law. As Ryall (2013) notes, the key consideration under that case law is whether the proceedings in question demonstrate a clear public law dimension which would preclude the court from granting an undertaking. Thus, an applicant in a planning/environmental case should generally not be required to give an undertaking as a condition for the grant of leave where the case raises public law issues and not private law interests, at least where the case is not one of a series of unsuccessful challenges by an applicant to a particular development (see Coll v Donegal County Council [2007] IEHC 110).

Separately there is the question of undertakings as to damages where an applicant seeks an interim/interlocutory injunction. Clearly any requirement to provide such an undertaking could amount to a prohibitively expensive barrier to pursuing injunctive relief, depending on the applicant’s means and the level of the required undertaking. Since judicial notice must be taken of the Aarhus Convention, and given the general position described above regarding cross-undertakings in public law cases, in practice an applicant should not be required to provide a cross-undertaking in damages in an environmental case. This is borne out by the authors’ experience in practice.

3) Is there legal aid available for natural persons?

There is legal aid available for natural persons but in practice not for environmental cases. As Clarke J commented in the Supreme Court at para 2.30 of Conway v Ireland, the Attorney General & Ors [2017] IESC 13, the evidence suggests that, at a very minimum, the grant of legal aid in environmental cases is an extreme rarity.

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?

Legal aid is available only to natural persons and not legal persons (or those who do not have legal personality but are not “natural persons”); see Friends of the Irish Environment v Legal Aid Board [2020] IEHC 454. In that case an eNGO was not eligible to apply for legal aid on the basis that it is a company – the judgment has been appealed to the Court of Appeal. Legal aid is not available to a group or to an individual member of a group, where the individual is acting on behalf of the group. Legal aid is not available in respect of proceedings before an administrative tribunal (e.g. An Bord Pleanála): see Ryall (2013).

Please see answer under 1.6 above regarding pro bono assistance.

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

There are no other financial mechanisms available to provide financial assistance.

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

The general rule for costs in respect of civil litigation in Ireland is that costs follow the event (i.e. the loser pays) (Order 99 of the Rules of the Superior Courts). This rule has been displaced in the case of certain environmental actions by special costs rules pursuant to the Aarhus Convention and EU law which provide that:

(a) as a starting principle, each side bears its own costs; and
(b) the court has discretion to award a winning applicant its costs or part thereof (see section 50B PDA 2000[1] and Part 2 of the Environment (Miscellaneous Provisions) Act 2011: EMPA 2011). (Under these rules a losing party may be awarded its costs in a matter of exceptional public importance and where in the special circumstances of the case it is in the interests of justice to do so.)

The result in both scenarios (i.e. ‘loser pays’ or the special cost protection rules) is that applicants in environmental cases can in some cases find lawyers willing to act on a “no win, no fee” basis. In such cases, the applicant will not pay its lawyers for their time, unless and until the applicant’s action is successful, at which point there may, at the court’s discretion, be an award of costs in the applicant’s favour, which will serve to pay the applicant’s lawyers for at least part of (and perhaps all of) their time.

The courts may award a winning applicant its costs under the special rules “to the extent that the applicant succeeds in obtaining relief” (see s.50B(2A) PDA 2000). In other words, if the applicant makes arguments alleging, say, three separate breaches of the EIA Directive by An Bord Pleanála in granting planning permission, and the court finds in favour of the applicant in respect of two of the arguments but against the applicant on one, the court may make a deduction in its award of costs on the basis that a certain amount of court time was spent arguing a losing point. Thus, in a successful EIA case taken against An Bord Pleanála regarding Edenderry power station, the eNGO An Taisce was awarded 65% of its costs for this reason.

While these special costs rules have certainly improved access to justice, there has been considerable uncertainty regarding their scope of application, and this has resulted in a significant volume of “satellite litigation” over the past decade. In brief, s.50B PDA 2000 appears aimed at giving effect to Article 9(2) and (4) of the Aarhus Convention (and related EU law), while EMPA 2011 appears aimed at giving effect to Article 9(1), (3) and (4) of the Convention (and related EU law). Since s.50B specifically lists provisions of certain EU directives – namely the EIA, SEA, and IPPC (IED) Directives and, since 2018, Art.6(3)/(4) of the Habitats Directive – it appeared that cost protection under s.50B would apply only where and to the extent that a case raised issues relating to one or more of these Directives/provisions. Further to the CJEU’s judgment in Case C-470/16 NEPPC, in Heatherr Hill Management Company CLG v An Bord Pleanála [2019] IEHC 186 the High Court held that the special costs rules under s. 50B apply to the entirety of proceedings, i.e. to all grounds of challenge and not just those relating to the above-named directives. In other words, where the impugned decision is made pursuant to a statutory provision that gives effect to the relevant provision(s) of any of the four named EU Directives, then the special costs rules apply to all grounds of challenge. This judgment is under appeal to the Court of Appeal.
The cost protection provided under Part 2 EMPA 2011 has similarly resulted in satellite litigation. The CJEU’s judgment in Case C-470/16 NEPPC confirmed that the requirement in s.4 EMPA 2011 to demonstrate a link with existing or likely damage to the environment before cost protection would apply is unlawful. This requirement has not yet (as at February 2021) been removed from Ireland’s legislation. Most recently, in O’Connor v Offaly County Council [2020] IECA 72 the Court of Appeal appears to have limited the scope of cost protection under the EMPA 2011 by holding that the scope of proceedings within the meaning of s.4(1)(a), insofar as it relates to an applicant seeking to ensure compliance with or enforcement of a statutory requirement, is limited to cases in which the applicant seeks to ensure compliance with or enforce into the future an identified statutory requirement. In contrast, where the applicant is seeking to ensure compliance with a statutory requirement by arguing that that requirement was breached in a past decision, cost protection will not apply. The Court noted that whether this represents a breach of EU law as explained in C-470/16 NEPPC can only be properly determined in a case in which the issue arises.

As the Environmental Governance Assessment on Ireland concludes, Ireland’s special cost protection rules do not apply to all environmental litigation. Gaps and uncertainties remain. For example, environmental litigation raising constitutional and/or human rights – e.g. the right to life in the context of climate change; or judicial review outside the planning context, where it is unclear whether a rule akin to the one established by the High Court in the Heather Hill case would apply. It should be noted that the courts have very broad residual discretion under Order 99 of the Rules of the Superior Courts as regards costs orders. This has proven important given remaining uncertainties re Ireland’s cost protection legislation and the CJEU’s judgment in C-470/16 NEPPC to the effect that where the application of national environmental law is at issue, it is for the national court to give an interpretation of national procedural law which, to the fullest extent possible, is consistent with the objectives laid down in Article 9(3) and (4) of the Aarhus Convention, so that judicial procedures are not prohibitively expensive. See the High Court’s discussion in Heather Hill of the use of the court’s discretion under Order 99 in such circumstances.

Finally, it should be noted that outlay costs (photocopying, couriers, etc.) remain payable by the applicant in cases taken on a “no win, no fee” basis – these costs cannot be eliminated and can be relatively significant, as described above.

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?

The court cannot provide such an exemption other than as set out in legislation. There is an exemption from court fees for cases brought under the cost protection rules in Part 2 of EMPA 2011 (art. 8 of S.I. 492/2014), but not for cases under the cost protection rules in s.50B PDA 2000. It is unclear why there is this difference between s50B cases and Part 2 EMPA 2011 cases.

Information on court fees and exemptions can be found here. 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? As the Department responsible nationally for the Aarhus Convention, the Department of the Environment, Climate and Communications provides this general information on access to justice. The Citizens’ Information website also provides general information on the Aarhus Convention and specific information about planning/environmental judicial review.

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

Normally the information is provided by way of a statement in a notice publicising the relevant competent authority’s licensing decision (more on these notices in (4) below). For example, a planning authority must publish a notice stating inter alia that a person may question the validity of any decision of the planning authority by way of an application for judicial review, under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986, as amended), in accordance with section 50 of the Planning and Development Act 2000.

These statutorily-required notices normally contain the above-mentioned basic information regarding access to justice; they do not, for example, provide information regarding whom an applicant should contact for further information on access to justice. It is then for an applicant to seek out further information themselves, for example by looking on the internet, where they may find the Citizens’ Information webpage on planning/environmental judicial review, or perhaps by consulting a lawyer.

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

In reaching administrative decisions (e.g. on licences/permits in different sectoral areas), many consent regimes in Ireland require the inclusion of specific wording relating to access to justice. More in section (4) immediately below.

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

Where a public authority refuses a request for access to environmental information, either in whole or in part, it must comply with certain obligations under Article 7(4) of the AIE Regulations, including an obligation to specify the reasons for the refusal and to inform the applicant of their rights of internal review and appeal, including the time limits within which such rights may be exercised.

Under the AIE Regulations, where a request is refused, or where an applicant believes that their request has been wrongfully/inadequately answered, two administrative remedies are available in the first instance: internal review and an appeal to the Commissioner for Environmental Information.

Where the decision on internal review affirms the original decision, or varies it in a way that results in the request being refused, either in whole or in part, the public authority must specify the reasons for the decision and must inform the applicant of the right to appeal to the Commissioner for Environmental Information and the time limit within which this right may be exercised. If no decision is made on an applicant’s internal review request within one month, this non-reply is deemed to be a refusal and the applicant may proceed with an appeal to the Commissioner.

The Regulations set out that following receipt of an appeal, the Commissioner shall (a) review the decision of the public authority; (b) affirm, vary or annul the decision concerned, specifying the reasons for the decision, and (c) where appropriate, require the public authority to make available environmental information to the applicant.

Thereafter, there is the possibility of an appeal on a point of law to the High Court from a decision of the Commissioner. Judicial review of the Commissioner’s decision is also an option.

Beyond access to information on the environment, various pieces of domestic legislation require that access to justice information be provided alongside a permitting decision. For example, in EIAs a planning authority must publish notice of its permission decision, which notice must state inter alia that a person may question the validity of any decision of the planning authority by way of an application for judicial review; under Order 84 of the Rules of the Superior Courts (S.I. 15 of 1986), in accordance with section 50 of the PDA 2000 (see section 34(1A) PDA 2000). The same is true in respect of strategic housing development, where the applicant for permission must give notice that judicial review lies as a remedy against the decision of ABP (see the Planning and Development (Strategic Housing Development) Regulations 2017, S.I. 271/2017). The same is also true in respect of IED and IPC licensing decisions by the EPA, where the EPA must give notice of its licensing decisions, including giving notice that a person shall not question the validity of the EPA’s decision other than by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (see the Environmental Protection Agency (Integrated Pollution Control) (Licensing) Regulations 2013 (S.I. 283/2013) and the Environmental Protection Agency (Industrial Emissions) (Licensing) Regulations 2013 (S.I. 137/2013)). This is also the case in respect of aquaculture licensing decisions by the Aquaculture Licenses Appeals Board, which must publish notices of its appeal decisions, including a statement that a person may question the validity of the determination or
decision by way of an application for judicial review (see the Aquaculture (Licence Application) (Amendment) (No. 2) Regulations 2010 (S.I. 369/2010). More generally, the European Communities (Public Participation) Regulations 2010 (S.I. 352/2010) inserted a requirement for such notice to be given in a range of other consent regimes in Ireland.

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

Public authorities have an obligation under the AIE Regulations (Articles 7(7) and 7(8)) to provide assistance to applicants to valid access to information requests and to provide applicants with information regarding the rights of internal review and appeal (Articles 7(4)(d) and 11(4)(b)). There is nothing in the Regulations relating specifically to foreign participants.

1.8. Special procedural rules


Country-specific EIA rules related to access to justice

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

In Ireland, EIA is governed by different statutory regimes depending on the subject matter. It is possible to judicially review an EIA screening decision. The time limits are the same as with challenging any decision by way of judicial review: generally three months to apply for leave, but 8 weeks in the case of planning/IED.

Planning/development: an application for leave to apply for judicial review of any planning decision is required to demonstrate that the applicant has a sufficient interest. Under section 50A of the Planning and Development Act 2000 (PDA 2000), environmental NGOs are deemed to have standing for EIA purposes where they (i) are a body or organisation (other than a State authority, a public authority or governmental body or agency) the aims or objectives of which relate to the promotion of environmental protection and (ii) have, during the period of 12 months preceding the date of the application, pursued those aims or objectives.

Other consent regimes: for non-planning judicial review in the area of environmental law, the standing threshold is generally a sufficient interest: see Order 84, r.21 of the Rules of the Superior Courts and S.I. No. 352/2014 (more below).

In some cases, eNGOs are deemed to have standing – see e.g. S.I. No. 352/2014. By way of example, s.43(5)(ba) of the Waste Management Act 1996, as inserted by the European Union (Access to Review of Decisions for Certain Bodies or Organisations promoting Environmental Protection) Regulations 2014 (S.I. No. 352 of 2014), provides that the High Court shall not grant leave for judicial review unless it is satisfied that— (i) the applicant has a sufficient interest in the matter which is the subject of the application, or (ii) the applicant— (i) is a body or organisation (other than a State authority, a public authority or governmental body or agency) the aims or objectives of which relate to the promotion of environmental protection, and (ii) has, during the period of 12 months preceding the date of the application, pursued those aims or objectives.

These 2014 Regulations similarly define the standing threshold as a sufficient interest, with deemed standing for eNGOs that meet the above-mentioned conditions, for challenges under:

s.7 of the Arterial Drainage Act 1945
s.87(10) of the Environmental Protection Agency Act 1992: IED licensing
reg.29 of the European Communities (Assessment and Management of Flood Risks) Regulations 2010 (S.I. No. 122 of 2010)
reg.21 of the National Monuments Act 1930
s.13A of the Petroleum and Other Minerals Development Act 1960

Separately:
reg 17 of the Forestry Regulations 2017 provides standing to challenge forestry decisions by way to judicial review to (a) those who have a sufficient interest, (b) “consultation bodies” (which includes various State bodies and one eNGO: An Taisce), or (c) bodies or organisations (other than a State authority, a public authority or governmental body or agency) the aims or objectives of which relate to the promotion of environmental protection, that have, during the period of 12 months preceding the date of the application, pursued those aims or objectives;
reg 15 of the European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011 (S.I. No. 456 of 2011, as amended) creates a similar standing rule (minus the consultation bodies) in respect of decisions relating to various agricultural activities;
s.205 of the Minerals Development Act 2017 creates a similar standing rule (minus the consultation bodies) in respect of consents under that Act; reg. 7G of the European Union (Environmental Impact Assessment) (Arterial Drainage) Regulations 2019 creates a similar standing rule (minus the consultation bodies) in respect of decisions relating to EIA drainage schemes.

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

The standing rules relating to scoping are the same as are described under 1) for screening.

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

In principle, the public is entitled to challenge screening and scoping decisions on administrative appeal or in court. In consent regimes with an administrative appeal (such as planning permission, forestry licensing, aquaculture licensing), such a challenge could be raised on appeal. An example of a court challenge is An Taisce v Minister for the Environment, Community and Local Government & Ors 2012 No. 1046 JR, in which the applicant commenced judicial review proceedings relating to the grant of a licence to test-drill for oil off the coast of Dublin, in circumstances where the respondent had unlawfully “screened out” the need for EIA. The case settled with a voluntary surrender of the licence by Providence Oil.

As above, deadlines for judicial review of screening and scoping decisions are the same as the standard judicial review deadlines: three months to apply for leave in most environmental law cases; 8 weeks in planning law/IED cases.

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

It is possible for anyone to challenge a final authorisation, provided they are held to have a sufficient interest or deemed to have standing. Also see the paragraphs on standing under 1) above.

For individuals, as a rule, participating in the administrative procedure will confer standing.

In the planning context, the Supreme Court in Grace and Sweetman v An Bord Pleáinístí (2017) IESC 10 held that a failure to participate in the permission granting process does not of itself exclude a person from having standing but that it may be a factor which can, in an appropriate case, be taken into account. In that context the Court emphasised that participation in the process will undoubtedly confer standing. On the facts, standing was accorded to Ms. Grace even though she had not participated at all in the administrative process. It should be noted, however, that she lived within 1 km of the proposed development, had a long history of activism in relation to the development and was certainly directly affected. The decision of the Court should not therefore be regarded as authority for the proposition that the prior participation rule has been dispensed with. That said, the Court indicated that had Mr. Sweetman
(the other challenger, who did not live near to the wind farm in question) participated in the permission granting process or given the Court some cogent explanation for non-participation, then it would have been much easier to resolve the standing question in his favour (ultimately the Court did not find it necessary to reach a final determination on the question of Mr. Sweetman’s standing).

Subsequently, the High Court held in [7] Conway v An Bord Pleanála [2019] IEHC 525 that there is nothing in Article 11 of the EIA Directive or in C-263/08 DJürgarden or C-137/14 Commission v. Germany which would preclude a national court, as a matter of EU law, from considering as among the factors to be taken into account in determining standing, the non-participation by the applicant in the prior administrative or planning process which led to the impugned decision and any explanation for that non-participation (factors which, as the Supreme Court in Grace and Sweetman confirmed, can be considered under Irish national standing rules). Indeed, the Court held, C-664/15 Protect Natur suggests that a prior participation requirement may not infringe the right of access to effective judicial mechanisms, at least under Article 9 of the Aarhus Convention and potentially also under Article 11 of Directive 2011/92. However, the Court did not reach a definitive conclusion on that point. Subsequently, in January 2021, the CJEU in Case C-826/18 Stichting Varkens in Nood held that Article 9(2) of the Aarhus Convention precludes a prior participation requirement in respect of proceedings within the scope of Article 9(2) brought by eNGOs which are part of the “public concerned”. The CJEU further held that Article 9(3) of the Convention does not preclude a prior participation requirement, unless the applicant cannot reasonably be criticised, in light of the circumstances of the case, for not having intervened in the earlier procedure.

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

In Sweetman v An Bord Pleanála [2008] 1 IR 277, the High Court held that the EIA Directive allows persons to challenge “the substantive or procedural legality of decisions” and that, while it is clear that Irish judicial review law allows an extensive review of the procedural legality of decisions, the Directive does not require that there must be a judicial review of the substance of the decision itself but rather the “substantive legality” of the decision, i.e. the Directive does not require a complete appeal on the merits but rather requires a review of the procedures followed, to determine whether they were in accordance with law, as well as a review of the “substantive legality” of the decision. The High Court concluded that current Irish judicial review law goes a long way towards (and indeed may well meet) that requirement.

Judicial review proceedings can review whether it was, as a matter of law, open to the decision maker to come to the decision taken. It can review whether statutory obligations were complied with, whether all proper matters were taken into account and no improper matters taken into account. The limitation on the review is that the court is not permitted “second guess” a judgment made by the decision maker on the basis of materials which could allow such a judgment to be reached.

The Irish courts defer to the technical expertise of decision-makers such as planning authorities, ABP and the EPA and apply curial deference since the courts are not themselves experts on planning and environmental matters. As such, the courts will generally not review the scientific accuracy or validity of an environmental statement and will be deferential to the decision-maker, provided that the procedural requirements are met.

Where the substance of a planning or environmental decision is challenged in judicial review proceedings, the High Court may quash such a decision where the decision in question is found to be “unreasonable” or “irrational,” applying either the general test in The State (Keegan) v Stardust Victims’ Compensation Tribunal [1988] IR 642 (whether the decision is “fundamentally at variance with reason and common sense”) or the narrower test in O’Keeffe v An Bord Pleanála [1993] 1 IR 39, which applies where the review is of a decision of a technical or skilled professional decision maker in the area of that special technical or skilled knowledge (see Denham J in the Supreme Court in Meadows v Minister for Justice, Equality and Reform [2010] 2 IR 701). Under this O’Keeffe test, the onus is on an applicant for judicial review to establish that the public authority decision-maker had “no relevant material” (cf. the mention of the Halpin case in 1.2(3) above) before it to support its decision and in default of the applicant so establishing, the court cannot reach a conclusion that the decision was unreasonable/irrational.

It has been determined in a number of cases that a greater level of scrutiny than O’Keeffe may potentially apply in planning/environmental cases, albeit accommodated within the existing judicial review regime: see Sweetman v An Bord Pleanála [2007] 2 ILRM 328, at 6.16 and 6.21; Klahn v An Bord Pleanála [2008] 2 ILRM 435, at 458; AAA & anor v Minister for Justice & ors [2017] IESC 80, par paras 18 and 19.

In cases relating to fundamental rights, the courts apply a proportionality test (see Meadows v Minister for Justice, Equality and Reform [2010] 2 IR 701 and AAA & anor v Minister for Justice & ors [2017] IESC 80), providing for a more intensive form of review.

Regarding whether the court can act of its own motion, the general position in Irish law is that the scope of the proceedings is defined or limited by the arguments put forward to the court by the parties to the litigation. The courts have a discretion to raise points of law of their own motion (usually described as raising a point of law ex officio), but this occurs relatively rarely in practice. In cases where a court decides to raise a point ex officio, the parties will be invited to make submissions on the point.

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

The general rule in judicial review is set out in [3] Order 84 of the Rules of the Superior Courts, to the effect that an application for leave to apply for judicial review must be made within three months from the date when grounds for the application first arose. Thus, as a general rule a decision, act or omission may be challenged by way of judicial review within three months.

Section 50(2) of the PDA 2000 provides that a person shall not question the validity of any decision made or other act done by a planning authority, a local authority or ABP in the performance or purported performance of a function otherwise than by way of an application for judicial review. This means that, in principle, any decision made or act done by a local authority, planning authority or An Bord Pleanála may be challenged by way of judicial review, within the required deadline, which is 8 weeks for planning permission decisions and acts (s.50).

In North East Pylon Pressure Campaign Ltd. v An Bord Pleanála [2016] IEHC 300, it was held by the High Court that section 50 PDA 2000 must be interpreted as meaning that substantive and determinative acts and decisions of a local or planning authority or the Board which are not capable of being substantively revisited in the final decision are the type of acts and decisions to which the section applies. Administrative, subordinate, minor, tentative, provisional, instrumental or secondary steps taken are not acts or decisions to which s.50 applies. In general, the date on which time begins to run must be taken to be the date of the final decision complained of, although there may be exceptional cases where an interim decision is so substantive and determines rights and liabilities irresponsibly and to such an extent as to warrant its being regarded as a decision to which s.50 applies. Thus only a formal decision having irreversible effects triggers the start of the running of time for the purposes of s.50.

For example, it was held that s.50 has no relevance to decisions such as steps in the pre-statutory process or decisions to accept and process an application, or to convene or conduct an oral hearing. The occurrence of a matter, an applicant's knowledge of it, or the taking of a formal step, does not trigger the running of time, unless the decision is crystallised by being embodied in a substantive decision having irreversible effect, normally the final decision. In addition, it was held that time for the purposes of a challenge to such a public law measure of general application does not therefore commence to run until the impact of the measure on an applicant has been crystallised in the form of an ultimate decision. Time does not run from the adoption of the measure, or the applicant's knowledge of it, or any interim step in the process.

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

There is a doctrine that one must generally exhaust administrative remedies before leave will be granted by the High Court to pursue judicial review proceedings (for a discussion, see [5] Simons 2014). While it is possible for an applicant to pursue judicial review proceedings without first exhausting
administrative appeal possibilities, often an applicant would be advised to pursue the administrative route first owing to the risk of being refused leave to bring the action for judicial review (or ultimately refused relief by the court exercising its discretion) for failing to exhaust administrative remedies before resorting to court. However, if for example the available administrative review procedure is not capable of addressing the particular issue(s) arising, then there is nothing to prevent an individual/NGO from proceeding directly to judicial review.

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?

The courts will not grant leave to bring judicial review proceedings unless they are satisfied that the applicant has a “sufficient interest” in the matter to which the application relates (the special standing rules applicable to eNGOs in this context have already been discussed, namely eNGOs don’t have to show “sufficient interest” where certain conditions are met).

In the planning permission context, in Grace and Sweetman v An Bord Pleanála [2017] IESC 10, the issue of standing arose in circumstances where neither applicant had not participated in the planning permission process at all before bringing judicial review proceedings. The Supreme Court held that as a matter of national law, a failure to participate in the permission granting process does not of itself exclude a person from having standing but that it may be a factor which can, in an appropriate case, be taken into account. The Court added that participation in the process will undoubtedly confer standing.

Subsequently, the High Court held in Conway v An Bord Pleanála [2019] IEHC 525 that there is nothing in Article 11 of the EIA Directive or in C-263/08 Djurgården or C-137/14 Commission v. Germany which would preclude a national court, as a matter of EU law, from considering as among the factors to be taken into account in determining standing, the non-participation by the applicant in the prior administrative or planning process which led to the impugned decision and any explanation for that non-participation (factors which, as the Supreme Court in Grace and Sweetman confirmed, can be considered under Irish national standing rules). Indeed, the Court held, C-664/15 Protect Natur suggests that a prior participation requirement may not infringe the right of access to effective judicial mechanisms, at least under Article 9 of the Aarhus Convention and potentially also under Article 11 of Directive 2011/92.

However, the Court did not reach a definitive conclusion on that point. Subsequently, in January 2021, the CJEU in Case C-826/18 Stichting Varkens in Nood held that Article 9(2) of the Aarhus Convention precludes a prior participation requirement in respect of proceedings within the scope of Article 9(2) brought by eNGOs which are part of the “public concerned”. The CJEU further held that Article 9(3) of the Convention does not preclude a prior participation requirement, unless the applicant cannot reasonably be criticised, in light of the circumstances of the case, for not having intervened in the earlier procedure.

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

Order 84, r.24(3) of the Rules of the Superior Courts provides that on the hearing of an application for leave directed to be on notice or for judicial review (on or on any adjournment of such hearing), the Court may give directions and make orders for the conduct of the proceedings as appear convenient for the determination of the proceedings in a manner which is inter alia just. There is no statutory guidance on what is meant by just (or fair and equitable) but there are of course many instances where the principle is applied in practice. In Coffey and others v. Environmental Protection Agency [2013] IESC 31, the Supreme Court considered a series of appeals in which applicants had sought a protective costs order at the outset of their cases on an ex parte basis (i.e. without the respondent or notice parties present, in order to avoid the possibility of the applicants being ordered to pay the other parties’ costs arising from the hearing to determine if a protective costs order would apply). The High Court had refused to grant such an order on an ex parte basis, holding that it would be unfair to make a final order of this kind without having given the EPA and any notice parties the opportunity to have been heard on the matter. The Supreme Court upheld the High Court’s conclusion.

In An Taisce v An Bord Pleanála [2015] IEHC 604, the applicant argued that it was not fair that the respondent public body was permitted by the court to raise a key legal issue only in person at the hearing, without having made the argument in the prior written procedure. An Taisce argued that Article 11(4) of the EIA Directive imports fairness and equity into planning decision review procedures. The High Court held (at para 50), however, that Article 11(4) applies only to review processes prior to any judicial review and not to judicial review itself, such that there is no requirement for Irish judicial review to be fair and equitable pursuant to the EIA Directive. This is contradicted by, for example, the CJEU’s judgment in Case C-470/16 NEPPC. To the authors’ knowledge, the An Taisce judgment is the only Irish judgment to have considered the question of fairness/equity for Aarhus Convention/related EU law purposes outside the context of costs. While the judgment was not appealed and could be cited by litigants in future cases, it is fair to say that the relevant part of the judgment is widely considered to have been wrongly decided, may in any event be obiter, and has not been applied since. Further, the judgment does not reflect the treatment or practical application of Article 11(4) of the EIA Directive in Irish legislation or in other case law at the national level (e.g. application of Ireland’s special costs rules to judicial review raising EIA issues via s.50B PDA 2000).

Aspects of fairness/equity remain of concern to applicants in environmental cases: e.g. applicants for judicial review have to meet tight, strictly-applied deadlines in order to commence proceedings: e.g. 8 weeks in the case of challenges to planning permission decisions. Thereafter, parties are not routinely required to keep to the statutory timelines as set down in the Rules of the Superior Courts - this flexibility after leave has been granted is applied equally to applicants as it is to respondents and notice parties.

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

The meaning of “timely” for EIA purposes has not been specifically transposed into Irish law for administrative review or judicial review purposes. Nor does guidance cover the point.

Administrative review
Planning permission: An Bord Pleanála has a statutory objective to reach decisions on appeals within 18 weeks (s.126 PDA 2000).

Forestry: the relevant legislation does not record a deadline for the Forestry Appeals Committee to determine appeals. A review of the afforestation approval process recorded that, in 2018, 26 of the 66 appeals decided by the Forestry Appeals Committee took over 53 weeks to determine – almost 40% of the total.

IED: the EPA must issue its proposed determination within 8 weeks (s.87(3) Environmental Protection Agency Act 1992; and the Environmental Protection Agency (Industrial Emissions) (Licensing) Regulations 2013 (S.I. 137/2013)). There is no administrative appeal mechanism akin to an appeal to ABP in the planning context; however, as set out above, the proposed determination may be objected to, and the EPA’s decision may be judicially reviewed before the High Court. The EPA’s decision must be given “as expeditiously as may be” (s.85).

Aquaculture licensing: on appeal, the Aquaculture Licences Appeals Board must endeavour to ensure that appeals are dealt with within four months.

Judicial review
The general time limit for judicial review applications in environmental law matters is three months (Order 84 of the Rules of the Superior Courts). The time limit for judicial review applications in planning law matters and in cases relating to IED decisions is eight weeks (s.50 PDA 2000 and s.87(10) of the Environmental Protection Agency Act 1992). In Irish Skydiving Club Ltd. v An Bord Pleanála [2016] IEHC 448 Baker J. noted that, in planning judicial review, the time limit is strict, and one in respect of which the power to grant an extension is also to be strictly construed. The time for challenging a planning decision runs from the date of the decision and not from the date on which the applicant first becomes aware of or fully understands the substance of the relevant decision: see SC SYM Fotovoltaic Energy Srl v- Mayo County Council & Ors (No.1) [2018] IEHC 20 at para.72.
There is no statutory requirement that judicial review procedures, once commenced, must be timely although: Order 84, r.24(3) of the Rules of the Superior Courts provides that on the hearing of an application for leave to be on notice or for judicial review (or on any adjournment of such hearing), the Court may give directions and make orders for the conduct of the proceedings as appear convenient for the determination of the proceedings in a manner which is just, expeditious and likely to minimise the costs of those proceedings. This applies to judicial review generally and would include decisions outside the scope of the EIA Directive. In the planning law context, encompassing EIA (development projects) and SEA (development plans), amongst other things, Planning and Development Act 2000 provides that the Court shall, in determining an application for leave or an application for judicial review on foot of such leave, act as expediently as possible consistent with the administration of justice and provides that on an appeal from a determination of the Court in respect of an application referred to in Planning and Development Act 2000, the Court of Appeal shall in determining the appeal, act as expeditiously as possible consistent with the administration of justice (cf. s.74 of the Court of Appeal Act 2014). Similar provisions are included in a range of other environmental legislation: e.g. see the Forestry Regulations 2017 and the European Union (Access to Review of Decisions for Certain Bodies or Organisations promoting Environmental Protection) Regulations 2014.

The Courts Service’s latest statistics reveal the following:
In the High Court, judicial review cases in 2019 lasted on average 392 days from issue to disposal (p.100). (In the Commercial List, where cases are expedited, 1 week to 6 months for a hearing in the High Court from the first return date.) In the Court of Appeal, in 2019 the average wait from when the appeal was entered in the court list to the hearing was 20 months (p.110). There is then of course a wait after the hearing for judgment. In the Supreme Court, in 2019 the average wait from the determination of the leave application to the hearing of the appeal was 55 weeks (p.110). There is then of course a wait after the hearing for judgment.

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 as a matter of general judicial review under Order 84 of the Rules of the Superior Courts but there are no special procedures or requirements for decisions under the EIA Directive. Order 84, r.18(2) of the Rules of the Superior Courts provides that an application for a declaration or an injunction may be made by way of an application for judicial review, and on such an application the Court may grant the declaration or injunction claimed if it considers that, having regard to:

- the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition, certiorari, or quo warranto,
- the nature of the persons and bodies against whom relief may be granted by way of such order, and
- all the circumstances of the case, it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.

Order 84, r.20(8) also provides that where leave to apply for judicial review is granted then the Court, should it consider it just and convenient to do so, may, on such terms as it thinks fit:
- grant such interim relief as could be granted in an action begun by plenary summons, where the relief sought is an order of prohibition or certiorari, make an order staying the proceedings, order or decision to which the application relates until the determination of the application for judicial review or until the Court otherwise orders.
- Section 160 PDA 2000 provides a general injunctive power in the planning law context. This is available where an unauthorised development has been, is being or is likely to be carried out or continued. In such circumstances, the High Court or the Circuit Court may, on the application of a planning authority or any other person, whether or not the person has an interest in the land, by order require any person to do or not to do, or to cease to do, as the case may be, anything that the Court considers necessary and specifies in the order.

A similar enforcement power is available under s.99H of the Environmental Protection Agency Act 1992, where, on application by any person to the High Court or the Circuit Court, the Court is satisfied that an activity is being carried on in contravention of the requirements of this Act. In such circumstances the Court may by order require the person in charge of the activity to do, refrain from or cease doing any specified act (including to refrain from or cease making any specified emission), and make such other provision, including provision in relation to the payment of costs, as the Court considers appropriate. The High Court or the Circuit Court when considering the matter may make such interim or interlocutory order as it considers appropriate.

Similarly, the Supreme Court has set out the relevant principles for injunction applications in judicial review cases in Okunade v Minister for Justice, Equality and Law Reform [2012] 3 IR 152. It was held in that case that, in considering whether to grant a stay or an interlocutory injunction in the context of judicial review proceedings, the court should apply the following considerations:
- the court should first determine whether the applicant had established an arguable case; if not the application must be refused, but if so, then;
- the court should consider where the greatest risk of injustice would lie. The court set out a range of factors to consider in this regard;
- the court should, in those limited cases where it was relevant, have regard to whether damages were available and would be an adequate remedy and also whether damages could be an adequate remedy arising from an undertaking as to damages; and
- subject to the issues arising in the judicial review not involving detailed investigation of fact or complex questions of law, the court could place all due weight on the strength or weakness of the applicant’s case.

Although this decision was applied in the field of immigration law, it also applies in the area of environmental law. In Friends of the Irish Environment Ltd. v. Minister for Communications, Climate Action and Environment [2019] IEHC 555 the High Court noted that some limited assessment should be made of the strength of the defence to the proceedings in the context of an EU law claim. The Okunade principles were also applied in Irish Coastal Environment Group Coastwatch CLG v The Sea Fisheries Protection Authority & Ors. [2019] IEHC 677 where an injunction application on notice was brought to restrain dredging for razor clams (Ensis siliqua) in Waterford estuary.

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

Decisions on applications for IPPC licences are made by the EPA. Sections 87(2) and (3) of the Environmental Protection Agency Act 1992 (as amended) require the EPA to notify the public of its proposed determination of a licence application within 8 weeks from the date of receipt of the application. The EPA’s final decision, following any objections and any oral hearing, must be given “as expeditiously as may be” (s.85).

Regulation 20 of the Environmental Protection Agency (Industrial Emissions) (Licensing) Regulations 2013 requires the notice to inform the public of the proposed determination and where and how an objection can be lodged.

Any person or body (including the applicant for a licence or a licensee) can make an objection within 28 days of the proposed determination being issued on payment of a fee of €126 (reduced to €63 for certain bodies). A person making a valid objection can request an oral hearing. A request must include the €100 fee and be received within the 28-day objection period. The EPA has absolute discretion to hold (or not) an oral hearing, whether or not a request has been made.
Regulation 37(2) and (3) of the Environmental Protection Agency (Industrial Emissions) (Licensing) Regulations 2013 (S.I. No. 137 of 2013) requires the EPA to publish its final decision and the reasons for its decision. Under regulation 37(3)(j), the notice of the final decision published by the EPA must state that leave for judicial review has to be instituted within 8 weeks of the date the final decision is made, in accordance with section 87(10) of the Environmental Protection Agency Act 1992 (as amended).

Under section 87(10) of the Environmental Protection Agency Act 1992 a person may question the validity of a decision of the EPA to grant or refuse a licence or revised licence by instituting proceedings within 8 weeks beginning on the date on which the licence or revised licence is granted or the date on which the decision to refuse or not to grant the licence or revised licence is made.

Section 87(10)(c) and (d) go on to provide the relevant standing rules: the High Court will not grant leave for judicial review unless it is satisfied that either the applicant has a sufficient interest in the matter (this is not limited to an interest in land or other financial interest) or, in the case of an environmental NGO, that the NGO has pursued environmental protection aims or objectives during the period of 12 months preceding the date of the application for leave.

Separately, section 99H of the Environmental Protection Agency Act 1992 provides a broad third party enforcement power in respect of IED/IPC licences, enabling "any person" to apply to the High Court or the Circuit Court where an activity is being carried on in contravention of the requirements of the Act, seeking an order—requiring the person in charge of the activity to do, refrain from or cease doing any specified act (including to refrain from or cease making any specified emission), making such other provision, including provision in relation to the payment of costs, as the Court considers appropriate.

The High Court or the Circuit Court when considering the matter may make such interim or interlocutory order as it considers appropriate. The effect is that anyone may at any time after a permit has been issued challenge the activity if it contravenes the rules contained in the Act.

The special costs rules set out in Part 2 of the Environment (Miscellaneous Provisions) Act 2011 (and also arguably section 50B PDA 2000) will in principle apply to proceedings under section 87 or 99H of the Environmental Protection Agency Act 1992 (see section 1.7.3(6) above).

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?

There is no administrative appeal available in respect of IED decisions in Ireland. Rather, judicial review is the only means of challenge.

No specific definition of “the public” or “the public concerned” has been included in Ireland’s legislation. Any person (individuals, NGOs, other legal entities, ad hoc groups, as well as (it would seem) non-resident individuals and NGOs) may make submissions to the EPA on an application for an IED licence (or a review of a licence). Any person may also challenge an EPA licensing decision by way of judicial review within 8 weeks, provided they have a “sufficient interest” (cf. the Supreme Court’s decision in the Grace and Sweetman case in the planning context, discussed in 1.1(4) above). However, as described above, environmental NGOs that have been active over the previous 12 months are effectively deemed to have such an interest by statute for the purposes of certain consent regimes. Further, “any person” - without any standing requirement - may seek to enforce the requirements of the Environmental Protection Agency Act 1992 in court under section 99H, e.g. where an activity is ongoing without an IED/IPC licence or in breach of the conditions of such a licence.

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

There is no administrative appeal available in respect of IED decisions in Ireland. Rather, judicial review is the only means of challenge.

The European Union (Access to Review of Decisions for Certain Bodies or Organisations promoting Environmental Protection) Regulations 2014 (S.I. No. 352 of 2014) define the standing threshold for IED licensing purposes as a sufficient interest, with deemed standing for eNGOs whose aims and objectives relate to the promotion of the environment and who have pursued that objective over the previous 12 months. This relates to challenges by way of judicial review pursuant to s.87(10) of the Environmental Protection Agency Act 1992, which covers a decision of the EPA to grant or refuse an IED licence or revised licence; challenges must be brought within 8 weeks. Thus, this is the standing rule where a decision relating to screening is challenged as part of a challenge to decision to grant or refuse an IED licence.

Where a screening decision is challenged outside the scope of a challenge to a decision to grant or refuse an IED licence, the standing test would be sufficient interest under Order 84 of the Rules of the Superior Courts, and as a general rule an application for leave to apply for judicial review must be made within three months from the date when grounds for the application first arose.

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

The same rules apply as are described immediately above in the context of screening challenges.

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

Any person or body can make an objection within 28 days of the proposed determination on the IED licence being issued by the EPA. On payment of a fee of €126 (reduced to €63 for certain bodies). A person making a valid objection can request an oral hearing. A request must include the €100 fee and be received within the 28-day objection period. This period commences on the date of notification of the proposed determination by the EPA. The EPA has absolute discretion to hold (or not) an oral hearing, whether or not a request has been made.

In arriving at its final determination the EPA will consider the application and all objections, submissions received and, where an oral hearing has been held, the report and recommendation of the person(s) who conducted the hearing.

No provision is made in the legislation for an administrative appeal in respect of the EPA’s decisions (also known as the “final determination”) on IED licence applications. Such decisions may however be challenged by way of judicial review within 8 weeks under section 87(10) of the Environmental Protection Agency Act 1992, as described above.

6) Can the public challenge the final authorisation?

No provision is made in the relevant legislation for an administrative appeal in respect of EPA decisions on IED licence applications. As described above, such decisions may however be challenged by way of judicial review. Special statutory rules apply to such challenges. An application for judicial review challenging the validity of a decision of the EPA to grant or to refuse to grant, an IED licence, must be instituted within the period of eight weeks from the date on which the licence is granted or the date on which the decision to refuse to grant the licence is made: Environmental Protection Agency Act 1992 (as amended), section 87(10). The High Court may, on application to it, extend the eight-week period where it considers, in the particular circumstances, that there is “good and sufficient reason” for extending the time limit.

As regards standing, the High Court must not grant leave to bring judicial review proceedings unless it is satisfied that the applicant has a “sufficient interest” in the matter to which the application relates: section 87(10) of the Environmental Protection Agency Act 1992. As discussed above, environmental NGOs that have been active over the previous 12 months are effectively deemed to have such an interest by statute for the purposes of certain consent regimes. Further, “any person” - without any standing requirement - may seek to enforce the requirements of the Environmental Protection Agency Act 1992 in court under section 99H, e.g. where an activity is ongoing without an IED/IPC licence or in breach of the conditions of such a licence.

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?

In Sweetman v An Bord Pleanála [2008] 1 IR 277, the High Court concluded that current Irish judicial review law goes a long way towards (and indeed may well meet) the requirement to provide for a review of substantive legality as well as procedural legality. Judicial review proceedings can review whether it was, as a matter of law, open to the decision maker to come to the decision taken. It can review whether statutory obligations were complied with, whether all
proper matters were taken into account and no improper matters taken into account. The limitation on the review is that the court is not permitted to "second guess" a judgment made by the decision maker on the basis of materials which could allow such a judgment to be reached.

The Irish courts defer to the technical expertise of decision-makers such as planning authorities, ABP and the EPA and apply curial deference since the courts are not themselves experts on planning and environmental matters. As such, the courts will generally not review the scientific accuracy or validity of an environmental statement and will be deferential to the decision-maker, provided that the procedural requirements are met.

Where the substance of a planning or environmental decision is challenged in judicial review proceedings, the High Court may quash such a decision where the decision in question is found to be "unreasonable" or "irrational", applying either the general test in The State (Keegan) v. Stardust Victims' Compensation Tribunal [1986] IR 642 (whether the decision is "fundamentally at variance with reason and common sense") or the narrower test in O'Keeffe v An Bord Pleanála [1993] 1 IR 39, which applies where the review is of a decision of a technical or skilled or professional decision maker in the area of that special technical or skilled knowledge (see Denham J in the Supreme Court in Meadows v Minister for Justice, Equality and Reform [2010] 2 IR 701). Under this O’Keeffe test, the onus is on an applicant for judicial review to establish that the public authority decision-maker had "no relevant material" (c.f. the mention of the Halpin case in 1.2(3) above) before it to support its decision and in default of the party so establishing, the court cannot reach a conclusion that the decision was unreasonable/irrational.

It has been determined in a number of cases that a greater level of scrutiny than O’Keeffe may potentially apply in planning/environmental cases, albeit accommodated within the existing judicial review regime: see Sweetman v An Bord Pleanála [2007] 2 ILRM 328, at 6.16 and 6.21; Klohn v An Bord Pleanála [2008] 2 ILRM 435, at 458; Keane v An Bord Pleanála [2012] IEHC 324, paras 18 and 19.

In cases relating to fundamental rights, the courts apply a proportionality test (see Meadows v Minister for Justice, Equality and Reform [2010] 2 IR 701 and AAA & anor v Minister for Justice & ors [2017] IESC 80), providing for a more intensive form of review.

Regarding whether the court can act of its own motion, the general position in Irish law is that the scope of the proceedings is defined or limited by the arguments put forward to the court by the parties to the litigation. The courts have a discretion to raise points of law of their own motion (usually described as raising a point of law ex officio), but this occurs relatively rarely in practice. In cases where a court decides to raise a point ex officio, the parties will be invited to make submissions on the point.

8) At what stage are these challengeable?

The usual remedy where an administrative decision of the EPA is believed to be unlawful would be for the court to quash the invalid decision in judicial review proceedings. Under section 87(10) of the Environmental Protection Agency Act 1992, proceedings to challenge a decision to grant or refuse a licence or revised licence must be instituted within the period of 8 weeks beginning on the date on which the licence or revised licence is granted or the date on which the decision to refuse or not to grant the licence or revised licence is made.

In terms of other acts or omissions, the court has inherent jurisdiction in judicial review matters under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986, as amended), and as a general rule an application for leave to apply for judicial review must be made within three months from the date when grounds for the application first arose.

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

Not applicable: there is no provision for an administrative review/appeal in the case of EPA decisions on IED/IPC licence applications.

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?

As discussed, the courts will not grant leave to bring judicial review proceedings unless they are satisfied that the applicant has a "sufficient interest" in the matter to which the application relates (NGOs are deemed to have automatic standing if they meet the statutory criteria: namely that the NGO's aims or objectives relate to the promotion of environmental protection and it has, during the 12 months preceding the date of the application, pursued those aims or objectives); see section 87(10) of the Environmental Protection Agency Act 1992.

In the planning permission context by way of parallel, in Grace and Sweetman v An Bord Pleanála [2017] IESC 10 the issue of standing arose in circumstances where neither applicant had participated in the planning permission process at all before bringing judicial review proceedings. The Supreme Court held that as a matter of national law, a failure to participate in the permission granting process does not of itself exclude a person from having standing but that it may be a factor which can, in an appropriate case, be taken into account. In that context the Court emphasised that participation in the process will undoubtedly confer standing. On the facts, the Court emphasised that participation in the process will undoubtedly confer standing. On the facts, standing was accorded to Ms. Grace even though she had not participated at all in the administrative process. It should be noted, however, that she lived within 1 km of the proposed development, had a long history of activism in relation to the development and was certainly directly affected. The decision of the Court should not therefore be regarded as authority for the proposition that the prior participation rule has been dispensed with. That said, the Court indicated that had Mr. Sweetman (the other challenger, who did not live near to the wind farm in question) participated in the permission granting process or given the Court some cogent explanation for non-participation, then it would have been much easier to resolve the standing question in his favour (ultimately the Court did not find it necessary to reach a final determination on the question of Mr. Sweetman’s standing). In January 2021, the CJEU in Case C-826/18 Stichting Varkens in Nood held that Article 9(2) of the Aarhus Convention precludes a prior participation requirement in respect of proceedings within the scope of Article 9(2) brought by eNGOs which are part of the “public concerned”. The CJEU further held that Article 9(3) of the Convention does not preclude a prior participation requirement, unless the applicant cannot reasonably be criticised, in light of the circumstances of the case, for not having intervened in the earlier procedure.

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

Order 84, r.24(3) of the Rules of the Superior Courts provides that on the hearing of an application for leave directed to be on notice or for judicial review (or on any adjournment of such hearing), the Court may give directions and make orders for the conduct of the proceedings as appear convenient for the determination of the proceedings in a manner which is inter alia just. There is no statutory guidance on what is meant by just (or fair and equitable) but there are of course many instances where the principle is applied in practice.

In Coffey and others v. Environmental Protection Agency [2013] IESC 31, the Supreme Court considered a series of appeals in which applicants had sought a protective costs order at the outset of their cases on an ex parte basis (i.e. without the respondent or notice parties present, in order to avoid the possibility of the applicants being ordered to pay the other parties’ costs arising from the hearing to determine if a protective costs order would apply). The High Court had refused to grant such an order on an ex parte basis, holding that it would be unfair to make a final order of this kind without having given the EPA and any notice parties the opportunity to have been heard on the matter. The Supreme Court upheld the High Court’s conclusion.

In An Taisce v An Bord Pleanála [2016] IEHC 604, the applicant argued that it was not fair that the respondent public body was permitted by the court to raise a key legal issue only in person on the hearing, without having made the argument in the prior written procedure. An Taisce argued that Article 11(4) of the EIA Directive imports fairness and equity into planning decision review procedures. The High Court held (at para 50), however, that Article 11(4) applies only to review processes prior to any judicial review and not to judicial review itself, such that there is no requirement for Irish judicial review to be fair and equitable pursuant to the EIA Directive. This is contradicted, for example, by the CJEU’s judgment in Case C-470/16 NEPPC. To the authors’ knowledge,
the An Taisce judgment is the only Irish judgment to have considered the question of fairness/equity for Aarhus Convention/related EU law purposes outside the context of costs. While the judgment was not appealed and might be cited by litigants in future cases, it is fair to say that the relevant part of the judgment is widely considered to have been wrongly decided, may have come about by obiter, and has not been applied since. Further, the judgment does not reflect the treatment or practical application of Article 11(4) of the EIA Directive in Irish legislation or in other case law at the national level (e.g. application of Ireland’s special costs rules to judicial review raising EIA issues via s.50B PDA 2000).

Aspects of fairness/equity remain of concern to applicants in environmental cases: e.g. applicants for judicial review have to meet tight, strictly-applied deadlines in order to commence proceedings: e.g. 8 weeks in the case of challenges to planning permission decisions. Thereafter, parties are not routinely required to keep to the statutory timelines as set down in the Rules of the Superior Courts - this flexibility after leave has been granted is applied equally to applicants as it is to respondents and notice parties.

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

The meaning of “timely” for IED purposes has not been specifically transposed into Irish law for administrative review or judicial review purposes. Nor does guidance cover the point.

Administrative review

The EPA must issue its proposed determination within 8 weeks (s.87(3) Environmental Protection Agency Act 1992; and the Environmental Protection Agency (Industrial Emissions) (Licensing) Regulations 2013 (S.I. 137/2013)). There is no administrative appeal mechanism akin to an appeal to ABP in the planning context; however, as set out above, the proposed determination may be objected to, and the EPA’s decision may be judicially reviewed before the High Court.

Judicial review

There is no statutory requirement that judicial review procedures must be timely although Order 84, r.24(3) of the Rules of the Superior Courts provides that on the hearing of an application for leave directed to be on notice or for judicial review (or on any adjournment of such hearing), the Court may give directions and make orders for the conduct of the proceedings as appear convenient for the determination of the proceedings in a manner which is just, expeditious and likely to minimise the costs of those proceedings. This applies to judicial review generally and would include decisions outside the scope of the IED Directive.

The Courts Service’s latest statistics reveal the following:

In the High Court, judicial review cases in 2019 lasted on average 392 days from issue to disposal (p.100). (In the Commercial List, where cases are expedited, 1 week to 6 months for a hearing in the High Court from the first return date.)

In the Court of Appeal, in 2019 the average wait from when the appeal was entered in the court list to the hearing was 20 months (p.110). There is then of course a wait after the hearing for judgment.

In the Supreme Court, in 2019 the average wait from the determination of the leave application to the hearing of the appeal was 55 weeks (p.110). There is then of course a wait after the hearing for judgment.

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?

An applicant seeking leave to bring judicial review proceedings to challenge a decision of the EPA to grant, or to refuse to grant, an IED licence, may seek interim or interlocutory relief from the High Court. The Rules of the Superior Courts provide that where leave for judicial review is granted, the court, where it considers it just and convenient to do so, may grant interim relief on such terms as it thinks fit: Order 84, rule 20(8).

Separately, section 99H of the Environmental Protection Agency Act 1992 provides a broad third party enforcement power in respect of IED/IPC licences, enabling “any person” to apply to the High Court or the Circuit Court where an activity is being carried on in contravention of the requirements of the Act, seeking an order—

(a) requiring the person in charge of the activity to do, refrain from or cease doing any specified act (including to refrain from or cease making any specified emission),

(b) making such other provision, including provision in relation to the payment of costs, as the Court considers appropriate.

The High Court or the Circuit Court when considering the matter may make such interim or interlocutory order as it considers appropriate.

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

The EPA provides information regarding judicial review of its decisions on its website - Licensing Process Explained.

1.8.3. Environmental liability

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 damage recorded in the ELD?

Regulation 16 of the European Communities (Environmental Liability) Regulations 2008 (S.I. 547/2008) (“the ELD Regulations”) provides that a person shall not question the validity of a decision of the EPA relating to—

(a) existence of environmental damage or whether Regulation 15 (2)(a) or (b) applies to a person (i.e. whether the person is affected or likely to be affected by the instance of environmental damage, or has a sufficient interest in the decisions relating to the environment made by the EPA or any other person), or

(b) whether or not to perform its functions under the Regulations pursuant to Regulation 15(6), unless the proceedings are instituted within the period of 8 weeks beginning on the date on which the decision is made.

Where, on application to the High Court, the Court considers that in the particular circumstances there is good and sufficient reason for doing so, the Court may extend this period.

Applications for leave must be made to the High Court in accordance with ordinary judicial review procedures under Order 84 of the Rules of the Superior Courts, which requires an applicant to have a “sufficient interest” in order to be granted leave. The Art 13(1) ELD requirement to provide access to a review procedure to the “persons referred to in Article 12(1)” (which includes persons with deemed standing as an eNGO) has not been transposed in Ireland in this context, in that Order 84 simply refers to a sufficient interest and does not in addition deem eNGOs to have standing in the circumstances described in the ELD.

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

There is no administrative appeal/review mechanism in Ireland in this context. Judicial review is the only method of recourse. As noted under 1) above, the deadline for instituting judicial review in respect of ELD decisions by the EPA is generally 8 weeks, with the court having discretion to extend this period.

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

Under regulation 15(4) of the ELD Regulations, where a person submits observations and requests the performance by the EPA of its functions, he or she shall also furnish a report to the EPA containing “all information and data relevant to the environmental damage.”

4) Are there specific requirements regarding ‘plausibility’ for showing that environmental damage occurred, and if yes, which ones?
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 decision must be notified in writing, giving reasons and advising the person of the period for bringing review or other legal proceedings in relation thereto pursuant to Regulation 16. No time limit is set for the EPA to notify its decision.

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?

Ireland’s ELD Regulations provide in Regulation 15(1) for the possibility of a request for action to be made in cases of imminent threat. In other words, Ireland has not exercised the option in Art 12(5) ELD to exclude cases of imminent threat from the scope of the national ELD regime in this regard.

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

The EPA is the competent authority.

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

There is no administrative review procedure in Ireland in the ELD context.

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?

It should be noted that because of Ireland’s location and industrial/infrastructural profile the number of projects that involve transboundary consultation is very small. The jurisprudence around the questions raised under this heading 1.8.4 is therefore notably underdeveloped by comparison with continental Member States.

Ireland’s Planning and Development Regulations 2001 (as amended) (“PDR 2001”) provide for a process by which any transboundary State (EU Member State or other party to the Espoo Convention) is informed of a proposed development project (Art 124 et seq) or a development plan (Art 13F), local area plan (Art 14F) or regional planning guidelines (Art 15E) likely to have significant transboundary impacts on that State, before the consent decision is taken. (For simplicity, the remainder of this section discusses the case of development plans as representative of the rules for local area plans and regional planning guidelines.) If a submission is made by a person, NGO or other interested party in a transboundary State to the planning authorities in Ireland those submissions are treated in exactly the same way as if they had been made by a person living or based in Ireland.

In the IED regime, Regulation 15 of the Environmental Protection Agency (Industrial Emissions) (Licensing) Regulations 2013 (S.I. 137/2013, as amended) (“the IED Regulations”) provides for transboundary consultative procedure where required.

Generally speaking all procedural rights which accrue apply equally to participants in the consent process that are based in a potentially affected transboundary State. Thus, the possibility to challenge environmental decisions arises as soon as the relevant decision is taken.

2) Notion of public concerned?

Insofar as consent for a development project is concerned the PDR 2001 frames the participation exercise in terms of the “views of the transboundary State” (art. 124(2)(e)) rather than the views of the public concerned.

In the context of development plans, Art 13F PDR 2001 cross-refer to the public referred to in Art 6(4) of the SEA Directive; that is, “Member States shall identify the public for the purposes of paragraph 2, including the public affected or likely to be affected by, or having an interest in, the decision-making subject to this Directive, including relevant non-governmental organisations, such as those promoting environmental protection and other organisations concerned.”

The IED Regulations use the (undefined) expression “the public concerned” to define those who may wish to participate.

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)?

The standing rules for an NGO in an affected country are the same as for an NGO based in Ireland. These are that any such NGO with aims and objectives relating to the promotion of the environment and who have pursued those aims over the previous 12 months have a right of standing in the case of development subject to EIA. There is no requirement, for example, that the NGO has to be incorporated in Ireland, and the standing rules are identical. Such an NGO would be in precisely the same position as an Irish NGO and could appeal or institute judicial review proceedings within the statutory time limit. An NGO would not be eligible for legal aid on the basis that only natural persons are eligible: see Friends of the Irish Environment v Legal Aid Board [2020] IEHC 454. In that case an eNGO was not eligible to apply for legal aid on the basis that it is a company – the judgment has been appealed to the Court of Appeal.

An NGO in an affected country would be in precisely the same position as an Irish NGO in seeking injunctive relief and/or a stay on any development or other actions taking place in furtherance of the grant of development consent or licence. There is no reason in principle why such an NGO would not equally be entitled to seek pro bono assistance or “no win, no fee” representation from solicitors and barristers.

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)?

The standing rules for an individual in an affected country are the same as for an individual based in Ireland – in each case, the test is sufficient interest. As a rule, participating in the administrative procedure will confer standing.

The Supreme Court in Grace and Sweetman v An Bord Pleanála [2017] IESC 10 held that a failure to participate in the permission granting process does not of itself exclude a person from having standing but that it may be a factor which can, in an appropriate case, be taken into account. In that context the Court emphasised that participation in the process will undoubtedly confer standing. On the facts, standing was accorded to Ms. Grace even though she had not participated at all in the administrative process. It should be noted, however, that she lived within 1 km of the proposed development, had a long history of activism in relation to the development and was certainly directly affected. (This aspect could pose difficulties for an individual in an affected country.) The decision of the Court should not therefore be regarded as authority for the proposition that the prior participation rule has been dispensed with. That said, the Court indicated that had Mr. Sweetman (the other challenger, who did not live near to the wind farm in question) participated in the permission granting process or given the Court some cogent explanation for non-participation, then it would have been much easier to resolve the standing question in his favour (ultimately the Court did not find it necessary to reach a final determination on the question of Mr. Sweetman’s standing).

Subsequently, the High Court held in Conway v An Bord Pleanála [2019] IEHC 525 that there is nothing in Article 11 of the EIA Directive or in C-263/08 Djørgården v C-137/14 Commission v. Germany which would preclude a national court, as a matter of EU law, from considering as among the factors to be taken into account in determining standing, the non-participation by the applicant in the prior administrative or planning process which led to the impugned decision and any explanation for that non-participation (factors which, as the Supreme Court in Grace and Sweetman confirmed, can be considered under Irish national standing rules). Indeed, the Court held, C-664/15 Protect Natur suggests that a prior participation requirement may not infringe the right of access to effective judicial mechanisms, at least under Article 9 of the Aarhus Convention and potentially also under Article 11 of Directive 2011/92.
However, the Court did not reach a definitive conclusion on that point. Subsequently, in January 2021, the CJEU in Case C-826/18 *Stichting Varkens in Nood* held that Article 9(2) of the Aarhus Convention precludes a prior participation requirement in respect of proceedings within the scope of Article 9(2) brought by eNGOs which are part of the “public concerned”. The CJEU further held that Article 9(3) of the Convention does not preclude a prior participation requirement, unless the applicant cannot reasonably be criticised, in light of the circumstances of the case, for not having intervened in the earlier procedure. As noted above, in order to have standing an individual must demonstrate that they have a sufficient interest in the decision. That interest does not need to relate to a financial or land-based interest but some degree of physical proximity or impact is one of the elements assessed, as described above. Equally, a Court will look at the reasons for the individual seeking judicial review of the administrative decision. Courts will generally look to identify either a personal and proximate interest and/or a genuine environmental concern and give standing if those factors are present. If, on the other hand, the proposed development does not engage any personal interest of the individual, they are not directly impacted and the Court perceives that a professed environmental concern is simply a proxy to interfere in the development process, standing may be refused. The absence of any definition of “sufficient interest” makes predicting in advance whether an individual will have standing a difficult exercise at times, and particularly so in the context of an individual in another country. However, as the Supreme Court emphasised in *Grace and Sweetman*, participation in the earlier process will undoubtedly confer standing. To the authors’ knowledge, no cases have been brought by individuals overseas in this context so it is not possible to provide any definitive information from practical experience in relation to the standing of such persons.

Any individual in an affected country accorded standing would, however, be in exactly the same position as an individual in Ireland in relation to their entitlement to apply for injunctive relief and to seek to access, for example, pro bono or “no win, no fee” representation. Individuals based outside Ireland are eligible to apply for legal aid – see [here](#). That said, as Clarke J commented in the Supreme Court at para 2.30 of *Conway v Ireland*, the **Attorney General & Ors [2017] IESC 13**, the evidence suggests that, at a very minimum, the grant of legal aid in environmental cases is an extreme rarity in Ireland.

### 5. At what stage is the information provided to the public concerned (including the above parties)?

In the case of consent for development projects, the PDR 2001 treats the transboundary State rather than the public concerned as the Irish authorities’ interlocutor. The relevant planning authority or An Bord Pleanála as appropriate must provide information on a proposed development referred to in articles 124 or 125 to the transboundary State concerned and shall enter into consultations with that State in relation to the potential transboundary effects of the proposed development: (a) at the same time as notifying the Minister under article 124(1) that, in its opinion, the proposed development would be likely to have significant effects on the environment in a transboundary State (this obligation arises “as soon as may be after receipt of a planning application”), or (b) upon request for such information by the transboundary State under article 125. 

In the case of a development plan, planning authority must, following consultation with the Minister, forward a copy of the draft development plan and associated environmental report to a Member State—(a) where the planning authority considers that implementation of the plan is likely to have significant effects on the environment of such Member State, or (b) where a Member State, likely to be significantly affected, so requests.

In the case of IED licensing, the EPA must, “as soon as may be after receipt of the application or request,” notify the appropriate competent authority in the Member State concerned.

### 6. What are the timetables for public involvement including access to justice?

In the case of development projects, the PDR 2001 (reg 130) specify that a planning authority shall, notwithstanding the 8 week deadline for a decision specified section 34(8) of the PDA 2000, not decide to grant or refuse permission in respect of a planning application to which transboundary consultation applies, or An Bord Pleanála shall not determine an appeal, an application for approval to which transboundary consultation applies or an application for strategic infrastructure development, until after (a) the views, if any, of any relevant transboundary State have been received in response to consultations under article 126(1), or (b) the consultations are otherwise completed.

In the case of development plans, the PDR 2001 (reg 13F) require that the authority must agree with the other State (i) a reasonable timeframe for the completion of the consultations and (ii) detailed arrangements to ensure that the environmental authorities and the public likely to be affected in the other Member State are informed and given an opportunity to forward their opinion within a reasonable timeframe.

In the case of IED licensing, where a Member State indicates that it intends to participate, the EPA must, before giving any notification indicating the manner in which it proposes to determine the IED application, consult with the Member State for the purposes inter alia of making arrangements, including the establishment of time-frames for consultations to inter alia enable the members of the public concerned in the territory of the affected Member State to participate effectively in the environmental decision-making procedure (reg. 15 of the IED Regulations, as amended).

### 7. How is information on access to justice provided to the parties?

As regards development projects, reg 131 of the PDR 2001 requires any relevant transboundary State to be sent various notices issued by planning authorities where they have approved development. How the transboundary State communicates this information onwards to the public concerned in that State is not addressed. In the case of planning permission granted by a planning authority, reg 31(k) PDR 2001 requires the notice to specify inter alia that an appeal against the decision may be made to An Bord Pleanála within the period of 4 weeks beginning on the date of the decision of the planning authority. In the case of An Bord Pleanála’s decisions on ordinary planning appeals, reg 74 does not require the notice to mention the possibility of judicial review. However, in the case of its decisions relating to strategic infrastructure (art. 220 PDR 2001) and strategic housing s.10(2) of the Planning and Development (Housing) and Residential Tenancies Act 2016, the relevant notices are required to mention the possibility of questioning the validity of the decision by way of judicial review.

As regards development plans, following any transboundary consultations, reg 13(2) PDR 2001 requires that any Member State consulted must be sent the plan and a statement summarising inter alia how any transboundary consultations have been taken into account in the making of the plan. However, there is no requirement to provide information on access to justice – e.g. how the decision may be challenged.

As regards IED licensing, under reg 21(1) of the IED Regulations the EPA must notify the competent authority of a potentially affected Member State of its proposed determination within 3 working days of the giving of the notification of the proposed determination. The notification must state that objections can be made and must specify the timeframe. Thereafter, once the EPA finally determines the application the EPA must notify the competent authority in the potentially affected Member State and this notice must mention the possibility of challenging the decision by way of judicial review (reg 37).

### 8. Is translation, interpretation provided to foreign participants? What are the rules applicable?

The detailed rules in relation to how transboundary consultation will take place are not prescribed in the PDR 2001 or as regards IED licensing. There is therefore no prima facie requirement that the notices informing the potentially affected country and the substantive underlying documentation are provided in the national language(s) of the potentially affected Member State.

This issue may however be less proximate in Ireland owing to its geographic position and the common language as between Ireland and the United Kingdom. The authors are unaware of any transboundary consultation that has been undertaken further afield in respect of an Irish project or plan. It is worth noting in this regard that the use of nuclear fission for electricity generation is effectively prohibited in Ireland by section 18 of the Electricity Regulation Act 1999.

### 9. Any other relevant rules?
There are no other relevant rules.

[1] Cost protection via s50B has been specifically applied to two consent regimes outside the planning law context: judicial review of forestry development involving EIA (cost protection under s50B PDA by virtue of reg 18 of the Forestry Regulations 2017), and judicial review in respect of certain on-farm impact assessment decisions/acts/omissions (cost protection under s50B PDA by virtue of Regulation 22 of the European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011, S.I. 456/2011. Whether this was necessary is unclear given that s50B appears to apply to any statutory provision that gives effect to the relevant provision(s) of one of the listed Directives.

[2] 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) 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?

There are no express standing rules for persons wishing to challenge decisions, acts or omissions concerning specific activities falling within the scope of EU environmental legislation outside the scope of the EIA and IED Directives. In each case, the High Court will have to be satisfied that the applicant has sufficient interest to bring the proceedings: s84 Order 84 of the Rules of the Superior Courts. Given that numerous Irish statutory provisions have been made to give eNGOs deemed standing in certain specific situations, it would be prudent to proceed on the basis that outside these specific statutory regimes/situations it will be necessary for eNGOs to demonstrate a sufficient interest rather than expecting that they will effectively be deemed in practice to have standing in all environmental/planning cases.

It is worth noting that the High Court has in recent judgments noted the impact of the CJEU’s judgment in C-243/15 LZ II, noting that the various stages of decision-making under Article 6(3) of the Habitats Directive, for example, engage Article 9(2) of the Aarhus Convention (Friends of the Irish Environment v An Bord Pleanála [2019] IEHC 80). The High Court has also noted the impact of C-664/15 Protect Nature, where the CJEU held that a decision under Article 4 of the Water Framework Directive attracted the provisions of Article 9(3) of the Aarhus Convention (Sweetman case just mentioned). In the case of the Environmental Liability Directive, applications for leave must be made to the High Court in accordance with ordinary judicial review procedures under s84 Order 41 of the Rules of the Superior Courts, which requires a “sufficient interest” in order to be granted leave. The Art 13(1) ELD requirement to provide access to a review procedure to “persons referred to in Article 12(1)” (which includes persons with deemed standing as an eNGO) has not been transposed in Ireland in this context, in that s84 Order 41 simply refers to a sufficient interest and does not in addition deem eNGOs to have standing in the circumstances described in the ELD.

It is worth noting that the State will litigate standing points against eNGOs; e.g. in 2020 the Government successfully argued before the Supreme Court that Friends of the Irish Environment, as a corporate body, did not have standing to vindicate personal constitutional rights or human rights under the ECHR in ‘Climate Case Ireland’: see Friends of the Irish Environment v Government of Ireland & Ors. [2020] IESC 49.

It is hard to provide a general assessment of the effectiveness of access to Irish courts in light of CJEU case law, but the following remarks may be salient: as will be evident from the names of cases cited here, a small number of individuals and NGOs bring many of the important environmental cases in Ireland: Friends of the Irish Environment, An Taisce and Peter Sweetman stand out. Further, based on the authors’ experience of litigation in practice, the majority of challenges are brought in the field of planning consents, with fewer cases in other areas.

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?

Administrative review procedures operated by, for example, An Bord Pleanála, the Aquaculture Licences Appeals Board, and the Forestry Appeals Committee involve considering the merits of the decision under appeal. For example, the ultimate decision for An Bord Pleanála on deciding a planning appeal is whether the proposed development amounts to “proper planning and sustainable development” (s.37(1)(b) PDA 2000). Regarding whether administrative review procedures cover procedural and substantive legality, it is worth noting the decision of Kelly J in the High Court in Harding v Cork County Council (No. 1) [2006] 1 IR 294 in the planning law context, in which the Court held that certain issues are not matters appropriate to An Bord Pleanála. On the facts of the case, Kelly J cited in this category points relating to vires, fair procedures and bias, which, the Court held, should properly be determined by a court rather than by An Bord Pleanála. The relevant passage was recently referred to with approval by the Supreme Court in Friends of the Irish Environment v An Bord Pleanála [2020] IESC 14. While the High Court’s decision in Harding related to An Bord Pleanála on the facts, its reasoning would seem applicable to other administrative review procedures.

Judicial review: in Sweetman v An Bord Pleanála [2008] 1 IR 277, the High Court concluded that current Irish judicial review law goes a long way towards (and indeed may well meet) the requirement to provide for a review of substantive legality as well as procedural legality. Judicial review proceedings can review whether it was, as a matter of law, open to the decision maker to come to the decision taken. It can review whether statutory obligations were complied with, whether all proper matters were taken into account and no improper matters taken into account. The limitation on the review is that the court is not permitted to “second guess” a judgment made by the decision maker on the basis of materials which could allow such a judgment to be reached. The Irish courts defer to the technical expertise of decision-makers such as planning authorities, ABP and the EPA and apply curial deference since the courts are not themselves experts on planning and environmental matters. As such, the courts will generally not review the scientific accuracy or validity of an environmental statement and will be deferential to the decision-maker, provided that the procedural requirements are met.

Where the substance of a planning or environmental decision is challenged in judicial review proceedings, the High Court may quash such a decision where the substance of a planning or environmental decision is found to be “unreasonable” or “irrational,” applying either the general test in The State (Keegan) v. Stardust Victims’ Compensation Tribunal [1986] IR 642 (whether the decision is “fundamentally at variance with reason and common sense”) or the narrower test in O’Keeffe v An Bord Pleanála [1993] 1 IR 39, which applies where the review is of a decision of a technical or skilled or professional decision maker in the area of that special technical or skilled knowledge (see Denham J in the Supreme Court in Meadows v Minister for Justice, Equality and Reform [2010] 2 IR 701). Under this O’Keeffe test, the onus is on an applicant for judicial review to establish that the public authority decision-maker had “no relevant material” (cf. the mention of
the *Halpin* case in 1.2(3) above) before it to support its decision and in default of the applicant so establishing, the court cannot reach a conclusion that the decision was unreasonable/irrational.

It has been determined in a number of cases that a greater level of scrutiny than *O’Keeffe* may potentially apply in planning/environmental cases, albeit accommodated within the existing judicial review regime: see *Sweetman v An Bord Pleanála* [2007] 2 ILRM 328, at 6.16 and 6.21; *Klohn v An Bord Pleanála* [2008] 2 ILRM 435, at 458; *Keane v An Bord Pleanála* [2012] IEHC 324, paras 18 and 19.

In cases relating to fundamental rights, the courts apply a proportionality test (see *Meadows v Minister for Justice, Equality and Reform* [2010] 2 IR 701 and *AAA & anor -- Minister for Justice & Ors* [2017] IESC 80), providing for a more intensive form of review.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? Some legislation provides for an administrative appeal, for instance to An Bord Pleanála (ABP) in the planning permission context; to the Aquaculture Licences Appeals Board (ALAB) in respect of aquaculture licensing; and to the Forestry Appeals Committee in the context of certain forestry activities.

There is a doctrine that one must generally exhaust administrative remedies before leave will be granted by the High Court to pursue judicial review proceedings (for a discussion, see *Simons* 2014). While it is possible for an applicant to pursue judicial review proceedings without first exhausting administrative appeal possibilities, often an applicant would be advised to pursue the administrative route first owing to the risk of being refused leave to bring the action for judicial review (or ultimately refused relief by the court exercising its discretion) for failing to exhaust administrative remedies before resorting to court.

However, if for example the available administrative review procedure is not capable of addressing the particular issue(s) arising, then there is nothing to prevent an individual/NGO from proceeding directly to judicial review.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.? Participation in the process will undoubtedly confer standing (see the judgment in *Grace and Sweetman*, cited below). However, having participated is not always a necessary precondition.

As regards individuals: in a number of cases the Irish Courts have considered standing requirements where the applicants have not participated in the administrative process. In *Grace and Sweetman v An Bord Pleanála* [2017] IESC 10 the Supreme Court stated that the requirement to establish a sufficient interest on the part of an applicant for leave to bring judicial review proceedings now defines the limits of standing to bring a judicial review challenge irrespective of the form of order sought. The Supreme Court further observed that the Irish courts have traditionally applied the same rules on standing which were identified in respect of constitutional cases in *Cahill v. Sutton* [1980] IR 269, in judicial review proceedings not involving a constitutional dimension. As noted by the Supreme Court, the overall approach to standing in judicial review proceedings can fairly be described as “reasonably flexible”.

Applying traditional Irish standing rules, and without considering the impact of EU law, standing was accorded to Ms. Grace even though she had not participated at all in the administrative process. It should be noted, however, that she lived within 1 km of the proposed development, had a long history of activism in relation to the development and was certainly directly affected. The decision of the Supreme Court should not therefore be regarded as authority for the proposition that the prior participation rule has been dispensed with. That said, the Court indicated that had Mr. Sweetman (the other challenger, who did not live near to the wind farm in question) participated in the permission granting process *or given the Court some cogent explanation for non-participation*, then it would have been much easier to resolve the standing question in his favour (ultimately the Court did not find it necessary to reach a final determination on the question of Mr. Sweetman’s standing).

Whilst this arose in the EIA context, by way of parallel it is worth noting that, subsequently, the High Court held in *Conway v An Bord Pleanála* [2019] IEHC 525 that there is nothing in Article 11 of the EIA Directive or in C-263/08 *Djurgården* or C-137/14 *Commission v. Germany* which would preclude a national court, as a matter of EU law, from considering as among the factors to be taken into account in determining standing, the non-participation by the applicant in the prior administrative or planning process which led to the impugned decision and any explanation for that non-participation (factors which, as the Supreme Court in *Grace and Sweetman* confirmed, can be considered under Irish national standing rules). Indeed, the Court held, C-864/15 *Protect Natur* suggests that a prior participation requirement may not infringe the right of access to effective judicial mechanisms, at least under Article 9 of the Aarhus Convention and potentially also under Article 11 of Directive 2011/92. However, the Court did not reach a definitive conclusion on that point. Subsequently, in January 2021, the CJEU in Case C-826/18 *Stichting Varkens in Noord* held that Article 9(2) of the Aarhus Convention precludes a prior participation requirement in respect of proceedings within the scope of Article 9(2) brought by eNGOs which are part of the “public concerned”. The CJEU further held that Article 9(3) of the Convention does not preclude a prior participation requirement, unless the applicant cannot reasonably be criticised, in light of the circumstances of the case, for not having intervened in the earlier procedure.

As regards NGOs: with the exception of situations in which an NGO has deemed standing (see section 1.8.1(1) above), it would be prudent to proceed on the basis that an NGO will need to satisfy the court that it has a sufficient interest in order to have standing rather than expecting that they will effectively be deemed in practice to have standing in all environmental/planning cases.

5) Are there some grounds/arguments precluded from the judicial review phase? Respondents in planning/environmental judicial review regularly argue that applicants may only raise points before the courts that they raised previously during the administrative process. Applicants argue that this is inconsistent with the CJEU’s judgment in C-137/14 *Commission v. Germany*. For example, such an exchange arose recently in a judgment in the Supreme Court in *Friends of the Irish Environment v Government of Ireland & Ors.* [2020] IESC 49. However, the Government of Ireland dropped its objections before the case came to hearing before the High Court.

In *M29 Steering Group v An Bord Pleanála* [2019] IEHC 929 the High Court held that as a matter of law there is no general rule that a prior participant who has not raised particular points before An Bord Pleanála is automatically precluded from raising such points before the court. On the other hand, neither do the authorities establish an unrestricted right to raise new points, held the Court. This is particularly so, as was recognised in C-137/14 *Commission v. Germany*, where there is evidence of bad faith or a deliberate decision to withhold a point.

6) Fair, equitable – what meaning is given to equality of arms in the national jurisdiction? *Order 84*, r.24(3) of the Rules of the Superior Courts provides that on the hearing of an application for leave directed to be on notice or for judicial review (or on any adjournment of such hearing), the Court may give directions and make orders for the conduct of the proceedings as appear convenient for the determination of the proceedings in a manner which is inter alia just. There is no statutory guidance on what is meant by just (or fair and equitable) but there are of course many instances where the principle is applied in practice.

In *Coffey and others v. Environmental Protection Agency* [2019] IESC 31, the Supreme Court considered a series of appeals in which applicants had sought a protective costs order at the outset of their cases on an ex parte basis (i.e. without the respondent or notice parties present, in order to avoid the possibility of the applicants being ordered to pay the other parties’ costs arising from the hearing to determine if a protective costs order would apply). The High Court had refused to grant such an order on an ex parte basis, holding that it would be unfair to make a final order of this kind without having given the EPA and any notice parties the opportunity to have been heard on the matter. The Supreme Court upheld the High Court’s conclusion.
In [An Taisce v An Bord Pleanála [2015] IEHC 604], the applicant argued that it was not fair that the respondent public body was permitted by the court to raise a key legal issue only in person at the hearing, without having made the argument in the prior written procedure. An Taisce argued that Article 11(4) of the EIA Directive imports fairness and equity into planning decision review procedures. The High Court held (at para 50), however, that Article 11(4) applies only to review processes prior to any judicial review and not to judicial review itself, such that there is no requirement for Irish judicial review to be fair and equitable pursuant to the EIA Directive. This is contradicted by, for example, the CJEU's judgment in [Case C-470/16 NEPPC]. To the authors' knowledge, the An Taisce judgment is the only Irish judgment to have considered the question of fairness/equity for Aarhus Convention-related EU law purposes outside the context of costs. While the judgment was not appealed and could be cited by litigants in future cases, it is fair to say that the relevant part of the judgment is widely considered to have been wrongly decided, may in any event be obiter, and has not been applied since. Further, the judgment does not reflect the treatment or practical application of Article 11(4) of the EIA Directive in Irish legislation or in other case law at the national level (e.g. application of Ireland's special costs rules to judicial review raising EIA issues via [s.50B PDA 2000]).

Aspects of fairness/equity remain of concern to applicants in environmental cases: e.g. applicants for judicial review have to meet tight, strictly-applied deadlines in order to commence proceedings: e.g. 8 weeks in the case of challenges to planning permission decisions. Thereafter, parties are not routinely required to keep to the statutory timelines as set down in the Rules of the Superior Courts - this flexibility after leave has been granted is applied equally to applicants as it is to respondents and notice parties.

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

There is no statutory requirement that judicial review procedures must be timely in respect of decisions falling within the scope of EU environmental legislation but outside the scope of the EIA and IED Directives although:

- s.50A(10) Planning and Development Act 2000 provides that the Court shall, in determining an application for leave or an application for judicial review on foot of such leave, act as expeditiously as possible consistent with the administration of justice; and
- s.50A(11) provides that on an appeal from a determination of the Court in respect of an application referred to in s.50A(10), the Court of Appeal shall in determining the appeal, act as expeditiously as possible consistent with the administration of justice (cf. s.74 of the Court of Appeal Act 2014).

The Courts Service’s latest statistics reveal the following:

In the High Court, judicial review cases in 2019 lasted on average 392 days from issue to disposal (p.100). (In the Commercial List, where cases are expedited, 1 week to 6 months for a hearing in the High Court from the first return date.)

In the Court of Appeal, in 2019 the average wait from when the appeal was entered in the court list to the hearing was 20 months (p.110). There is then of course a wait after the hearing for judgment.

In the Supreme Court, in 2019 the average wait from the determination of the leave application to the hearing of the appeal was 55 weeks (p.110). There is then of course a wait after the hearing for judgment.

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?

It is possible to seek interlocutory injunctive relief in judicial review proceedings and this is provided for by Order 84 of the Rules of the Superior Courts.

There are no special rules applicable to each sector mentioned in the area of judicial review. However, there are special statutory rules for injunctive relief as a means of enforcement.

- Section 160 PDA 2000 provides a general injunctive power in the planning law context. This is available where an unauthorised development has been, is being or is likely to be carried out or continued. In such circumstances, the High Court or the Circuit Court may, on the application of a planning authority or any other person, whether or not the person has an interest in the land, by order require any person to do or not to do, or to cease to do, as the case may be, anything that the Court considers necessary and specifies in the order.

In the area of waste management law, s.57 of the Waste Management Act 1996 provides that where, on application by any person to the High Court, that Court is satisfied that waste is being held, recovered or disposed of in a manner that causes or is likely to cause environmental pollution or a waste permit or licence is contravened, it may by order—

(a) require the person holding, recovering or disposing of such waste to carry out specified measures to prevent or limit, or prevent a recurrence of, such pollution or contravention, within a specified period, (b) require the person holding, recovering or disposing of such waste to do, refrain from or cease doing any specified act, or to refrain from or cease making any specified omission, (c) make such other provision, including provision in relation to the payment of costs, as the Court considers appropriate.

Application for inter or interlocutory orders, as appropriate.

Section 11 of the Local Government (Water Pollution) Acts 1977-1990 also provides that where a contravention of s.3(1) or s.4(1) of that Act has occurred or is occurring, the High Court may by order prohibit the continuance of the contravention on the application of a local authority or any other person, whether or not the person has an interest in the waters. There is no standing requirement for such applications and they can be made by any person.

More generally, the Supreme Court has set out the relevant principles for injunction applications in judicial review cases in Okunade v Minister for Justice, Equality and Law Reform [2012] 3 IR 152. It was held in that case that, in considering whether to grant a stay or an interlocutory injunction in the context of judicial review proceedings, the court should apply the following considerations:

- the court should first determine whether the applicant had established an arguable case; if not the application must be refused, but if so, then;
- the court should consider where the greatest risk of injustice would lie. The court set out a range of factors to consider in this regard;
- the court should, in those limited cases where it was relevant, have regard to whether damages were available and would be an adequate remedy and also whether damages could be an adequate remedy arising from an undertaking as to damages; and
- subject to the issues arising in the judicial review not involving detailed investigation of fact or complex questions of law, the court could place all due weight on the strength or weakness of the applicant’s case.

Although this decision was applied in the field of immigration law, it also applies in the area of environmental law. In Friends of the Irish Environment Ltd v. Minister for Communications, Climate Action and Environment [2019] IEHC 555 the High Court noted that some limited assessment should be made of the strength of the defence to the proceedings in the context of an EU law claim. The Okunade principles were also applied in Irish Coastal Environment Group Coastwatch CLG v The Sea Fisheries Protection Authority & Ors. [2019] IEHC 677 where an injunction application on notice was brought to restrain dredging for razor clams (Ensis siliqua) in Waterford estuary.

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?
There is no express statutory reference in Irish law to the effect that costs should not be prohibitive. As described above, the High Court in [2019] IEHC 186 held that the special costs rules under s.50B Planning and Development Act 2000 apply to the entirety of proceedings, i.e. to all grounds of challenge and not just those relating to the directives listed in s.50B (EIA, SEA, IPPC (IED) and Art 6 (3)(4) Habitats Directive). In other words, where the impugned decision is made pursuant to a statutory provision that gives effect to the relevant provision(s) of any of the four named EU Directives, then the special costs rules apply to all grounds of challenge. This judgment is under appeal to the Court of Appeal. For now, the effect of the judgment is essentially that all planning permission challenges will have cost protection. With the exception of:

1. 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]

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

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

The Strategic Assessment Directive (Directive 2001/42/EC) is principally transposed by:


Decisions or failures relating to strategic environmental assessment of planning decisions are subject to the standing rules in s.50A of the PDA 2000: generally a sufficient interest must be demonstrated; there is deemed standing for eNGOs active over the past 12 months; plus substantial grounds must be demonstrated in all cases. However, challenges under the SEA Directive are not confined to planning. General challenges brought by way of judicial review are subject to the standing rules in Order 84 of the Rules of the Superior Courts, where the test is simply a sufficient interest. Where a planning decision is challenged on the basis that it breaches the SEA Directive, the applicant must raise substantial grounds and bring the challenge within eight weeks (subject to any extension), and an eNGO applicant may be deemed to have standing. In the case of a non-planning decision, where the SEA Directive is relied upon, the applicant is subject to the lower threshold of arguability and a time limit of three months, but will need to demonstrate a sufficient interest. An example of a recent action for judicial review on inter alia SEA grounds can be found in [2020] Friends of the Irish Environment v Government of Ireland where the applicant challenged the validity of the assessments that were carried out by the respondents and alleged that due to shortcomings in the various assessments and due to the lack of certain monitoring and other provisions, the assessments themselves and the resultant National Planning Framework (NPF) were fatally flawed. However, the High Court found that there was no breach of the SEA Directive.

Access to the courts is relatively good in respect of SEA challenges, particularly in the planning context where s.50B PDA 2000 clearly provides cost protection. However, compared to cases raising issues in respect of the EIA and Habitats Directives there have been relatively few cases relating to SEA in Ireland.

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?

Administrative review is not provided for in respect of plans/programmes subjected to SEA in Ireland. Regarding judicial review, please see the answer under section 2.1(2) above.

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

N/A - while there is public participation/consultation in such procedures, administrative review is not provided for, and the only mechanism by which to challenge the decision of a public authority is by way of judicial review proceedings in the High Court.

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

Decisions or failures relating to strategic environmental assessment of planning decisions are subject to the standing rules in s.50A of the PDA 2000: generally a sufficient interest must be demonstrated; there is deemed standing for eNGOs active over the past 12 months; plus substantial grounds must be demonstrated in all cases. However, challenges under the SEA Directive are not confined to planning. General challenges brought by way of judicial review
are subject to the standing rules in Order 84 of the Rules of the Superior Courts, where the test is simply a sufficient interest. For more details regarding standing for individuals and NGOs, please see the answer to section 2.1(4) above. As will be clear from that discussion, in certain cases it may be possible to demonstrate a sufficient interest without having participated in the administrative process.

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 as a matter of general judicial review under Order 84 of the Rules of the Superior Courts but there are no special procedures or requirements for decisions under the SEA Directive. Order 84, r.20(8) also provides that where leave to apply for judicial review is granted the Court, should it consider it just and convenient to do so, may, on such terms as it thinks fit: grant such interim relief as could be granted in an action begun by plenary summons, where the relief sought is an order of prohibition or certiorari, make an order staying the proceedings, order or decision to which the application relates until the determination of the application for judicial review or until the Court otherwise orders.

The Supreme Court has set out the relevant principles for injunctive actions in judicial review cases in Okunde v Minister for Justice, Equality and Law Reform [2012] 3 IR 152. It was held in that case that, in considering whether to grant a stay or an interlocutory injunction in the context of judicial review proceedings, the court should apply the following considerations: (a) the court should first determine whether the applicant had established an arguable case; if not the application must be refused, but if so, then; (b) the court should consider where the greatest risk of injustice would lie. The court set out a range of factors to consider in this regard; (c) the court should, in those limited cases where it was relevant, have regard to whether damages were available and would be an adequate remedy and also whether damages could be an adequate remedy arising from an undertaking as to damages; and, (d) subject to the issues arising in the judicial review not involving detailed investigation of fact or complex questions of law, the court could place all due weight on the strength or weakness of the applicant’s case.

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?

There is no general express statutory reference in Irish law to the effect that costs should not be prohibitive. However, challenges on SEA grounds should benefit from cost protection under s.50B of the Planning and Development Act 2000.

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?

Article 7 of the Aarhus Convention has not been given effect in Ireland beyond the scope of SEA: see Ireland’s Implementation Table in respect of the Convention.

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?

Where (despite not having transposed Art. 7 of the Aarhus Convention beyond the scope of SEA) the public is given the opportunity to participate in the adoption of a plan or programme not subject to SEA: there is no administrative review possibility; and judicial review would be available and its scope would be as described in section 1.8.1(5) above.

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

Not applicable.

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 relation to plans or programmes that do not engage the terms of the SEA Directive the standing requirements are the same as described above in section 2.1(4).

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?

Please see the answer to section 2.2(5) above.

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 a judicial review challenging a plan or programme not subject to SEA on the basis of national law relating to the environment, applicants may point to the CJEU’s judgment in C-470/16 NEPPC, where the CJEU held that, while the application of national environmental law is at issue, it is for the national court to give an interpretation of national procedural law which, to the fullest extent possible, is consistent with the objectives laid down in Article 9(3) and (4) of the Aarhus Convention, so that judicial procedures are not prohibitively expensive. Applicants will argue that the national courts have a strong duty of interpretation to exercise their discretion, in considering costs under Order 99 of the Rules of the Superior Courts, in such a way so as to avoid prohibitive expense. See the High Court’s discussion in Heather Hill of the use of the court’s discretion under Order 99 in such circumstances.

However, the uncertainty means that applicants will decide to litigate (or not) unsure whether cost protection will apply. The consequences of losing a case where all or part of the proceedings did not benefit from cost protection would be a costs order on the normal ‘loser pays’ basis, subject to the court’s discretion.

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

Administrative review: there is no administrative review available in respect of such plans/programmes.

Legal challenge before court: there are no specific procedures for decisions, acts or omissions concerning plans and programmes required to be prepared under EU environmental legislation. The standing rules are the same as the general rules in judicial review, as set out in Order 84 of the Rules of the Superior Courts: a sufficient interest. Injunctive relief may also be sought under the general judicial review rules in Order 84, as described above.

In terms of effectiveness, access to national courts would be reasonably good, albeit both individuals and NGOs would need to demonstrate a sufficient interest. Where the prospective litigant has not participated in the earlier administrative process, this could cause difficulties in terms of establishing standing: see the High Court’s decision in Conway v An Bord Pleanála [2019] IEHC 525, but cf. the CJEU’s subsequent judgment in Case C-826/18 Stichting Varkens in Nood. Uncertainty regarding cost protection might put some off litigating – more below.

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)?

Please see answer under 1).

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?

Please see the answer under section 2.1(2) above.

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

N/A - while there is public participation/consultation in such procedures, administrative review is not provided for, and the only mechanism by which to challenge the decision of a public authority is by way of judicial review proceedings in the High Court.

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

The standing rules are the same as the general rules in judicial review, as set out in Order 84 of the Rules of the Superior Courts: the applicant must have a sufficient interest. While there is no mandatory requirement for prior participation (Supreme Court in Grace and Sweetman), such participation is one of the factors that may be assessed in considering the sufficiency of a person’s interest for this purpose according to the High Court in Conway v An Bord Pleanála [2019] IEHC 525 (also see the CJEU’s later judgment in Case C-826/18 Stichting Varkens in Nood).

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

Please see the answer to section 2.1(5) above.

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

Please see the answer to section 1.8.1(9) above.

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

Please see the answer to section 2.1(7) above.

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

Please see the answer to section 2.2(5) above.

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?

Please see the answer to section 2.3(6) above.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[6]

1) What are the applicable national statutory rules on legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts?

There are no specific procedures for decisions, acts or omissions concerning executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts. The standing rules are the same as the general rules in judicial review, as set out in Order 84 of the Rules of the Superior Courts – the test is a sufficient interest. Injunctive relief may also be sought under the general judicial review rules in Order 84. Both primary and secondary legislation can be challenged by way of judicial review (subject to time limits) or plenary proceedings. Where primary legislation is challenged, the relief will be declaratory in nature and the applicant will have to demonstrate that it has standing to challenge the legislation. The general position is that a party only has locus standi to challenge the constitutionality of a statutory provision if imminently affected by a decision made or about to be made under it (Cahill v Sutton [1980] IR 269). The question of whether or not a person has a sufficient interest depends upon the circumstances of each particular case. In each case, the question of sufficient interest is a mixed question of fact and law which must be decided upon legal principles but there is greater importance attached to the facts because it is only by an examination of the facts that the court can come to a decision as to whether there is a sufficient interest in the matter to which the application relates (The State (Lynch) v Cooney [1982] IR 337).

There is authority for the proposition that an NGO can directly challenge secondary legislation in judicial review proceedings on the basis inter alia of a contravention of EU law. For example, in Friends of the Irish Environment Ltd. v Minister for Communications, Climate Action and the Environment [2019] IEHC 646, the applicant, in judicial review proceedings, challenged the validity of two statutory instruments. The High Court concluded that the Ministerial Regulations were invalid as they were inconsistent with the requirements of the EIA Directive and the Habitats Directive, and the use of secondary legislation to introduce the legislative amendments required to give effect to the new licensing regime was ultra vires.

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 in this context. Please see the answer to section 2.1(2) regarding judicial review.

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

N/A - administrative review is not provided for, and the only mechanism by which to challenge in this context is by way of judicial review proceedings in the High Court.

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

The standing rules are the same as the general rules in judicial review, as set out in Order 84 of the Rules of the Superior Courts: the applicant must have a sufficient interest. While there is no mandatory requirement for prior participation (Supreme Court in Grace and Sweetman), such participation is one of
the factors that may be assessed in considering the sufficiency of a person’s interest for this purpose according to the [2] High Court in Conway v An Bord Pleanála [2019] IEHC 525 (also see the CJEU’s later judgment in Case C-826/18 Stichting Varkens in Nood).

In the context being considered here – the making of legislation – while there will be a parliamentary process, there may not always be an opportunity for public participation as such. In those circumstances, clearly non-participation would not represent a bar to standing.

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?

Please see the answer to section 2.2(5) above. For a recent example of injunctive relief being granted in this context, see [2] Friends of the Irish Environment v Minister for Communications, Climate Action and Environment & Ors [2019] IEHC 555, where an interlocutory injunction was granted restraining the implementation of certain Regulations.

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 precise jurisdictional basis for a costs order in this context is unclear and will depend to some extent on the underlying nature of the legislation that is challenged. For example, in the Friends of the Irish Environment case cited in 5) immediately above, the legislation challenged related to the EIA and Habitats Directives. The State conceded that an order for costs should be made in favour of Friends and the court therefore did not have to resolve whether an order for costs should be made under [2] s.50B PDA 2000 (special cost protection rules pursuant to the Aarhus Convention) or under the general provision governing costs ([2] Order 99 of the Rules of the Superior Courts): see [2] Friends of the Irish Environment v Minister for Communications, Climate Action and Environment & Ors [2019] IEHC 685.

For a discussion of s.50B, please see the answer to section 1.7.3(6) above.

For a discussion of Order 99, please see the answer to section 2.3(6) above.

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 such a challenge. There is however no specific procedure provided to allow that to occur and the very first validity reference in Ireland was instituted in January 2020 ([2] Friends of the Irish Environment v Minister for Communications, Climate Action and the Environment & Ors. [2020] IEHC 383). This challenged the validity of the decision of the European Commission to include Shannon LNG Terminal on the Union list of Projects of Common Interest in November 2019. It also challenged the domestic decision-making in respect of the inclusion of the Terminal. The latter element allowed the proceedings to be brought to Court as this element provided a right for the proceedings to be instituted. However, the main respondent party was the European Commission who were not, for reasons of comity, named in the proceedings. The proceedings are judicial review proceedings which seek relief against the domestic respondents and ask that the matter be referred to the CJEU for a determination on the validity of the Commission’s measure. The High Court rejected the challenge on the basis that, in the absence of a domestic implementing measure, the High Court had no jurisdiction to refer to the matter to the CJEU. The authors understand it is the intention of the applicant to appeal.

[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 ACC/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, Janecék and cases such as Boxus and Solvay C-128/09-C-131/09 and C-162/10, 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 Hoekschewaarders Landschap, ECLI:EU:C:2017:774.

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

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

There are no rules in relation to what is termed “administrative passivity”. There is no mechanism by which the Courts (or any other administrative body) can of their own motion impose penalties on State parties that frustrate access to justice or fail to take the necessary steps to facilitate access to justice. The only way for that to occur is for individual litigants to bring an action that alleges a failure to vindicate access to justice rights. These types of action are relatively commonplace – i.e. that notice of a potential development was not provided or that submissions were not considered as part of litigation impugning the validity of a grant of a licence or development consent.

However, this type of litigation tends to focus on the failure to provide access to justice in particular instances or as regards particular cases and not in relation to systemic failures to vindicate access to justice requests. That means that access to justice points are used tactically by litigants seeking to quash the development consent or licence, but without any mechanism to guard against administrative passivity on a national or macro scale. There is no other State watchdog or body with a remit to ensure that access to justice measures are enacted and applied.

While there are no specific rules or penalties which the Courts can impose for breaches of the principle of access to justice, the High Court can, in an action for judicial review, grant damages in addition to, or in lieu of, certiorari or prohibition, or a declaration or an injunction ([2] Order 84 r.24, Rules of the Superior Courts). The courts also have coercive powers to attach and commit for breaches of court orders.

Non-compliance with a court judgment amounts to civil contempt of court. This can result in the party in default being open to punitive sanctions for being in contempt. The court can commit the party to prison for an indefinite, as opposed to a definite (as occurs in criminal contempt of court), period, which will end when the person agrees to comply with the court order/judgment. It is worth noting that public bodies are subject to liability for civil wrong in the same way as private companies and individuals and are also responsible for the acts and omissions of their employees and agents under principles of vicarious liability. To the extent that a public body deliberately breached a court judgment, it is possible that persons such as its CEOs, directors, board members (depending on this being a private company) could be held liable for the acts of the public body.
how that particular body is constituted), could be held liable for contempt of court. Where a public body is a company, the procedure in s.53 of the Companies Act 2014 could potentially be used to enforce a judgment against the company and its officers – remedies include sequestration and attachment (i.e. bringing the directors/officers before the High Court to answer their contempt).

The purpose of imprisonment in civil contempt is not punitive but rather coercive. However, in practice the boundary between civil and criminal contempt has become blurred in the Irish courts. Currently, the law appears to provide the broadest possible range of sanctions for civil contempt. These stretch from punitive sanctions imposed on the basis of the public interest (as set out in Laois County Council v. Hanrahan, SC No. 411 of 2013) to unlimited powers of coercive imprisonment.

Hogan, Morgan and Daly comment in Administrative Law (5th Ed., 2019) that "in principle, a Minister can be found guilty of contempt of court, although there is (to our knowledge) no recorded instance of this having occurred."

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Access to justice in environmental matters - Ireland

To find out more about access to justice in environmental matters in Ireland, please take a look at:

1. Access to justice at Member State level
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. Legal order - sources of environmental law

Ireland’s Parliament - the Oireachtas - is the national legislature empowered to make laws for the State. The Oireachtas consists of two Houses (Dáil Éireann (the lower house) and Seanad Éireann (the upper house)) plus the President of Ireland.

New primary legislation begins as a Bill. Bills are normally initiated by the government, although opposition bills - called Private Members’ Bills - are also possible, albeit less likely to make it onto the statute book.

A Bill may be commenced in either the Dáil or the Seanad but it must be passed by both Houses to become law. Before a government Bill is introduced to the Oireachtas, the contents of the Bill are approved by the government. Often there will be a consultation process with government departments and groups likely to be affected by the Bill. Once a Bill has successfully passed the parliamentary process, the Bill must then be signed by the President before it becomes an Act of the Oireachtas. Ireland’s Constitution (Bunreacht na hÉireann) provides the President with the power to refer certain Bills to the Supreme Court for a determination as to whether the Bill or any provision thereof is repugnant to the Constitution.

As well as primary legislation, Ireland also relies heavily on secondary legislation or ‘statutory instruments’ in the field of environmental law. Secondary legislation must be consistent with, and based on, legislation adopted by the Oireachtas. Thus, each statutory instrument will have a preamble citing its "enabling powers"; that is, the provision(s) of primary legislation under which the statutory instrument is made. Statutory instruments can take the form of orders, regulations, rules, etc. Hundreds are issued each year, in contrast to a much smaller number of Bills/Acts. If EU law requires transposition by Ireland, this is implemented by primary legislation or more usually by secondary legislation (statutory instrument) under the European Communities Act 1972. If the government wishes to change the Constitution, it must first introduce the proposal to amend the Constitution as a Bill, which must pass the Oireachtas. Then the proposed change must be approved by way of a popular referendum allowing citizens to approve or reject the proposal by way of a majority vote.

Finally, local authorities are empowered to make bye-laws relating to anything within their remit by virtue of the Local Government Act 2001. Such bye-laws are not a prominent feature of environmental law in Ireland, which tends to be dominated by EU law, Acts of the Oireachtas, and statutory instruments, some of which are of course made in fulfilment of obligations under international law. Since Article 29.6 of Ireland’s Constitution provides that no international agreement forms part of the domestic law of the State except as may be determined by the Oireachtas, legislation must be put in place in order to give effect to international agreements in the domestic legal system.

Numerous pieces of UK legislation remain in force in Ireland dating from before the foundation of the Irish State in 1922, albeit again these are not a prominent feature in the environmental law field. Many of the pre-1922 laws which had no ongoing relevance to Ireland were repealed by the Statute Law Revision Acts 2005-2016.

Further information on how laws are made in Ireland can be found here. Texts of primary legislation (Acts of the Oireachtas) and secondary legislation are available via the Irish Statute Book website. The website generally carries the original text of the legislation as made, with subsequent amendments to each piece of legislation listed. In some cases the website provides a revised/consolidated version.

Bills (i.e. draft primary legislation) are available via the Oireachtas website. Since Ireland has a common law system, in which both legislation and judicial decisions make up the national law, it is typically necessary to consult case law in addition to legislation in order to determine the current state of the law. Much case law can be found on the Courts Service’s website or on the websites of the Irish Legal Information Initiative (IRLII) and British and Irish Legal Information Institute (BAIIII), though some judgments - particularly older judgments - are accessible only from subscription services or in hard copy.

Main elements of the fact sheet:

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

Environmental policy in Ireland is heavily influenced by EU law and international law, of course, with implementation and enforcement being the responsibility of various public authorities, including for example, central government, the EPA, the Gardaí (police) and local authorities (county councils, city councils). The Minister currently responsible for environmental issues (including matters relating to the Aarhus Convention, which Ireland ratified in 2012) is the Minister of the Environment, Climate and Communications. Several other Ministers have significant environmental responsibilities, including for instance the Minister of Housing, Local Government and Heritage (marine environment, water, planning, landscape, biodiversity and nature conservation), and the Minister of Agriculture, Food and the Marine (Common Agricultural Policy implementation, sea fisheries and aquaculture).
The Environmental Protection Agency (EPA) is responsible for inter alia environmental research development, monitoring, certain licensing regimes (e.g. Integrated Pollution Control (IPC) and Industrial Emissions (IED); waste; waste water discharges; genetically modified organisms (both contained use and deliberate release); emissions trading; volatile organic compounds; and dumping at sea). It also performs enforcement functions in certain areas of environmental law, alongside a wide range of other bodies, including other government agencies and local government.

There are over 30 national environmental NGOs in Ireland covering a wide range of policy areas, plus a number of regional and local organisations. Ireland’s national NGOs include, for example, An Taisce, The National Trust for Ireland (the oldest eNGO in Ireland, established in 1948); BirdWatch Ireland, Friends of the Earth Ireland, Friends of the Irish Environment, and the Irish Wildlife Trust. There are two complementary ‘umbrella organisations’ of environmental NGOs in Ireland: the Environmental Pillar and the Irish Environmental Network, the latter of which disburses core funding from the government.

Relatively broad standing rules (the rules on access to courts) exist for individuals and NGOs in Ireland. See the Supreme Court’s decision in Grace and Sweetman v An Bord Pleanála [2017] IESC 10 and the High Court’s decision in Conway v An Bord Pleanála [2019] IEHC 525 for a recent summary and discussion of the situation relating to individuals (more below).

The environmental rights of individuals and NGOs include the right to access environmental information which is held by or for public authorities, and such public authorities have a statutory duty, subject to the provisions of the European Communities (Access to Information on the Environment) Regulations 2007 (S.I. 133 of 2007, as amended) (the AIE Regulations), to provide information and guidance to those seeking access to environmental information. There are also rights of early and effective public participation in environmental decision-making including around planning permission matters and licensing decisions (such as EPA decisions to grant waste and other licences), including the right to access all information relevant to the decision-making procedure and the right to be promptly informed of environmental decisions.

Individuals and NGOs also have the right to seek a review of decisions that have been made which may affect the environment, or regarding their right to access environmental information, including an administrative appeal (where this is available) and/or by way of judicial review (following an application for leave to bring proceedings) via the courts. The courts may make an order to quash a decision, to prohibit a body from taking certain actions, or more rarely, to require it to take specific actions, or to require a body to act where it has failed to do so.

Planning and environmental law also provides for a range of statutory remedies with a view to enforcement by third parties such as individuals and NGOs, including the remedy of a planning injunction under section 180 of the Planning and Development Act 2000 (as amended) (PDA 2000), whereby “any person” may apply for a court order in the context of unauthorised development; and similarly for judicial enforcement of certain EPA licences under section 99H of the Environmental Protection Agency Act 1992.

The potential for litigants to be exposed to high litigation costs has proven one of the main barriers to accessing environmental justice in Ireland. The introduction of special costs rules in 2010/11 has certainly improved access to justice (more below), although progress in this regard has been gradual over the past decade as a result of uncertainty regarding the scope of these rules and resulting ‘satellite’ litigation to determine the scope. This form of cost protection does not, in any event, apply to all environmental litigation (discussed further below), and concerns also remain over the effectiveness of judicial remedies, and potential time delays for judgments, as noted in the Environmental Governance Assessment on Ireland and the related country fiche. For example, in November 2020 the Aarhus Convention’s Compliance Committee found in ACCC/C/2016/141 that by failing to put in place measures to ensure that the Office of the Commissioner for Environmental Information and the courts decide appeals regarding environmental information requests in a timely manner, Ireland fails to comply with the requirement in Article 9(4) of the Aarhus Convention to ensure timely procedures for the review of environmental information requests; and by maintaining a system whereby courts may rule that information requests fall within the scope of the AIE Regulations without issuing any directions for their adequate and effective resolution thereafter, Ireland fails to comply with the requirement in Article 9(4) of the Convention to ensure adequate and effective remedies for the review of environmental information requests.

In addition to the Department of the Environment, Climate and Communications’ webpages on the Aarhus Convention, the Citizens’ Information website (a government initiative) has a page on the Aarhus Convention which describes the broad requirement for access to justice, including the judicial review process. This page directs readers to the website of the Courts Service “for information on the court fees payable”. These court fees (e.g. stamp duty when a case commences) are however only a very small element of the costs of litigation in Ireland, and should not be confused with the legal fees that may be payable to an applicant’s own legal team and potentially the costs also payable to the opposing litigant in the event that the applicant’s case is unsuccessful.

The Citizens’ Information’s Judicial review page is probably the best currently available reference source for the public to consult regarding the potential costs of environmental litigation in practice and potential ways to ameliorate these costs (e.g. by way of ‘no win, no fee’ arrangements with lawyers) in order to provide improved access to justice. This said, the webpage’s summary of the special cost protection rules in s.50B PDA 2000 should now be read in light of the High Court’s judgment in Heather Hill [2019] IEHC 186, which extended cost protection in practice in the field of planning law (NB. this judgment has been appealed to the Court of Appeal).

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

The Constitution of Ireland (Bunreacht na hÉireann), dating from 1937, does not contain any reference to the environment or to environmental rights. The European Convention on Human Rights (ECHR), to which Ireland is a Party, has effect in the domestic legal order via primary legislation, namely the Environmental Protection Act 1992, as amended. These court fees (e.g. stamp duty when a case commences) are however only a very small element of the costs of litigation in Ireland, and should not be confused with the legal fees that may be payable to an applicant’s own legal team and potentially the costs also payable to the opposing litigant in the event that the applicant’s case is unsuccessful.

The Citizens’ Information’s Judicial review page is probably the best currently available reference source for the public to consult regarding the potential costs of environmental litigation in practice and potential ways to ameliorate these costs (e.g. by way of ‘no win, no fee’ arrangements with lawyers) in order to provide improved access to justice. This said, the webpage’s summary of the special cost protection rules in s.50B PDA 2000 should now be read in light of the High Court’s judgment in Heather Hill [2019] IEHC 186, which extended cost protection in practice in the field of planning law (NB. this judgment has been appealed to the Court of Appeal).

The European Convention on Human Rights (ECHR), to which Ireland is a Party, has effect in the domestic legal order via primary legislation, namely the European Convention on Human Rights Act 2003. The European Court of Human Rights has determined that a State’s positive obligations under Article 2 (right to life) ECHR may be violated with respect to environmental risks, and that Article 8 ECHR (the right to respect for the home, private and family life) may be engaged in respect of environmental pollution that impacts on enjoyment of the home. Article 6 (the right to a fair hearing) and Article 13 (right to an effective remedy) of the ECHR are also potentially relevant in the environmental protection context, as well as Articles 1 of the First Protocol to the ECHR (the right to property), for example. These rights also find expression in the Irish Constitution.

The fundamental rights of the citizen are guaranteed in Articles 40 to 44 of the Constitution. Article 40 provides that all citizens are to be held equal before the law and obliges the State to vindicate the personal rights of the citizen, including the right to life. The term “personal rights”, as interpreted by the courts, has led to the recognition and vindication of several rights not expressly provided for in the text of the Constitution. These ‘unenumerated rights’ include the right to bodily integrity, among others. In July 2020, in Friends of the Irish Environment v Government of Ireland & Ors. [2020] IESC 49, the Supreme Court held that there is no unenumerated or derived constitutional right to a healthy environment in Ireland.

There is no express (or explicit) right of access to justice in the Irish Constitution, but the courts have recognised an ‘unenumerated’ constitutional right of “access to the courts”, and a constitutional right to litigate: Macauley v Minister for Posts and Telegraphs [1966] IR 345. The right to litigate is not absolute, however, and the State may place objectively justifiable and proportionate limitations on this right (e.g. by setting reasonable time limits within which proceedings must be brought). Parties to litigation are entitled to fair procedures, often described as “constitutional justice”, which has also been recognised by the courts as an unspecified constitutional right.
There is no express constitutional right to legal aid. However, the courts have recognised a constitutional right to legal aid where an accused is facing a serious criminal charge and is unable to fund legal representation from their own resources. As regards legal aid in civil cases, the courts have accepted that a constitutional right to civil legal aid may arise in limited circumstances as an aspect of the constitutional right of access to the courts and the right to fair procedures, where a plaintiff is not in a position to fund legal representation from their own resources. In O’Donoghue v. Legal Aid Board & Others [2004] IHIC 413, for instance, the High Court found that the plaintiff’s constitutional right to civil legal aid had been infringed by the very long delay in granting her a certificate for legal aid. However, the precise parameters of any such rights have yet to be fully determined. Although the Legal Aid Scheme maintained by Ireland does, in principle, permit aid to be provided for environmental cases, in practice legal aid is only extremely rarely, if ever, provided for environmental litigation (see the Supreme Court at para 2.30 of Conway v Ireland, the Attorney General & Ors [2017] IESC 13). In the Conway case, the Supreme Court raised the possibility of an entitlement to legal aid pursuant to the Aarhus Convention and/or the Public Participation Directive (Directive 2003/35/EC), but the point did not fall to be determined on the facts of the case.

Article 29.6 of the Constitution provides that no international agreement forms part of the domestic law of the State except as may be determined by the Oireachtas (meaning Ireland has what is known as a dualist legal system). This means that legislation must be put in place in order to give effect to international agreements in the domestic legal system. Ireland ratified the Aarhus Convention in June 2012 and the Convention entered into force for Ireland in September 2012. As Ireland has a dualist legal system, it was necessary to transpose all provisions of the Convention into national law prior to ratification. In addition to specific transposition of the provisions of the Convention, section 8 of the Environment (Miscellaneous Provisions) Act 2011 provides that judicial notice must be taken of the Aarhus Convention.

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

As noted above, due to Ireland’s dualist legal system, specific implementation measures were required to give effect to the Aarhus Convention in the domestic legal system. An implementation table totalling some 56 pages was completed on ratification of the Convention, listing the legislation used to implement the Convention in Ireland. The sheer volume of legislation cited makes the framework complex, lacking in clarity in certain respects, and difficult when it comes to public engagement with and understanding of the rules. Certain additional measures that have since been enacted are listed here on the Department of the Environment, Climate and Communications’ website.

For the access to information pillar the situation is relatively simple, in that Ireland has introduced one main statutory instrument – the European Communities (Access to Information on the Environment) Regulations 2007-2018 (S.I. 133 of 2007, as amended: consolidated version) – to transpose obligations under the AIE Directive (Directive 2003/4/EC). Ireland lists an additional eight pieces of transposing legislation in its notification of implementing measures to the European Commission.

On access to justice, the situation is more complex, not least because there is no horizontal EU access to justice directive. The two most significant pieces of national legislation in this area are section 50B of the PDA 2000, and Part 2 of the Environment (Miscellaneous Provisions) Act 2011, both of which introduced new costs rules to apply in certain environmental cases, as well as (in the case of the 2011 Act) a requirement that judicial notice be taken of the Aarhus Convention, as noted above.

In terms of the public participation pillar under the Aarhus Convention, multiple pieces of legislation have been used to transpose the Public Participation Directive (Directive 2003/35/EC) into Irish law, including the integration of its requirements into Irish planning law and into legislation governing other environmental consents. Indeed, Ireland notified the European Commission of 71 separate pieces of legislation as its national transposition of the Directive. For example, in the planning system, members of the public may submit observations on planning applications and may appeal planning decisions to An Bord Pleanála (Ireland’s Planning Appeals Board).

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

As Ireland has a common law system (where both legislation and judicial decisions make up the national law), case law is highly relevant to the access to justice provisions of the Aarhus Convention. Many judgments can be found on the Courts Service’s website or on the websites of the Irish Legal Information Initiative (IRILII) and British and Irish Legal Information Institute (BAILII), though some judgments - particularly older judgments - are accessible only from subscription services or in hard copy. A list of judgments related to access to information on the environment can be found here. The list below outlines a number of relevant rulings since the ratification of the Aarhus Convention by Ireland but is by no means comprehensive. More recent rulings have tended to be preferred here as they better represent the current state of the law and often discuss earlier jurisprudence:


North East Pylon Pressure Campaign Ltd. & anor v An Bord Pleanála & ors (No.5) [2018] IEHC 622: interpretation of the special cost protection rules in section 50B of the Planning and Development Act 2000 and Part 2 of the Environment (Miscellaneous Provisions) Act 2011; conclusion that these provisions do “not fully give effect to the not-prohibitively-expensive principle that applies in all national environmental challenges within fields covered by EU environmental law”.


Coffey and others v Environment Protection Agency [2013] IESC 31: on protective costs orders, including the question of the costs of a hearing to determine if a protective costs order will apply.


Conway v Ireland, the Attorney General & ors [2017] IESC 13: reference to the Aarhus Convention Compliance Committee’s decisions; reference to a potential requirement for legal aid pursuant to the Aarhus Convention.

Friends of the Irish Environment v Legal Aid Board [2020] IEHC 454: whether an environmental NGO that is a company is eligible for legal aid (answer: no). This judgment has been appealed to the Court of Appeal.


Electricity Supply Board v Commissioner for Environmental Information & Lar Mc Kenna [2020] IEHC 190: meaning of environmental information.

Currently there are no specialist administrative or environmental courts in Ireland, and environmental cases are dealt with across the different courts, up to the level of the Supreme Court. However, the Programme for Government (2020) contains a commitment to establish a new Planning and Environmental Law Court managed by specialist judges, and to review and reform the judicial review system while adhering to EU law obligations under the Aarhus Convention.

The Supreme Court has the following functions:

1. It hears appeals from the Court of Appeal if the Supreme Court is satisfied that: the decision involves a matter of general public importance, or in the interests of justice it is necessary that there is an appeal to the Supreme Court.
2. It hears appeals directly from the High Court (called a “leapfrog appeal”) if the Supreme Court is satisfied that there are exceptional circumstances that call for a direct appeal to it. The Supreme Court must be satisfied that: the decision involves a matter of general public importance, and/or it is in the interests of justice.

It is a constitutional court, as it is the final decision-maker in interpreting the Constitution of Ireland. It can end the President’s term of office, if five Supreme Court judges or more decide that a President has become permanently incapacitated. It can check the constitutionality of a legislative Bill passed by both Houses of the Oireachtas where the Bill is referred to the Court by the President in accordance with Article 26 of the Constitution.

In the latter two functions, the Supreme Court has original jurisdiction, rather than appellate jurisdiction. Further information on the Supreme Court is available here.

In Ireland, consistency of jurisprudence is maintained through the doctrine of ‘stare decisis’, meaning that a court is generally bound by its own previous decisions and that lower courts are bound by the decisions of the higher courts.

The Supreme Court has jurisdiction to intervene and to interfere with its own order. Where the Supreme Court is satisfied that there are exceptional circumstances warranting a direct appeal (the "leapfrog appeal"), the Supreme Court has original jurisdiction, rather than appellate jurisdiction. Further information on the Supreme Court is available here.

Service of Ireland's website

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)?

Articles 34 to 37 of Ireland’s Constitution deal with the administration of justice in general and outline the structure of the court system. Article 34.1 states that ‘Justicia shall be administered in Courts established by law’. The Constitution outlines the structure of the court system as comprising a court of final appeal (the Supreme Court), a Court of Appeal, and courts of first instance which include a High Court (with original full jurisdiction in all criminal and civil matters) and courts of local and limited jurisdiction (the Circuit Court and the District Court) which are organised on a regional basis and deal with both criminal and civil matters.

In Ireland, there are five distinct types of court, which operate in a hierarchy: the District Court, the Circuit Court, the High Court, the Court of Appeal and the Supreme Court. Each court deals with specific types of cases. When the Circuit Court deals with criminal matters it is known as the Circuit Criminal Court, and the High Court is known as the Central Criminal Court when it exercises its criminal jurisdiction. There is also a Special Criminal Court that deals with criminal cases that cannot adequately be dealt with by the ordinary courts (e.g. terrorist and organised crime cases). Information on the Irish courts system is accessible via the Citizens’ Information website, as well as on the Courts Service of Ireland’s website.

3) Specialities as regards court rules in the environmental sector (special administrative tribunals), laymen contributing, expert judges
All civil planning and environmental litigation is dealt with by the ordinary courts. As such, there are currently no specialised environmental courts in Ireland, albeit the **Programme for Government** (2020) contains a commitment to establish a new Planning and Environmental Law Court managed by specialist judges. In order to speed up the hearing of certain planning permission cases, the Commercial Planning and SID (Strategic Infrastructure Development) List of the High Court (the SID List) is responsible for hearing: (a) judicial reviews in relation to development defined as “strategic infrastructure development” or “strategic housing development”, and (b) planning cases submitted to the Commercial List. Cases in this SID List are subject to a special case management procedure before a judge who specialises in dealing with this list (Practice Direction HC103). Planning law cases which do not fall within the definition of strategic infrastructure/strategic housing may be admitted to the Commercial List (and hence the SID List) provided that they meet the thresholds and criteria for entry to that List (set out in Order 63A of the Rules of the Superior Courts), including payment of a fee of €5,000. The size of this fee means that planning cases normally enter the Commercial List at a developer’s behest rather than at an individual’s or NGO’s.

Regarding the issue of judicial expertise, the recent Environmental Governance Assessment on Ireland noted that, from a brief review of relevant cases, the level of knowledge on planning issues is high, although there is less evidence of specific knowledge in wider environmental cases. As Ryall (2013) noted, in judicial review proceedings the High Court reviews the legality of decisions, and under Irish law there is very limited judicial review of the substance or merits of planning and environmental decisions: see the discussion of judicial review on the basis of unreasonableness/irrationality in 1.2(4) below. The Governance Assessment cited Ryall’s (2013) study to the effect that the Irish courts tend to defer to the expertise of public authorities on environmental issues, and called this a concern, noting that it had seen no evidence to suggest this practice has changed since then. It is worth noting a recent judgment in which the High Court emphasised curial deference but nevertheless concluded that there was no material before An Bord Pleanála (ABP) capable of supporting its planning permission decision, despite ABP having concluded that such material was before it: see Haipin v An Bord Pleanála [2020] IEHC 218. ABP sought to appeal this decision to the Court of Appeal on the basis that the High Court is not entitled to “drill down” into its reasoning in this way, but ABP was refused leave by the High Court.

While Ireland does not currently have a specialised environmental court as such, ABP is an administrative appellate body empowered to make binding decisions in planning (i.e. land use) disputes. Significantly, both first parties (i.e. the developer seeking planning permission) and third parties (e.g. members of the public/NGOs) can appeal to ABP. ABP is responsible for the determination of planning appeals as well as the determination of applications for strategic infrastructure development and strategic housing development. It is also responsible for a range of other functions pertaining to land use and planning/environmental law, see here. ABP is composed of an expert lay decision-making board and a large number of expert professional staff. ABP uses scientific-technical experts as decision-makers, and can hire-in experts to provide advice, and to assist in the evaluation of evidence presented by the parties. Other specialist decision-making bodies that may be considered environmental tribunals of sorts include the Aquaculture Licences Appeals Board and the Forestry Appeals Committee.

Whilst not tribunals as such, other planning authorities (e.g. local authorities) also have considerable technical expertise in respect of their planning consent functions, which is recognised by the courts (see also the section on curial deference below) and the EPA is another decision-making body with technical expertise which has the power to grant permits and monitor and enforce permit conditions, as well as other broad enforcement powers.

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

**Curial deference**

The Irish courts defer to the technical expertise of decision-makers such as planning authorities, ABP and the EPA, since the courts are not experts on planning and environmental matters, while the Oireachtas has often vested the task of making planning and environmental decisions in these expert administrative bodies.

In judicial review proceedings, the High Court reviews the legality of the contested decision. Such review involves a consideration of whether all statutory requirements were met and fair/proper procedures observed. Where the substance of a planning or environmental decision is challenged in judicial review proceedings, the High Court may quash such a decision where the decision in question is found to be “unreasonable” or “irrational,” applying either the general test in The State (Keegan) v. Stardust Victims’ Compensation Tribunal [1986] IR 642 (whether the decision is “fundamentally at variance with reason and common sense”) or the narrower test in O’Keeffe v An Bord Pleanála [1993] 1 IR 39, which applies where the review is of a decision of a technical or skilled or professional decision maker in the area of that special technical or skilled knowledge (see Denham J in the Supreme Court in Meadows v Minister for Justice, Equality and Reform [2010] 2 IR 701). Under this O’Keeffe test, the onus is on an applicant for judicial review to establish that the public authority decision-maker had “no relevant material” (cf. the mention of the Haipin case in 1.2(3) above) before it to support its decision and in default of the applicant so establishing, the court cannot reach a conclusion that the decision was unreasonable/irrational.

It has been determined in a number of cases that a greater level of scrutiny than O’Keeffe may potentially apply in planning/environmental cases, albeit accommodated within the existing judicial review regime: see Sweetman v An Bord Pleanála [2007] 2 IRLR 328, at 6.16 and 6.21; Klön v An Bord Pleanála [2008] 2 IRLR 435, at 458; Keane v An Bord Pleanála [2012] IEHC 324, paras 18 and 19. In cases relating to fundamental rights, the courts apply a proportionality test (see Meadows v Minister for Justice, Equality and Reform [2010] 2 IR 701 and AAA & anor v Minister for Justice & ors [2017] IESC 80), providing for a more intensive form of review.

1.3. Organisation of justice at administrative and judicial level

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

There are a number of Government Departments responsible for the formation of policy and the development of legislation, including for example the Department of Housing, Local Government and Heritage, and the Department of the Environment, Climate and Communications.

The implementation of planning and environmental law in Ireland is a matter for national bodies which have been established for that purpose. Planning authorities (i.e. local authorities) and An Bord Pleanála (ABP) are responsible for determining planning applications and, in the case of planning authorities, the preparation of development plans and forward planning. ABP is responsible for the determination of planning appeals as well as the determination of applications for strategic housing development and strategic infrastructure development including major road and railway cases. It is also responsible for a range of other functions, a full list of which can be found here.
The EPA is an independent public body established under the Environmental Protection Agency Act 1992. The EPA is organised across five Offices: the Office of Environmental Sustainability; the Office of Environmental Enforcement; the Office of Evidence and Assessment; the Office of Radiological Protection and the Office of Communications and Corporate Services. On 1 August 2014, the Radiological Protection Institute of Ireland (RPRI) merged with the EPA and the Office of Radiological Protection was established. The EPA is responsible for licensing waste facilities, including landfills, incinerators, waste transfer stations; large scale industrial activities such as pharmaceutical, cement manufacturing, power plants; some forms of intensive agriculture; the contained use and controlled release of Genetically Modified Organisms (GMOs); sources of ionising radiation; large petrol storage facilities; waste water discharges; and dumping at sea activities.

In terms of enforcement, the EPA is responsible for conducting an annual programme of audits and inspections of EPA licensed facilities; overseeing local authorities’ environmental protection responsibilities; supervising the supply of drinking water and enforcing urban wastewater licences in plants managed by Irish Water; working with local authorities and other agencies to tackle environmental crime by co-ordinating a national enforcement network (NIECE), targeting offenders and overseeing remediation; prosecuting those who breach certain environmental laws; promoting compliance and enforcing producer responsibility Regulations such as Waste Electrical and Electronic Equipment (WEEE) and batteries; enforcing Regulations such as chemicals (REACH, mercury & detergents), paints, hazardous substances (RoHS, PCBs & POPs), fluorinated greenhouse gases and ozone depleting substances; and coordinating the implementation of the National Hazardous Waste Management Plan.

The Commissioner for Environmental Information determines appeals relating to decisions by public authorities on requests for access to environmental information. The role was established by the European Communities (Access to Information on the Environment) Regulations 2007-2018. Similarly, administrative appellate bodies exist in other fields such as planning (ABP, mentioned above), aquaculture licensing, forestry, and in respect of certain nature conservation decisions - see 1.3(4) below.

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

There is a right of appeal from a local authority’s planning permission decision to the appellate body at the national level (Article 12 of the Planning and Development Act 2000). There is a right of appeal from a local authority’s planning permission decision to the High Court (the SID List) is responsible for hearing: (a) judicial reviews in relation to development defined as “strategic infrastructure development” or “strategic housing development”, and (b) planning cases admitted to the Commercial List. Cases in this SID List are subject to a special case management procedure before a judge who specialises in dealing with this list  Practice Direction HC103(3). Planning law cases which do not fall within the definition of strategic infrastructure/strategic housing may be admitted to the Commercial List (and hence the SID List) provided that they meet the thresholds and criteria for entry to that List (set out in Order 63A of the Rules of the Superior Courts), including payment of a fee of €5,000. The size of this fee means that planning cases normally enter the Commercial List at a developer’s behest rather than at an individual’s or NGO’s.

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

Many environmental consent regimes in Ireland do not provide for an administrative appeal, such that the only recourse is to challenge a decision by way of judicial review in the High Court.

There is a right of appeal from a local authority’s planning permission decision to the Planning and Development Act 2000 (s.37 PDA 2000). Decisions on access to environmental information requests may be appealed to the Commissioner for Environmental Information, an independent appellate body at the national level (Article 12 of the European Communities (Access to Information on the Environment) Regulations 2007-2018). Aquaculture licensing decisions can be appealed to the Aquaculture Licences Appeals Board, an independent national body.

Various consents related to forestry can be appealed to the Forestry Appeals Committee, a body appointed by the Minister for Agriculture (s.14A Agriculture Appeals Act 2001; and the Forestry Appeals Committee Regulations 2020, S.I. 418/2020).
Regulation 37 of the European Communities (Birds and Natural Habitats) Regulations 2011 provides that a person, who has an interest in land that is affected by an order of the Minister to restrict activities that could damage a Natura 2000 site, or by a decision by the Minister not to permit a derogation from such an order, may appeal the decision to an independent Appeals Officer. Further, a person affected by a decision of the Appeals Officer or the Minister may appeal to the High Court on a point of law from the decision within 28 days of receiving the decision of the Appeals Officer.

There is no right of administrative appeal in respect of IED licences granted by the EPA. However, the EPA is required to issue a proposed determination whereby objections may be made followed by a final determination, and the EPA’s decision may be judicially reviewed.

In terms of enforcement, decisions of the District Court may be appealed to the Circuit Court for a full de novo hearing and decisions of the Circuit Court may be appealed to the High Court for a full de novo hearing.

While most areas of environmental law attract an automatic right of appeal from the High Court to the Court of Appeal, judicial review decisions of the High Court in respect of planning law matters may only be appealed to the Court of Appeal if the High Court certifies that its decision involved a point of law of exceptional public importance and that it is desirable in the public interest that an appeal should be taken (section 50A, PDA 2000). This jurisdiction is strictly construed and both limbs of the test must be satisfied. Since the 33rd amendment to the Constitution, establishing the Court of Appeal in 2014, a “leapfrog appeal” application may be made by a party directly to the Supreme Court after the High Court proceedings. For leave to be granted, the Supreme Court must be satisfied that there are exceptional circumstances warranting a direct appeal to it, and a precondition for the Supreme Court being so satisfied is the presence of either or both of the following factors: the decision involves a material of general public importance or the interests of justice. These criteria are determined by a panel of three judges of the Supreme Court based on papers lodged seeking leave to appeal and any notice of response.

As the Supreme Court noted in Grace and Sweetman v An Bord Pleanála & ors [2017] IESC 10, it is possible to envisage that there might be a case where the High Court quite correctly refused a certificate to appeal to the Court of Appeal (applying its “and” test) but the Supreme Court, without in any way disagreeing with the High Court, found that the constitutional threshold had been met (applying its “either or both” test). As the Supreme Court noted, the thresholds are not the same and the High Court’s certificate threshold is undoubtedly somewhat higher.


Some Acts and statutory instruments provide for referring a point of law or for an appeal on a point of law from an administrative body or tribunal to the High Court. For example, section 50(1) of the Planning and Development Act 2000 provides that An Bord Pleanála can refer a question of law to the High Court, and the AIE Regulations provide for an appeal on a point of law to the High Court. In addition, the District Court and Circuit Court may refer issues of law by way of a case stated procedure with, respectively, the High Court and the Court of Appeal.

There are no other extraordinary ways or means of appeal apart from the restriction in s.50A(7) of the Planning and Development Act 2000, which requires - as an exception to the general automatic right of appeal to the Court of Appeal - that leave be obtained for appeals from the High Court in planning judicial review applications.

There are no separate or distinct national rules or practice directions on when the national courts should make preliminary references to the Court of Justice of the European Union (CJEU) under art. 267 of the Treaty on the Functioning of the European Union. In the past, applicants have sought clarity regarding whether, for example, it is permissible in a planning judicial review for the High Court to decline to make a preliminary reference then decline to grant leave for an appeal.

Ireland’s courts have in recent years shown an increasing tendency to refer questions to the CJEU in the area of environmental law. See, for example: NEPPC (C-470/16), Grace & Sweetman v An Bord Pleanála (C-164/17), Kloon (C-167/17), People Over Wind & Sweetman v Coillte (C-323/17), Holohan v An Bord Pleanála (C-461/17), Friends of the Irish Environment CLG v An Bord Pleanála (C-254/19), Friends of the Irish Environment v Commissioner for Environmental Information (C-470/19).

In Holohan & Ors. v An Bord Pleanála [2017] IEHC 268, it was held by the High Court that if a question of EU law which is not acte claris arises, there may be some reasons for considering that it might be more appropriate for it to be referred by the High Court rather than by an appellate court.

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

There is the option to pursue both mediation and arbitration in Ireland and these may be used as alternative dispute resolution mechanisms for environmental disputes and conflicts. Mediation is regulated by the Mediation Act 2017 and there are court rules for mediation in the District Court, Circuit Court and High Court. The Court may issue an invitation to consider mediation of its own motion in any civil proceedings to which the 2017 Act applies, on any occasion on which such proceedings are before the Court and where, following an invitation by the Court, the parties decide to engage in mediation, the Court may, having heard the parties, make such orders in accordance with section 16(2) of the 2017 Act as it considers appropriate.

Commercial arbitration is regulated under the Arbitration Act 2010 and may arise where there is a commercial agreement such as an asset purchase agreement or share purchase agreement or lease agreement where a covenant, or warranty or indemnity relating to environmental law has been breached. Mediation and arbitration as options for dispute resolution are generally agreed between the parties and do not involve the court system although court proceedings may be adjourned sine die pending the outcome of mediation or arbitration. There is also an option for an arbitrator to state a point of law to the High Court and there is a dedicated High Court judge to deal with arbitration matters.

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

The Director of Public Prosecutions (DPP) has a role in prosecuting environmental crime. For example, certain waste offences may be prosecuted on indictment in the Circuit Court by the DPP. The penalty on conviction on indictment is a fine not exceeding €15,000,000 or imprisonment for a term not exceeding ten years, or to both such fine and such imprisonment. The Commissioner for Environmental Information has a role in determining appeals under the European Communities (Access to Information on the Environment) Regulations 2007-2018. The role of the Commissioner is to carry out independent reviews of decisions made by public authorities on requests for environmental information.

Ireland’s Ombudsman can investigate complaints about public service providers. However, its website listing of those it can investigate misses out several relevant bodies (e.g. Bord na Móna (semi-State peat company) and the EPA). The website does however note that the list is not exhaustive; that said, the fact that a body is not listed may make it less likely that this route is used to seek redress in respect of such bodies.

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)?

In general terms those with standing are split into two groups. Firstly, those people who made a submission during the administrative process and who have a sufficient interest in the proceedings (participation in the process will undoubtedly confer standing, albeit having made a submission is not always a necessary precondition: see Grace and Sweetman v. An Bord Pleanála [2017] IESC 10). All persons, irrespective of location or interest or any other qualifying criteria can make a submission. An assessment of whether a particular party has a sufficient interest will depend on the factors present in each case. The courts will look at factors such as the degree of impact on the individual from the proposed development, the degree of involvement they have had in the decision-making process, their motives in seeking to review a decision and the stage in the process in respect of which a decision is sought to be challenged in deciding whether they have standing to challenge the decision.
Secondly, eNGOs whose aims and objectives relate to the promotion of the environment and who have pursued that objective over the previous 12 months have a right of standing in the case of development subject to EIA. Currently there are no rules in terms of the numbers of members or other criteria for eNGOs in order to qualify under this general standing right. There is equally no distinction drawn between eNGOs that are incorporated as a legal entity and those that are unincorporated associations.

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

The standing rules outlined above are generally applicable to challenges that involve the EIA, IED, Habitats/Birds and SEA Directives, etc. However, depending on the nature of the activity, all litigation is funnelled through one of two distinct legislative streams: development (planning permission) and non-development activity (i.e. waste, water, IED etc.).

In the case of development (planning permission) challenges, a litigant will only be granted leave if the court is satisfied both that the litigant has a sufficient interest in the matter (which may be deemed in the case of eNGOs, as described above) and that there are “substantial grounds” for contending that the decision or act concerned is invalid or ought to be quashed (s.50A PDA 2000). This requirement to demonstrate substantial grounds does not apply outside the field of planning permission.

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.)

For individuals, as a rule, participating in the administrative procedure will confer standing.

The Supreme Court in Grace and Sweetman v An Bord Pleanála [2017] IESC 10 held that a failure to participate in the permission granting process does not of itself exclude a person from having standing but that it may be a factor which can, in an appropriate case, be taken into account. In that context the Court emphasised that participation in the process will undoubtedly confer standing. On the facts, standing was accorded to Ms. Grace even though she had not participated at all in the administrative process. It should be noted, however, that she lived within 1 km of the proposed development, had a long history of activism in relation to the development and was certainly directly affected. The decision of the Court should not therefore be regarded as authority for the proposition that the prior participation rule has been dispensed with. That said, the Court indicated that had Mr. Sweetman (the other challenger, who did not live near to the wind farm in question) participated in the permission granting process or given the Court some cogent explanation for non-participation, then it would have been much easier to resolve the standing question in his favour (ultimately the Court did not find it necessary to reach a final determination on the question of Mr. Sweetman’s standing).

Subsequently, the High Court held in Conway v An Bord Pleanála [2019] IESC 49 that there is nothing in Article 11 of the EIA Directive or in C-263/08 Djurgården or C-137/14 Commission v. Germany which would preclude a national court, as a matter of EU law, from considering as among the factors to be taken into account in determining standing, the non-participation by the applicant in the prior administrative or planning process which led to the impugned decision and any explanation for that non-participation (factors which, as the Supreme Court in Grace and Sweetman confirmed, can be considered under Irish national standing rules). Indeed, the Court held, C-664/15 Protect Natur suggests that a prior participation requirement may not infringe the right of access to effective judicial mechanisms, at least under Article 9 of the Aarhus Convention and potentially also under Article 11 of Directive 2011/92.

However, the Court did not reach a definitive conclusion on that point. Subsequently, in January 2021, the CJEU in Case C-826/18 Stichting Varkens in Nood held that Article 9(2) of the Aarhus Convention precludes a prior participation requirement in respect of proceedings within the scope of Article 9(2) brought by eNGOs which are part of the “public concerned”. The CJEU further held that Article 9(3) of the Convention does not preclude a prior participation requirement, unless the applicant cannot reasonably be criticised, in light of the circumstances of the case, for not having intervened in the earlier procedure.

In order to have standing, an individual must demonstrate that they have a sufficient interest in the decision. That interest does not need to relate to a financial or land-based interest but some degree of physical proximity or impact is one of the elements assessed. Equally, a Court will look at the reasons for the individual seeking judicial review of the administrative decision. Courts will generally look to identify either a personal and proximate interest and/or a genuine environmental concern and give standing if those factors are present. If, on the other hand, the proposed development does not engage any personal interest of the individual, they are not directly impacted and the Court perceives that a professional environmental concern is simply a proxy to interfere in the development process, standing may be refused. The absence of any definition of “sufficient interest” makes predicting in advance whether an individual will have standing a difficult exercise, particularly where the individual has not participated in the earlier procedure. As the Supreme Court emphasised in Grace and Sweetman, participation in the earlier process will undoubtedly confer standing.

Finally, although not strictly a standing issue, as described above an individual will not pass the initial threshold for judicial review in a planning permission case unless they can demonstrate “substantial grounds” as to why the decision should be set aside. This requires that they demonstrate to the Court on an ex parte basis the legal reasons that they say mean that the decision should be set aside. Those legal reasons must satisfy a Court that there is at least a serious prima facie case being made and the applicant should be allowed to litigate the claim at full hearing.

NGOs must also demonstrate substantial grounds to the same standard in planning permission cases, and must generally demonstrate a “sufficient interest” in order to have standing. However, they do not have to demonstrate a sufficient interest in a decision subject to EIA. In other words, in EIA cases they are entitled to participate as of right once they have aims or objectives “which relate to the promotion of environmental protection” and had pursued those aims during the previous 12 months prior to the date of the application for development or a licence. It is unclear whether this 12 month requirement refers to a necessity for constant activity over that period or whether a single intervention or activity by the NGO during the previous 12 months will suffice. This 12 month requirement precludes NGOs from being set up after an application has been submitted in order to function as a litigation vehicle with deemed standing for subsequent proceedings. Provision is made in legislation for the authorities to prescribe additional requirements for NGOs to satisfy in order to be granted standing rights but that power has not been exercised to date.

Given that numerous Irish statutory provisions have been made to give eNGOs deemed standing in certain specific situations, it would be prudent to proceed on the basis that outside these specific statutory regimes/situations it will be necessary for eNGOs to demonstrate a sufficient interest rather than expecting that they will effectively be deemed in practice to have standing in all environmental/planning cases. It is worth noting that the State will litigate standing points against eNGOs; e.g. in 2020 the Government successfully argued before the Supreme Court that Friends of the Irish Environment, as a corporate body, did not have standing to vindicate personal constitutional rights or human rights under the ECHR: see Friends of the Irish Environment v Government of Ireland & Ors. [2020] IESC 49.

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

The general rule is that all cases must be in one of the official languages of the State, i.e. English or Irish.

Regarding interpretation, Order 120 of the Rules of the Superior Courts provides that there shall be such number of interpreters as the Chief Justice and the President of the High Court respectively may from time to time, by requisition in writing addressed to the Minister for Justice, request, and such interpreters shall attend the Courts and the Offices of the Superior Courts and be available to attend those Courts as required for the hearing of any cause or matter. The Courts Service’s Annual Report 2020 states that funding of €1.5m was provided for interpretation services in the courts in 2019, and contains a table listing the most common languages interpreted in court.
Any foreign language documents to be used in litigation must be translated by a suitably qualified translator into English or Irish. The costs of this exercise must be borne by the party which seeks to rely upon those documents. Affidavits can be sworn in a foreign language once duly sworn and accompanied by a verified translation and an affidavit(s) from the translator and interpreter confirming that the translation is accurate and that the interpreter read accurately to the deponent the contents of the foreign language affidavit (Order 40 of the Rules of the Superior Courts).

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?

Judicial procedures in Ireland are common law adversarial procedures. Generally speaking, outside of injunctive or enforcement proceedings, the primary procedure available in the environmental sphere is judicial review of an administrative decision that has already been made. That involves an assessment by a court of the legality of the decision made. The Irish courts tend to defer to the technical expertise of planning and environmental decision-makers on the basis that the courts are not generally experts on planning and environmental matters, and the relevant legislation has given the task of making decisions to these expert administrative bodies (see Ryall (2013)). The court’s review is therefore generally confined to ensuring that the administrative authorities have correctly discharged the legal and administrative requirements – e.g. that any statutory duties have been fulfilled, that public participation has occurred, that proper regard has been had to submissions, that all required environmental assessments have been completed to the necessary standard, and that all the administrative steps have been discharged – and that the body has not acted “unreasonably” or “irrationally” (on which see 1.2(4) above).

That limitation means that once a Court is assessing an administrative decision it is assessing only the evidence that was before (and which was considered by) the administrative body. As the Court has no role in revisiting the merits of the conclusion reached by that body (other than in the limited sense of reviewing the reasonableness or rationality of the decision on O’Keefe/Keegan grounds – see section 1.2(4)), it has no jurisdiction or power to request new evidence.

In a recent judgment in the planning permission context the High Court emphasised its longstanding position on curial deference but nevertheless concluded that there was no material before An Bord Pleanála (ABP) (Ireland’s Planning Appeals Board) capable of supporting ABP’s decision under challenge, despite ABP having concluded that such material was before it: see Halpin v An Bord Pleanála [2020] IEHC 218. ABP sought to appeal this decision to the Court of Appeal on the basis that the High Court is not entitled to “drill down” into its reasoning in this way, but ABP was refused leave by the High Court.

2) Can one introduce new evidence?

An individual or NGO is entitled to place whatever expert evidence it considers relevant before the administrative body. Once a judicial review procedure has commenced both sides are, in theory at least, entitled to produce any new evidence they wish in sworn form. However, as a Court does not reassess the merits of the substantive conclusions reached by the administrative authority on the evidence that was before it (other than in the limited sense of reviewing the reasonableness or rationality of the decision on O’Keefe/Keegan grounds – see section 1.2(4)) any new evidence is, by definition, unlikely to be relevant to the judicial review process. However, despite this difficulty, both the applicant/objector and the developer will nevertheless sometimes submit new evidence to the Court.

On the applicant/objector side this expert evidence is generally designed to demonstrate that the administrative authorities could not have reached particular conclusions and/or to demonstrate that the scientific basis for those conclusions was erroneous. On the developer side affidavits are frequently sworn by the authors of expert reports that were considered by the administrative authorities. These affidavits generally purport to explain the type and scale of the scientific assessments which were undertaken by the developer with a view to supporting the legality of the decision to grant planning permission.

Finally, the administrative authority that took the decision will, almost invariably, be the primary respondent to any judicial review proceedings. These authorities have a limited role in seeking new evidence prior to any decision on an application for development or a licence. Once a decision has been made the administrative authorities will ordinarily swear affidavits verifying the steps taken in reaching that decision and identifying how and where statutory obligations were discharged. However, those affidavits will not, by definition, be composed of additional evidence that was not considered in advance of the impugned decision having been taken justifying the decision taken.

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

The commissioning of expert evidence, notwithstanding the very limited role of any evidence that was not before the administrative body, is a matter entirely at the discretion of the party seeking to rely upon it. It is up to a party seeking expert evidence to approach an individual or organisation with the necessary expertise and agree the scope and terms of that evidence with them.

While Ireland does not have an official accrediting body for expert witnesses, Round Hall (publisher) compiles the Expert Witness Directory of Ireland, a reference-checked list of expert witnesses in over 1,000 areas of expertise. To be permitted to use the associated logo “Expert Witness Directory of Ireland Irish Checked”, a witness listed in this Directory has to establish that they meet the requirements of the Expert Witness Directory of Ireland Code of Conduct. There is no statutory listing of requirements (such as qualifications or professional experience) for evidence to be regarded as “expert”. However, any such expert evidence will include an attestation as to the author’s qualifications, experience and particular expertise. Given the small size of the jurisdiction and the limited number of environmental topics that are ordinarily subject to litigation on a more than occasional basis, in practice the pool of experts is generally familiar to all sides; otherwise, experts may identified by way of the Directory described above or by word of mouth, searching on the internet, etc. Ireland’s Law Reform Commission produced a report on Consolidation and Reform of Aspects of the Law on Evidence in 2016, which deals extensively with the issue of experts.

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

Expert evidence (whether from the developer or from the objectors) which was before the administrative body is not binding on that administrative body. These bodies exercise an independent decision-making function and are specifically entrusted to assess and reach independent conclusions in respect of the evidence placed before them.

However, once they have formed that view and made a decision to grant or refuse the application that opinion (and the decision made on foot of it) are regarded as presumptively correct for the purposes of any subsequent judicial review proceedings: Kelly v An Bord Pleanála (Alki Laytown) [2019] IEHC 84. They may only be varied by a Court if they are predicated upon an error of law or an error of jurisdiction made by the administrative authority. In practice it is very difficult to successfully challenge any substantive conclusion reached by an administrative body in respect of the evidence placed before it. A party seeking to do so must demonstrate that the decision is fundamentally at variance with reason and common sense (general test) or that there was no evidence to support the conclusion (the narrower test that applies where the review is of a decision of a technical or skilled or professional decision maker in the area of that special technical or skilled knowledge) (see 1.2(4) above). It does not matter, therefore, if a Court thinks that the decision was inadvisable or that the evidence available inclined to a different conclusion.

This said, in a recent judgment in the planning permission context the High Court emphasised its longstanding position on curial deference but nevertheless concluded that there was no material before An Bord Pleanála (ABP) (Ireland’s Planning Appeals Board) capable of supporting ABP’s decision under
challenge, despite ABP having concluded that such material was before it: see [2020] IEHC 218. ABP sought to appeal this decision to the Court of Appeal on the basis that the High Court is not entitled to “drill down” into its reasoning in this way, but ABP was refused leave by the High Court.

Curial deference does not apply in relation to the legal requirements which have to be discharged. Those are matters, such as statutory interpretation, which the Court is clearly expert in. This means that, in practice, challenges to grants of permission or licences are overwhelmingly concerned with legal requirements rather than the substance of an application and in respect of which independent expert evidence is generally produced. The scope for expert evidence is therefore much more limited in the Irish system than may be the case in inquisitorial proceedings.

3.2) Rules for experts being called upon by the court
In the Irish system there is no scope for experts to be called by the Court on its own motion. The Court can suggest that certain evidence may be useful for it to hear but it has no power to compel the production of that evidence.

3.3) Rules for experts called upon by the parties
In the majority of civil actions, but not environmental judicial review, expert evidence is submitted via expert reports, affidavits or letters in a broadly similar standard form. This standard form is to ensure that the expert is independent of the party which commissioned the evidence and includes an express undertaking that the expert’s primary obligation is to the Court and not to that party. In general these reports are drafted directly by the experts themselves with minimal intervention by lawyers. These experts may be called to give evidence during the proceedings and may be subjected to cross-examination by lawyers for the opposing parties.

In environmental judicial review proceedings, there is no strict obligation on the expert to attest to that primary obligation to the Court or to the independence of the expert, although as a matter of practice the expert will ordinarily identify their relevant experience. In addition, this evidence tends to be drafted with significant input from lawyers.

Environmental judicial review proceedings are almost always conducted without any expert evidence being given orally in Court and consequently without cross-examination.

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 for expert evidence as such. Any expert evidence which is sought to be adduced is in the form of affidavit evidence. There are de minimis administrative costs for the swearing (€10 + €2 for each document exhibited) and filing (€20) of these affidavits. However, they are precisely the same costs in respect of all affidavits and no distinction is drawn on the basis that they are expert evidence.

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 not compulsory for litigants to be represented by lawyers. However, litigants would normally be well advised to seek such legal representation in order to ensure an equality of arms.

The legal profession in Ireland is divided between solicitors and barristers. Solicitors are qualified legal professionals who provide expert legal advice and support to clients on contentious and non-contentious business. Barristers do not handle clients’ funds, they do not provide safe custody of original documents, nor do they provide the normal non-contentious administrative services which a client would expect from a firm of solicitors. Solicitors seek the expert assistance of barristers on issues that they feel require further opinion and in the preparation and conduct of litigation. Solicitors tend to call on the services of barristers to present their clients’ cases in the higher courts, mainly because of barristers’ expertise in oral advocacy and court procedure.

Normally a client must have a solicitor in order to access the services of a barrister. Certain professional bodies (and their members), if approved by the Bar of Ireland, may have direct professional access to barristers to seek legal opinion in non-contentious matters. In litigation, a client will typically be represented by a firm of solicitors and two (sometimes three, rarely four) barristers: a junior counsel (rarely two) and a senior counsel (sometimes two).

The Law Society of Ireland maintains a directory of solicitors. This contains basic contact details for individual solicitors and firms and does not enable clients to identify specialized environmental lawyers. Solicitors are however allowed to advertise their services (e.g. on their website), subject to strict rules, which for example prevent solicitors from advertising that they will take cases on a “no win, no fee” basis. For more information about solicitors, see here. The Bar of Ireland maintains a directory of barristers here. This is searchable by area of specialisation as well as name, allowing one to identify barristers specializing in the fields of planning and environmental law. Again, special advertising rules apply. For more about barristers, see here.

Clients typically contact lawyers by email or phone, and in practice word of mouth tends to operate to inform potential clients of lawyers who specialise in the fields of planning/environmental law, and of those solicitors and barristers who may be willing to take cases on a “no win, no fee” basis.

1.1. Existence or not of pro bono assistance
Some non-contentious advisory work is undoubtedly done by many lawyers on a pro bono basis, but this is often ad hoc and often unseen. There are a number of free legal advice centres in Ireland, though they have not tended to do environmental law work. Recently, however, Community Law & Mediation hired an environmental justice law firm – a first for the free legal advice sector in Ireland. In addition, two large corporate law firms in Dublin hired a lawyer (each) to work full-time on pro bono matters outside the firms’ normal areas of practice. In November 2020, the Pro Bono Pledge, an initiative of the Public Interest Law Alliance (PILA) and FLAC (Free Legal Advice Centres), launched in Ireland – signatories commit to a minimum aspirational target of 20 pro bono hours per lawyer per year and there is a mechanism to benchmark progress through annual reporting of anonymous pro bono data. The Bar of Ireland operates a voluntary assistance scheme for NGOs, charities, etc.

Litigation in the field of environmental law does not tend to be done on a pro bono basis by solicitors or barristers. Rather, lawyers may be willing to take cases on a “no win, no fee” basis, meaning the lawyers are not paid if the client’s case is unsuccessful but if it is successful then the lawyers would expect to recover their fees (in full or part) from the losing litigant.

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.)?
As mentioned under 1.1, most pro bono assistance in the field of environmental law would be ad hoc, established by the client simply making direct contact with the lawyer(s) in question and the lawyer(s) agreeing to help. Information about how to apply for assistance from the Bar of Ireland’s Voluntary Assistance Scheme is available here.

1.3 Who should be addressed by the applicant for pro bono assistance?
Please see answer to 1.2.

2) Expert registries or publicly available websites of bars or registries that include the contact details of experts
While Ireland does not have an official accrediting body for expert witnesses, Round Hall (publisher) compiles the Expert Witness Directory of Ireland, a reference-checked list of expert witnesses in over 1,000 areas of expertise. This is available in hard copy only.

In terms of online resources, this searchable UK-based directory lists experts in Ireland as well as the UK, but is not comprehensive. A list of expert engineers is available here. Otherwise, experts tend to be identified based on word of mouth, searching on the internet, etc.
3) List of NGOs who are active in the field, links to sites where these NGOs are accessible

The websites of the two complementary umbrella organisations for eNGOs – the Irish Environmental Network and the Environmental Pillar – contain lists of their eNGO members with links to websites:

https://ien.ie/our-members/
https://environmentalpillar.ie/our-members/

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

Friends of the Earth has an Irish branch: Friends of the Earth Ireland. Friends of the Irish Environment recently partnered with ClientEarth to bring a case relating to the Common Fisheries Policy before the Irish High Court. Otherwise, eNGOs in Ireland tend to be national, albeit with links to and/or membership of international networks such as the EEB, BirdLife International, etc.

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 for a statutory appeal will depend on the decision-making regime. In the case of appealing planning decisions to ABP, this is four weeks (s.37 PDA 2000). In the case of an appeal to the Commissioner for Environmental Information, the appeal must be brought within one month after receipt of the decision following the internal review (or where no decision was notified within one month from the time when the decision was required to be notified) (Article 12 of the European Communities (Access to Information on the Environment) Regulations 2007-2018). In the case of an appeal against an aquaculture licensing decision, the period is one month from the date of publication of the decision (s.40 of the Fishery’s (Amendment) Act 1997 (as amended)). In the case of various consents related to forestry, the deadline for appealing to the Forestry Appeals Committee is 28 days from the date of the Minister’s decision (Article 5 of the Forestry Appeals Committee Regulations 2020, S.I. 2020/148). The time limit for appeals Regulation 37 of the European Communities (Birds and Natural Habitats) Regulations 2011 (referred to in section 1.3 above) is not later than 28 days after notice of the direction or the decision was given. Unlike court applications for judicial review, where the court has discretion to extend time, statutory time limits generally cannot be extended.

2) Time limit to deliver decision by an administrative organ

Planning authorities must generally issue decisions within eight weeks, though this period can be extended by a further four weeks where further information is requested or by a further eight weeks where further information is requested in a case requiring EIA or an appropriate assessment under the EU Habitats Directive (s.34(8) PDA 2000). An Bord Pleanála has the objective of reaching decisions on appeals within 18 weeks (s.126 Order 84 of the Rules of the Superior Courts). In planning law and IED actions for judicial review, the period is 8 weeks.

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

There is a doctrine that one must generally exhaust administrative remedies before leave will be granted by the High Court to pursue judicial review proceedings (for a discussion, see Simons 2014). While it is possible for an applicant to pursue judicial review proceedings without first exhausting administrative appeal possibilities, often an applicant would be advised to pursue the administrative route first owing to the risk of being refused leave to bring the action for judicial review (or ultimately refused relief by the court exercising its discretion) for failing to exhaust administrative remedies before resorting to court.

However, if for example the available administrative review procedure is not capable of addressing the particular issue(s) arising, then there is nothing to prevent an individual/ NGO from proceeding directly to judicial review.

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

There is no deadline on national courts to deliver judgments and delays can be an issue in practice, e.g. before the Court of Appeal where there have been lengthy backlogs. The Courts Service must maintain a register of civil judgments that are outstanding pursuant to section 46 of the Court and Court Officers Act 2002 (as amended). If a judgment is not delivered within 2 months from the date on which it was reserved, the President of the Court will list the proceedings before the judge who reserved judgment, and that judge should then specify the date on which he or she proposes to deliver judgment in the proceedings (s.46(4)). However, the delivery of a judgment is a matter for the trial judge and it is not uncommon for the delivery of judgment to be adjourned on a number of occasions.

In the recent case of Keane v Ireland (Application no. 72060/17), the European Court of Human Rights (ECHR) found that Ireland had breached Art. 6 of the ECHR because of delays in deciding legal proceedings (not relating to environmental law) at the national level. The domestic proceedings in question took more than 11 years in total from first instance to the Supreme Court’s judgment. The ECHR also found that Ireland was in breach of Art. 13 ECHR (right to an effective remedy) because there was no effective remedy provided in Ireland in respect of such delays. Further, in November 2020 the Aarhus Convention’s Compliance Committee found in ACCC/C/2016/141 that Ireland fails to comply with the requirement in Article 9(4) of the Aarhus Convention to ensure timely procedures for the review of environmental information requests – this conclusion applies inter alia to judicial procedures.

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

J udicial procedure

The general rule in environmental judicial review is that the applicant has three months to apply for leave from the date when grounds for the application first arose (Order 84 of the Rules of the Superior Courts). In planning law and IED actions for judicial review, the period is 8 weeks.

Once an action for judicial review has commenced with a grant of leave and service of the applicant’s statement of grounds and groundng affidavit (exhibiting evidence), Order 84 of the Rules of the Superior Court then requires respondents to deliver opposition papers (statement of opposition and replying affidavit) in the normal judicial review list within three weeks, but this rarely happens in practice.
Beyond the applicant’s exhibition of evidence at leave stage, and the respondent’s replying affidavit (exhibiting evidence in reply), which must in principle be filed within 3 weeks (as noted above), there are no time limits in judicial review proceedings for parties to submit additional evidence. Where a party wishes to submit further evidence on affidavit, leave of the court is required (Order 84, rule 23). If a case is admitted to the Commercial Planning and SID (Strategic Infrastructure Development) List in the High Court, directions will be agreed or made by the court.

Administrative procedure

The time limit for a statutory administrative appeal will depend on the decision-making regime. In the case of appealing planning decisions to ABP, this is four weeks (s.37 PDA 2000). In the case of an appeal to the Commissioner for Environmental Information, the appeal must be brought within one month after receipt of the decision following the internal review (or where no decision was notified within one month from the time when the decision was required to be notified) (Article 12 of the European Communities (Access to Information on the Environment) Regulations 2007, S.I. 133 of 2007, as amended), which can be extended by the Commissioner under Article 12(4)(b). In the case of an appeal against an aquaculture licensing decision, the period is one month from the date of publication of the decision (s.40 of the Fisheries (Amendment) Act 1997 (as amended)). In the case of various consents related to forestry, the deadline for appealing to the Forestry Appeals Committee is 28 days from the date of the Minister’s decision (Article 5 of the Forestry Appeals Committee Regulations 2020, S.I. 2020/418). Unlike court applications for judicial review, where the court has discretion to extend time, statutory time limits generally cannot be extended.

1.7.2. Interim and precautionary measures, enforcement of judgments

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

Where a decision is made by a planning authority to grant planning permission, the grant itself may not be made until the period for an appeal expires (s.34(11) PDA 2000). If the decision is appealed, the grant of permission may not be made until the determination or withdrawal of the appeal. The same situation pertains in respect of aquaculture licences: s.14 of the Fisheries (Amendment) Act 1997. Whether an appeal of a forestry consent decision has suspensive effect is unclear from the legislation.

The initiation of judicial review proceedings in respect of any decision by the appellate body does not have automatic suspensive effect. This early stage is done on an ex parte basis (where the administrative authority and the beneficiary of the decision are not on notice or present for the initial hearing). However, an applicant can apply at that stage for an interim Order known as a ‘stay’. This is not an injunction but is a temporary judicial order preventing any steps being taken in pursuance of the challenged licence or application until (a) either the first time that the matter is returned to Court and all parties are present or (b) indefinitely until the substantive proceedings are resolved.

In the case of (a) the beneficiary of the decision (i.e. the developer and not the administrative authority) may indicate that it wishes to have the stay removed. If it wishes to do so then it must bring an application by way of notice of motion grounded on an affidavit. That will take the form of a relatively brief subsequent hearing as to whether the stay should be lifted such as to allow the developer to take steps to develop the project pending the determination of the proceedings. In resolving any such application a Court will generally try and balance the degree of prejudice to both sides and/or whether irreversible damage (environmental or otherwise) will occur in the interim.

In the case of (b) the developer will be given the right to seek to have the stay lifted at any time on the basis of the considerations above.

In practice, it is very unusual for developers to seek to proceed with developments which are subject to judicial review and/or to seek to have a stay lifted. A developer in that situation will generally seek to have the matter entered into the Commercial List of the High Court, on payment of a fee of €5,000, which allows for rigorous case management and an expedited hearing as a way to have the matter heard as quickly as possible.

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

The benefit of a decision to grant planning permission or a licence does not vest in the beneficiary of a decision until an appeal has been determined. There is therefore generally no requirement or scope for any injunctive proceedings at the administrative stage.

It should be noted in the Irish system that the administrative authorities do not themselves institute appeals against first instance decision makers. The model is rather an adversarial one where an applicant applies for permission or to be awarded a licence. That application will be subject to public participation. Whatever decision is reached at first instance can be appealed by the proposed developer or (as explained above) the participants in the application process, provided an administrative appeal exists (this is not always the case – e.g. certain EPA licences can be challenged only by way of judicial review). The same parties can, in turn, seek to institute judicial review proceedings (and, if appropriate, seek injunctive relief) in respect of any decision by the appellate body. Generally neither the first instance nor appellate bodies themselves intervene in order to appeal a decision or to seek injunctive relief.

However, very rarely a first instance decision-maker may intervene to challenge by way of judicial review the decision that the appellate body reaches on appeal: for a recent example, see [Dublin City Council v An Bord Pleanála [2020] IEHC 557]. Furthermore, in general, administrative decision-making authorities in Ireland have no power to grant an injunction. That remedy is only available from the High Court, or in certain limited circumstances the Circuit Court, and is therefore typically only sought (if at all) once the appellate tribunal has made its decision and recourse for an aggrieved party is open for the initiation of court proceedings. It is worth noting that in certain cases the power to seek an injunction is given to the Minister: e.g. Regulation 38 of the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. 477/2011, as amended), provides for the relevant Minister to apply to a court of competent jurisdiction for an injunction requiring the taking of action or the refraining from taking action, for the purposes of ensuring compliance with the Habitats or Birds Directives. A ‘court of competent jurisdiction’ means either the Circuit Court for the circuit in which the relevant lands or part of the relevant lands are situated or the High Court.

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?

For the reasons explained above, there is no possibility of an injunction being either sought or granted during the administrative procedure.

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

A decision from a first-instance decision maker automatically does not take effect if there is an appeal by any person (including the applicant in the case that they have been unsuccessful with their appeal at first instance). If the applicant has been successful and they have been granted permission or the licence requested and there is no appeal then the rights and obligations that accrue from that decision will accrue automatically on the day after the period for an appeal has expired.

In respect of a decision by the appellate body: if the applicant for development consent or a licence has been successful on appeal, the rights pursuant to that decision will accrue automatically on the day after the appropriate period for commencing a challenge has expired, where there is no challenge. Where there is such a challenge by way of judicial review then the rights pursuant to that decision will still accrue on the same day subject to any stay or interim injunctive relief having been granted by the Court in the course of the initial application stage.

If any such stay or application has been sought the Court may grant it on an interim short term basis or until the hearing of the substantive proceedings. Alternatively, the Court may grant no injunctive relief but afford to the applicant for judicial review the opportunity to apply for injunctive relief with representation from all sides. If this is the route taken this hearing is normally convened shortly after the initiation of the judicial review proceedings.

5) Is the administrative decision suspended once challenged before court at the judicial phase?
No. An applicant for judicial relief may apply for injunctive relief during the judicial phase. That application is determined on the basis of entirely different criteria from those that are used to assess the legality of the substantive decision.

First, the Court will consider whether it has been established that there is a fair question to be tried. If there is a fair issue to be tried the court will consider how best to strike a balance between the parties pending the hearing of the action, which involves a consideration of the balance of convenience and the balance of justice, including the degree of prejudice to both sides if relief is granted or refused and its assessment of the motivations and conduct of the parties. Both of these elements arise in environmental cases in a similar manner to the circumstances in which they might arise in commercial or general civil disputes.

However, the thirdly assessed factor in commercial disputes is whether damages would be an adequate remedy. That factor does not sit easily in the vast majority of environmental cases that are taken by community groups, private individuals or NGOs that typically do not have the resources to provide an undertaking as to damages in the event that they are unsuccessful – i.e. that the substantive proceedings are lost and loss or damage is caused to the beneficiary of the decision. The issue has not arisen substantively to date and the general practice of the Courts when determining the question of whether to grant injunctive relief is ordinarily determined by reference to the first two issues and to disregard the third in light of the decision of the CJEU in Case C-530/11 Commission v United Kingdom and/or by reference to public interest concerns (whether in favour of granting or refusing injunctive relief).

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?

Neither first instance nor appellate bodies may provide injunctive relief as described above. A Court, upon application for judicial review, may do so on whatever conditions it deems fit. This is a discretionary remedy in which the Court has a very broad latitude to grant or refuse.

As described above, there is ordinarily provision for an undertaking to pay any damages that might accrue if an injunction is granted but the proceedings are ultimately unsuccessful but that does not tend to factor in applications for injunctive relief in environmental cases. If applied it would preclude, in almost all cases, the grant of injunctive relief in environmental cases. Apart from that (at the time of writing) theoretical possibility, there is no scope for a deposit or other financial payment by applicants for judicial review.

In the event that an application for injunctive relief is refused or granted in the context of judicial review proceedings it is possible to appeal this decision to the Court of Appeal.

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.?

Under section 150 of the Legal Services Regulation Act 2015 legal practitioners must as soon as practicable provide their clients with a notice written in clear language setting out what legal costs will be incurred in relation to the matter. There are specific obligations as to what the notice must contain in respect of litigation, including the likely costs of each stage – see here. Each barrister must provide a section 150 notice to their instructing solicitor.

Administrative review

Administrative fees: For a member of the public or NGO to participate at first instance before a planning authority costs €20, and to appeal a grant of planning permission to An Bord Pleanála costs €220. There is a reduced fee to appeal of €110 for certain prescribed bodies, including one NGO: An Taisce. To make a submission or observation on appeal (e.g. if you are not an appellant) costs €50 (certain bodies are exempt from this charge, including An Taisce). To request an oral hearing costs €50, and An Bord Pleanála’s practice is to retain these €50 request fees even where it decides not to hold an oral hearing.

For a member of the public or NGO to appeal an aquaculture licence decision costs €152, plus €76 if a request is made to hold an oral hearing. Again, the Aquaculture Licences Appeals Board’s stated practice is not to refund this request fee even where it decides not to hold an oral hearing.

In the case of forestry applications, to participate at first instance costs €20 plus €200 to appeal.

Legal fees: To draft an appeal document (with no oral hearing), the cost of legal representation could range from zero (entirely pro bono - rare) to say €5,000 (ex VAT) or more. The latter figure based on a lawyer with 5 years of post-qualification experience charging say €250 per hour (ex VAT) and spending 20 hours drafting an appeal.

To draft an appeal and represent a party at an oral hearing, the cost of legal representation could range from expenses only (i.e. travel costs, hotel costs, food costs, other outlay – this would be rare) to over €100,000 (see example below). This would depend to some extent on the complexity of the case and the length of the oral hearing. Oral hearings can last from a day to several weeks. A lawyer could easily charge €1,000-1,500 (ex VAT) per day to attend an oral hearing, in addition to preparatory work, expenses, outlays. To attend a seven day oral hearing could therefore give rise to costs of about €10,000 to €15,000 (including VAT) – this would cover fees (for one lawyer) and outlays.

An Bord Pleanála will almost never award any costs to an appellant in a normal (i.e. not strategic infrastructure/housing) planning appeal, despite typically awarding costs to itself and other parties after an oral hearing, and this even where the appellant succeeds with its appeal after a lengthy oral hearing. It is therefore typically not possible for NGOs to find lawyers willing to act on a “no win, no fee” basis at oral hearings at the administrative review stage.

In “strategic infrastructure” cases An Bord Pleanála has in a small number of cases been willing to award some costs to appellants or third parties. Such examples give an idea of the scale of costs involved in oral hearings: e.g. in Case reference PA0003, which related to a planning application for a container terminal in Cork, An Bord Pleanála’s oral hearing ran for 15 days. An Bord Pleanála awarded itself costs of €176,272 (the cost of the Inspector’s report was €88,309). It ordered that €48,617 be paid to the solicitors for the Cork Harbour Environmental Protection Association, which was successful in securing the refusal of permission for the development, but this was only a fraction of the €129,923 in legal costs that were incurred for the 15-day hearing (see the Inspector's Report 1 and Order 1 in Case PA0003). As above, this relatively large costs award to an appellant is very much the exception rather than the rule at the administrative review stage.

Experts’ fees: Depending on the nature of the report, an expert could charge in the range of €1,000 to €3,000 per report. In a complex case, there might be between 3 and 5 reports.

If there is an oral hearing, the NGO’s expert(s) will likely have to attend and give evidence, including sitting through the opposing side’s expert evidence on the relevant issue. So in addition to the cost of producing a written report, the expert(s) may charge a fee for appearing at the oral hearing and giving evidence. This could be (say) €500-1000 per day plus travel and subsistence expenses.

Outlay costs: in particular photocopying, could be from tens of euros to several hundred euros for an oral hearing where the NGO/individual is represented by a lawyer.

Judicial review

Court fees: are about €350 in each of the High Court, Court of Appeal and Supreme Court (so about €1,150 if a case goes all the way to the Supreme Court).

As described above, a fee of €5,000 is payable where a case is admitted to the Commercial List of the High Court; as such, this route is rarely pursued by individuals/NGO applicants.
Legal fees: by way of examples: in July 2011, the Taxing Master heard a claim for fees in a case taken by the Usk Residents Association against An Bord Pleanála and the Attorney General. The respondents challenged the costs claimed after they were awarded by the court to the applicant. This is therefore an example of the legal costs of the applicant, which were payable by the losing respondents. The fees included a brief fee of €60,000 for the senior counsel and €40,000 for the junior counsel, plus €4,000 per day in court for the senior and €2,666.66 a day for the junior. The Taxing Master allowed these fees, and allowed a solicitor’s instruction fee of €225,000. Garrett Simons (now a High Court judge) highlighted that these judicial review proceedings were very complex and had been at hearing for approximately eight days in the Commercial List of the High Court. He went on to contrast these fees with those payable in what he described as a “common-or-garden” (i.e. ordinary) judicial review, where an individual - Mr. Klohn - fell liable to pay €86,000 to An Bord Pleanála under the ‘loser pays’ rule, plus his own legal costs of €32,550, giving a total liability of €118,000. This case ended in a judgment of the CJEU relating to prohibitive expense: C-167/17 Klohn.

These levels of legal fees are no doubt an important factor for applicants who seek out “no win, no fee” representation in planning/environmental litigation in Ireland.

Experts’ fees: as discussed in section 1.5(2), because the Court does not reassess the merits of the substantive conclusions reached by the administrative authority on the evidence that was before it (other than in the limited sense of reviewing the reasonableness or rationality of the decision on O’Keeffe/Keegan grounds – see section 1.2(4)), any new evidence is, by definition, unlikely to be relevant to the judicial review process. However, despite this difficulty, parties will nevertheless sometimes submit new expert evidence to the Court. Depending on the nature of the expert evidence, an expert could charge in the range of €1,000 to €3,000 per report. As mentioned above, environmental judicial review proceedings are almost always conducted without any expert evidence being given orally in court.

Outlay costs: these would include outlay expenses such as photocopying and stationery for producing documentation for court, serving that documentation on other litigants, couriers, taxis to/from court with boxes of documents, etc. These costs can be considerable and depend on various factors – e.g. the complexity, whether the court will permit electronic exchange of exhibits, etc. For an action for judicial review at first instance (High Court) with one affidavit exhibiting evidence, it is estimated that would be outlay expenses of about €350 to obtain leave, and about €1,000 (including the earlier €350) by the time ‘books’ (i.e. folders of materials) are produced for the hearing. In a complex action for judicial review the outlay costs could be as high as €5,000 or more before each court (so a multiple of this for cases that go on appeal). Such costs will naturally increase where the case continues on appeal to the Court of Appeal and/or Supreme Court, and will depend in part on the number of parties and the number of judges who require copies of books.

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

As a condition for granting leave for judicial review in a planning law matter in Ireland, the court may require the applicant to give an undertaking as to damages (s.50A(6) PDA 2000). The considerations to be taken into account in this regard are not specified in the legislation. One might look, by analogy, to cases regarding undertakings required under what is now Order 84, rule 20(7) of the Rules of the Superior Courts, which remains the applicable rule in judicial review contexts other than planning law. As notes, the key consideration under that case law is whether the proceedings in question demonstrate a clear public law dimension which would preclude the court from granting an undertaking. Thus, an applicant in a planning/environmental case should generally not be required to give an undertaking as a condition for the grant of leave where the case raises public law issues and not private law interests, at least where the case is not one of a series of unsuccessful challenges by an applicant to stop a particular development (see Coll v Donegal County Council [2007] IEHC 110).

Separately there is the question of undertakings as to damages where an applicant seeks an interim/interlocutory injunction. Clearly any requirement to provide such an undertaking could amount to a prohibitively expensive barrier to pursuing injunctive relief, depending on the applicant’s means and the level of the required undertaking. Since judicial notice must be taken of the Aarhus Convention, and given the general position described above regarding cross-undertakings in public law cases, in practice an applicant should not be required to cross-undertake in damages in an environmental case. This is borne out by the authors’ experience in practice.

3) Is there legal aid available for natural persons?

There is legal aid available for natural persons but in practice not for environmental cases. As Clarke J commented in the Supreme Court at para 2.30 of Conway v Ireland, the Attorney General & Ors [2017] IESC 13, the evidence suggests that, at a very minimum, the grant of legal aid in environmental cases is an extreme rarity.

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?

Legal aid is available only to natural persons and not legal persons (or those who do not have legal personality but are not “natural persons”): see Friends of the Irish Environment v Legal Aid Board [2020] IEHC 454. In that case an eNGO was not eligible to apply for legal aid on the basis that it is a company – the judgment has been appealed to the Court of Appeal. Legal aid is not available to a group or to an individual member of a group, where the individual is acting on behalf of the group. Legal aid is not available in respect of proceedings before an administrative tribunal (e.g. An Bord Pleanála): see Ryall (2013). Please see answer under 1.6 above regarding pro bono assistance.

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

There are no other financial mechanisms available to provide financial assistance.

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

The general rule for costs in respect of civil litigation in Ireland is that costs follow the event (i.e. the loser pays) (Order 99 of the Rules of the Superior Courts). This rule has been displaced in the case of certain environmental actions by special costs rules pursuant to the Aarhus Convention and EU law which provide that:

(a) as a starting principle, each side bears its own costs; and
(b) the court has discretion to award a winning applicant its costs or part thereof (see section 50B PDA 2000[1] and Part 2 of the Environment (Miscellaneous Provisions) Act 2011: EMPA 2011). (Under these rules a losing party may be awarded its costs in a matter of exceptional public importance and where in the special circumstances of the case it is in the interests of justice to do so.)

The result in both scenarios (i.e. ‘loser pays’ or the special cost protection rules) is that applicants in environmental cases can in some cases find lawyers willing to act on a “no win, no fee” basis. In such cases, the applicant will not pay its lawyers for their time, unless and until the applicant’s action is successful, at which point there may, at the court’s discretion, be an award of costs in the applicant’s favour, which will serve to pay the applicant’s lawyers for at least part of (and perhaps all of) their time.

The courts may award a winning applicant its costs under the special rules “to the extent that the applicant succeeds in obtaining relief” (see s.50B(2A) PDA 2000). In other words, if the applicant makes arguments alleging, say, three separate breaches of the EIA Directive by An Bord Pleanála in granting...
planning permission, and the court finds in favour of the applicant in respect of two of the arguments but against the applicant on one, the court may make a
deduction in its award of costs on the basis that a certain amount of court time was spent arguing a losing point. Thus, in a successful EIA case taken against
An Bord Pleanála regarding Edenderry power station, the eNGO An Taisce was awarded 65% of its costs for this reason.
While these special costs rules have certainly improved access to justice, there has been considerable uncertainty regarding their scope of application, and
this has resulted in a significant variant of “satellite litigation” over the past decade. In brief, [s.50B PDA 2000] appears aimed at giving effect to Article 9(2)
and (4) of the Aarhus Convention (and related EU law), while [s.4 EMPA 2011] appears aimed at giving effect to Article 9(1), (3) and (4) of the Convention (and
related EU law). Since s.50B specifically lists provisions of certain EU directives – namely the EIA, SEA, and IPPC (IED) Directives and, since 2018, Art. 6(3)/
(4) of the Habitats Directive – it appeared that cost protection under s.50B would apply only where and to the extent that a case raised issues relating to one
or more of these Directives/provisions. Further to the CJEU’s judgment in [Case C-470/16 NEPPC, in [Heather Hill Management Company CLG v An
Bord Pleanála [2019] IEHC 185] the High Court held that the special costs rules under s. 50B apply to the entirety of proceedings, i.e. to all grounds of
challenge and not just those referred to in the above-named directives. In other words, the impugned decision is made pursuant to a statutory provision
that gives effect to the relevant provision(s) of any of the four named EU Directives, then the special costs rules apply to all grounds of challenge. This
judgment is under appeal to the Court of Appeal.
The cost protection provided under [Part 2 EMPA 2011] has similarly resulted in satellite litigation. The CJEU’s judgment in Case C-470/16 NEPPC
confirmed that the requirement in [s.4 EMPA 2011] to demonstrate a link with existing or likely damage to the environment before cost protection
would apply is unlawful. This requirement has not yet (as at February 2021) been removed from Ireland’s legislation. Most recently, in [O’Connor v Offaly County
Council [2020] IECA 72] the Court of Appeal appears to have limited the scope of cost protection under the [EMPA 2011] by holding that the scope of
proceedings within the meaning of s.4(1)(a), insofar as it relates to an applicant seeking to ensure compliance with or enforcement of a statutory requirement,
is limited to cases in which the applicant seeks to ensure compliance with or enforce into the future an identified statutory requirement. In contrast, where the
applicant is seeking to ensure compliance with a statutory requirement by arguing that that requirement was breached in a past decision, cost protection
will not apply. The Court noted that whether this represents a breach of an EU law as explained in C-470/16 NEPPC can only be properly determined in a case in
which the issue arises.
As the [Environment Governance Assessment on Ireland] concludes, Ireland’s special cost protection rules do not apply to all environmental litigation.
Gaps and uncertainties remain. For example, environmental litigation raising constitutional and/or human rights – e.g. the right to life in the context of climate
change; or judicial review outside the planning context, where it is unclear whether a rule akin to the one established by the High Court in the [Heather Hill
case would apply. It should be noted that the courts have very broad residual discretion under [Order 99 of the Rules of the Superior Courts as regards costs orders.
This has proven important given remaining uncertainties re Ireland’s cost protection legislation and the CJEU’s judgment in C-470/16 NEPPC to the effect that
where the application of national environmental law is at issue, it is for the national court to give an interpretation of national procedural law which, to the fullest
extent possible, is consistent with the objectives laid down in Article 9(3) and (4) of the Aarhus Convention, so that judicial procedures are not prohibitively
expensive. See the High Court’s discussion in [Heather Hill] of the use of the court’s discretion under [Order 99 in such circumstances. Finally, it should be noted
that outlay costs (photocopying, couriers, etc.) remain payable by the applicant in cases taken on a “no win, no fee” basis – these costs cannot be eliminated
and can be relatively significant, as described above.
7) Can the court provide an exemption from procedural costs, duties, filling fees, taxation of costs, etc.? Any other national characteristics linked to this topic?
The court cannot provide such an exemption other than as set out in legislation. There is an exemption from court fees for cases brought under the cost
protection rules in [Part 2 of EMPA 2011] (art. 8 of [S.I. 492/2014]), but not for cases under the cost protection rules in [s.50B PDA 2000]. It is unclear
why there is this difference between s50B cases and Part 2 EMPA 2011 cases.
Information on court fees and exemptions can be found [here].

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?
As the Department responsible nationally for the Aarhus Convention, the Department of the Environment, Climate and Communications provides this general
information on access to justice. The Citizens’ Information website also provides [general information] on the Aarhus Convention and [specific information]
about planning/environmental judicial review.
2) During different environmental procedures how is this information provided? From whom should the applicant request information?
Normally the information is provided by way of a statement in a notice publicising the relevant competent authority’s licensing decision (more on these
notices in (4) below). For example, a planning authority must publish a notice stating inter alia that a person may question the validity of any decision of the
planning authority by way of an application for judicial review, under [Order 84 of the Rules of the Superior Courts [S.I. No. 15 of 1986, as amended], in
accordance with [section 50 of the Planning and Development Act 2000].
These statutorily-required notices normally contain the above-mentioned basic information regarding access to justice; they do not, for example, provide
information regarding whom an applicant should contact for further information on access to justice. It is then for an applicant to seek out further information
themselves, for example by looking on the internet, where they may find the Citizens’ Information [webpage] on planning/environmental judicial review, or
perhaps by consulting a lawyer.
3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?
In reaching administrative decisions (e.g. on licences/permits in different sectoral areas), many consent regimes in Ireland require the inclusion of specific
wording relating to access to justice. More in section (4) immediately below.
4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment?
Where a public authority refuses a request for access to environmental information, either in whole or in part, it must comply with certain obligations under
Article 7(4) of the [AIE Regulations], including an obligation to specify the reasons for the refusal and to inform the applicant of their rights of internal review
and appeal, including the time limits within which such rights may be exercised.
Under the AIE Regulations, where a request is refused, or where an applicant believes that their request has been wrongfully/inadequately answered, two
administrative remedies are available in the first instance: internal review and an appeal to the Commissioner for Environmental Information.
Where the decision on internal review affirms the original decision, or varies it in a way that results in the request being refused, either in whole or in part, the
public authority must specify the reasons for the decision and must inform the applicant of their right to appeal to the Commissioner for Environmental
Information and the time limit within which this right may be exercised. If no decision is made on an applicant’s internal review request within one month, this
non-reply is deemed to be a refusal and the applicant may proceed with an appeal to the Commissioner.
The Regulations set out that following receipt of an appeal, the Commissioner shall (a) review the decision of the public authority, (b) affirm, vary or annul the
decision concerned, specifying the reasons for the decision, and (c) where appropriate, require the public authority to make available environmental
information to the applicant.
Thereafter, there is the possibility of an appeal on a point of law to the High Court from a decision of the Commissioner. Judicial review of the Commissioner’s decision is also an option.

Beyond access to information on the environment, various pieces of domestic legislation require that access to justice information be provided alongside a permitting decision. For example, in EIA cases a planning authority must publish notice of its permission decision, which notice must state inter alia that a person may question the validity of any decision of the planning authority by way of an application for judicial review, under Order 84 of the Rules of the Superior Courts (S.I. 15 of 1986), in accordance with section 50 of the PDA 2000 (see section 34(1A) PDA 2000). The same is true in respect of strategic housing development, where the applicant for permission must give notice that judicial review lies as a remedy against the decision of ABP (see the Planning and Development (Strategic Housing Development) Regulations 2017, S.I. 271/2017). The same is also true in respect of IED and IPC licensing decisions by the EPA, where the EPA must give notice of its licensing decisions, including giving notice that a person shall not question the validity of the EPA’s decision other than by way of an application for judicial review under Order 84 of the Rules of the Superior Courts (see the Environmental Protection Agency (Integrated Pollution Control) (Licensing) Regulations 2013 (S.I. 283/2013) and the Environmental Protection Agency (Industrial Emissions) (Licensing) Regulations 2013 (S.I. 137/2013)). This is also the case in respect of aquaculture licensing decisions by the Aquaculture Licenses Appeals Board, which must publish notices of its appeal decisions, including a statement that a person may question the validity of the determination or decision by way of an application for judicial review (see the Aquaculture (Licence Application) (Amendment) (No. 2) Regulations 2010 (S.I. 369/2010). More generally, the European Communities (Public Participation) Regulations 2010 (S.I. 352/2010) inserted a requirement for such notice to be given in a range of other consent regimes in Ireland.

5) Is translation, interpretation provided to foreign participants? What are the rules applicable?
Public authorities have an obligation under the AIE Regulations (Articles 7(7) and 7(8)) to provide assistance to applicants to make valid access to information requests and to provide applicants with information regarding the rights of internal review and appeal (Articles 7(4)(d) and 11(4)(b)). There is nothing in the Regulations relating specifically to foreign participants.

1.8. Special procedural rules

Country-specific EIA rules related to access to justice

1) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)
In Ireland, EIA is governed by different statutory regimes depending on the subject matter. It is possible to judicially review an EIA screening decision. The time limits are the same as with challenging any decision by way of judicial review: generally three months to apply for leave, but 8 weeks in the case of planning/IED.

Planning/development: an application for leave to apply for judicial review of any planning decision is required to demonstrate that the applicant has a sufficient interest. Under Order 84, r.21 of the Rules of the Superior Courts and S.I. No. 352/2014 (more below).
In some cases, eNGOs are deemed to have standing — see e.g. S.I. No. 352/2014. By way of example, s.43(5)(ba) of the Waste Management Act 1996, as inserted by the European Union (Access to Review of Decisions for Certain Bodies or Organisations promoting Environmental Protection) Regulations 2014 (S.I. No. 352 of 2014), provides that the High Court shall not grant leave for judicial review unless it is satisfied that — (i) the applicant has a sufficient interest in the matter which is the subject of the application, or (ii) the applicant— (I) is a body or organisation (other than a State authority, a public authority or governmental body or agency) the aims or objectives of which relate to the promotion of environmental protection and (II) have, during the period of 12 months preceding the date of the application, pursued those aims or objectives.

Other consent regimes: for non-planning judicial review in the area of environmental law, the standing threshold is generally a sufficient interest: see Order 84, r.21 of the Rules of the Superior Courts and S.I. No. 352/2014 (more below).
In some cases, eNGOs are deemed to have standing — see e.g. S.I. No. 352/2014. By way of example, s.43(5)(ba) of the Waste Management Act 1996, as inserted by the European Union (Access to Review of Decisions for Certain Bodies or Organisations promoting Environmental Protection) Regulations 2014 (S.I. No. 352 of 2014), provides that the High Court shall not grant leave for judicial review unless it is satisfied that — (i) the applicant has a sufficient interest in the matter which is the subject of the application, or (ii) the applicant— (I) is a body or organisation (other than a State authority, a public authority or governmental body or agency) the aims or objectives of which relate to the promotion of environmental protection and (II) have, during the period of 12 months preceding the date of the application, pursued those aims or objectives.

These 2014 Regulations similarly define the standing threshold as a sufficient interest, with deemed standing for eNGOs that meet the above-mentioned conditions, for challenges under:
s.7 of the Arterial Drainage Act 1945
s.87(10) of the Environmental Protection Agency Act 1992: IED licensing
reg.29 of the European Communities (Assessment and Management of Flood Risks) Regulations 2010 (S.I. No. 122 of 2010)
s.73 of the Fisheries (Amendment) Act 1997
s.13A and s.21B of the Foreshore Act 1933
s.40A of the Gas Act 1976
s.14E of the National Monuments Act 1930
s.13A of the Petroleum and Other Minerals Development Act 1960
Separately:
reg 17 of the Forestry Regulations 2017 provides standing to challenge forestry decisions by way to judicial review to (a) those who have a sufficient interest, (b) “consultation bodies” (which includes various State bodies and one eNGO: An Taisce), or (c) bodies or organisations (other than a State authority, a public authority or governmental body or agency) the aims or objectives of which relate to the promotion of environmental protection, that have, during the period of 12 months preceding the date of the application, pursued those aims or objectives;
reg 15 of the European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011 (S.I. No. 456 of 2011, as amended) creates a similar standing rule (minus the consultation bodies) in respect of decisions relating to various agricultural activities;
s.205 of the Minerals Development Act 2017 creates a similar standing rule (minus the consultation bodies) in respect of consents under that Act;
reg. 7G of the European Union (Environmental Impact Assessment) (Arterial Drainage) Regulations 2019 creates a similar standing rule (minus the consultation bodies) in respect of decisions relating to EIA drainage schemes.

2) Rules on standing relating to scoping (conditions, timeframe, public concerned)
The standing rules relating to scoping are the same as are described under 1) for screening.

3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?
In principle, the public is entitled to challenge screening and scoping decisions on administrative appeal or in court. In consent regimes with an administrative appeal (such as planning permission, forestry licensing, aquaculture licensing), such a challenge could be raised on appeal. An example of a court challenge
is An Taise v Minister for the Environment, Community and Local Government & Ors 2012 No. 1048 JR, in which the applicant commenced judicial review proceedings relating to the grant of a licence to test-drill for oil off the coast of Dublin, in circumstances where the respondent had unlawfully “screened out” the need for EIA. The case settled with a voluntary surrender of the licence by Providence Oil.

As above, deadlines for judicial review of screening and scoping decisions are the same as the standard judicial review deadlines: three months to apply for leave in most environmental law cases; 8 weeks in planning law/IED cases.

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

It is possible for anyone to challenge a final authorisation, provided they are held to have a sufficient interest or deemed to have standing. Also see the paragraphs on standing under 1) above.

For individuals, as a rule, participating in the administrative procedure will confer standing. In the planning context, the Supreme Court in [2019] IEHC 525 that there is nothing in Article 11 of the EIA Directive or in C-263/08 Djurgården or C-137/14 Commission v. Germany which would preclude a national court, as a matter of EU law, from considering as among the factors to be taken into account in determining standing, the non-participation by the applicant in the prior administrative or planning process which led to the impugned decision and any explanation for that non-participation (factors which, as the Supreme Court in Grace and Sweetman confirmed, can be considered under Irish national standing rules). Indeed, the Court held, C-664/15 Protect Natur suggests that a prior participation requirement may not infringe the right of access to effective judicial mechanisms, at least under Article 9 of the Aarhus Convention and potentially also under Article 11 of Directive 2011/92. However, the Court did not reach a definitive conclusion on that point. Subsequently, in January 2021, the CJEU in Case C-826/18 Stichting Varkens in Nood held that Article 9(2) of the Aarhus Convention precludes a prior participation requirement in respect of proceedings within the scope of Article 9(2) brought by eNGOs which are part of the “public concerned”. The CJEU further held that Article 9(3) of the Convention does not preclude a prior participation requirement, unless the applicant cannot reasonably be criticised, in light of the circumstances of the case, for not having intervened in the earlier procedure.

Subsequently, the High Court held in Conway v An Bord Pleanála [2019] IEHC 324 that there is nothing in Article 11 of the EIA Directive or in C-263/08 Djurgården or C-137/14 Commission v. Germany which would preclude a national court, as a matter of EU law, from considering as among the factors to be taken into account in determining standing, the non-participation by the applicant in the prior administrative or planning process which led to the impugned decision and any explanation for that non-participation (factors which, as the Supreme Court in Grace and Sweetman confirmed, can be considered under Irish national standing rules). Indeed, the Court held, C-664/15 Protect Natur suggests that a prior participation requirement may not infringe the right of access to effective judicial mechanisms, at least under Article 9 of the Aarhus Convention and potentially also under Article 11 of Directive 2011/92. However, the Court did not reach a definitive conclusion on that point. Subsequently, in January 2021, the CJEU in Case C-826/18 Stichting Varkens in Nood held that Article 9(2) of the Aarhus Convention precludes a prior participation requirement in respect of proceedings within the scope of Article 9(2) brought by eNGOs which are part of the “public concerned”. The CJEU further held that Article 9(3) of the Convention does not preclude a prior participation requirement, unless the applicant cannot reasonably be criticised, in light of the circumstances of the case, for not having intervened in the earlier procedure.

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

In Sweetman v An Bord Pleanála [2008] 1 IR 277, the High Court held that the EIA Directive allows persons to challenge “the substantive or procedural legality of decisions” and that, while it is clear that Irish judicial review law allows an extensive review of the procedural legality of decisions, the Directive does not require that there must be a judicial review of the substance of the decision itself but rather the “substantive legality” of the decision, i.e. the Directive does not require a complete appeal on the merits but rather requires a review of the procedures followed, to determine whether they were in accordance with law, as well as a review of the “substantive legality” of the decision. The High Court concluded that current Irish judicial review law goes a long way towards (and indeed may well meet) that requirement.

Judicial review proceedings can review whether it was, as a matter of law, open to the decision maker to come to the decision taken. It can review whether statutory obligations were complied with, whether all proper matters were taken into account and no improper matters taken into account. The limitation on the review is the court is not permitted to “second guess” a judgment made by the decision maker on the basis of materials which could allow such a judgment to be reached.

The Irish courts defer to the technical expertise of decision-makers such as planning authorities, ABP and the EPA and apply curial deference since the courts are not themselves experts on planning and environmental matters. As such, the courts will generally not review the scientific accuracy or validity of an environmental statement and will be deferential to the decision-maker, provided that the procedural requirements are met. Where the substance of a planning or environmental decision is challenged in judicial review proceedings, the High Court may quash such a decision where the decision in question is found to be “unreasonable” or “irrational,” applying either the general test in The State (Keegan) v Stardust Victims’ Compensation Tribunal [1986] IR 642 (whether the decision is “fundamentally at variance with reason and common sense”) or the narrower test in O’Keeffe v An Bord Pleanála [1993] 1 IR 39, which applies where the decision is of a decision of a technical or skilled or professional decision maker in the area of that special technical or skilled knowledge (see Denham J in the Supreme Court in Meadows v Minister for Justice, Equality and Reform [2010] 2 IR 701). Under this O’Keeffe test, the onus is on an applicant for judicial review to establish that the public authority decision-maker had “no relevant material” (cf. the mention of the Halpin case in 1.2(3) above) before it to support its decision and in default of the applicant so establishing, the court cannot reach a conclusion that the decision was unreasonable/irrational.

It has been determined in a number of cases that a greater level of scrutiny than O’Keeffe may potentially apply in planning/environmental cases, albeit accommodated within the existing judicial review regime. see甜妹 v An Bord Pleanála [2007] 2 ILRM 328, at 6.16 and 6.21; Kühn v An Bord Pleanála [2008] 2 ILRM 435, at 458; Keane v An Bord Pleanála [2012] IEHC 324, paras 18 and 19.

In cases relating to fundamental rights, the courts apply a proportionality test (see Meadows v Minister for Justice, Equality and Reform [2010] 2 IR 701 and AAA & anor v Minister for Justice & Ors [2017] IESC 90), providing for a more intensive form of review. Regarding whether the court can act of its own motion, the general position in Irish law is that the scope of the proceedings is defined or limited by the arguments put forward to the court by the parties to the litigation. The courts have a discretion to raise points of law of their own motion (usually described as raising a point of law ex officio), but this occurs relatively rarely in practice. In cases where a court decides to raise a point ex officio, the parties will be invited to make submissions on the point.

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

The general rule in judicial review is set out in Order 84 of the Rules of the Superior Courts, to the effect that an application for leave to apply for judicial review must be made within three months from the date when grounds for the application first arose. Thus, as a general rule a decision, act or omission may be challenged by way of judicial review within three months. Section 50(2) of the PDA 2000 provides that a person shall not question the validity of any decision made or other act done by a planning authority, a local authority or ABP in the performance or purported performance of a function otherwise than by way of an application for judicial review. This means that, in principle, any decision made or act done by a local authority, planning authority or An Bord Pleanála may be challenged by way of judicial review, within the required deadline, which is 8 weeks for planning permission decisions and acts (s.50).
The meaning of “timely” for EIA purposes has not been specifically transposed into Irish law for administrative review or judicial review purposes. Nor does applicants as it is to respondents and notice parties.

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?

The courts will not grant leave to bring judicial review proceedings unless they are satisfied that the applicant has a “sufficient interest” in the matter to which the application relates (the special standing rules applicable to eNGOs in this context have already been discussed, namely eNGOs don’t have to show “sufficient interest” where certain conditions are met).

In the planning permission context, in Grace and Sweetman v An Bord Pleanála [2017] IESC 10, the issue of standing arose in circumstances where neither applicant had not participated in the planning permission process at all before bringing judicial review proceedings. The Supreme Court held that as a matter of national law, a failure to participate in the permission granting process does not of itself exclude a person from having standing but that it may be a factor which can, in an appropriate case, be taken into account. The Court added that participation in the process will undoubtedly confer standing.

Subsequently, the High Court held in Conway v An Bord Pleanála [2019] IIEC 525 that there is nothing in Article 11 of the EIA Directive or in C-263/08 Djurgårdren or C-137/14 Commission v. Germany which would preclude a national court, as a matter of EU law, from considering as among the factors to be taken into account in determining standing, the non-participation by the applicant in the prior administrative or planning process which led to the impugned decision and any explanation for that non-participation (factors which, as the Supreme Court in Grace and Sweetman confirmed, can be considered under Irish national standing rules).

The Court, however, did not reach a definitive conclusion on that point. Subsequently, in January 2021, the CJEU in Case C-826/18 Stichting Varkens in Nood v An Taisce held that Article 9(2) of the Aarhus Convention precludes a prior participation requirement in respect of proceedings within the scope of Article 9(2) brought by eNGOs which are part of the “public concerned”. The CJEU further held that Article 9(3) of the Convention does not preclude a prior participation requirement, unless the applicant cannot reasonably be criticised, in light of the circumstances of the case, for not having intervened in the earlier procedure.

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

Order 84, r.24(3) of the Rules of the Superior Courts provides that on the hearing of an application for leave directed to be on notice or for judicial review (or on any adjournment of such hearing), the Court may give directions and make orders for the conduct of the proceedings as appear convenient for the determination of the proceedings in a manner which is inter alia just. There is no statutory guidance on what is meant by just (or fair and equitable) but there are of course many instances where the principle is applied in practice.

In Coffey and others v. Environmental Protection Agency [2013] IESC 31, the Supreme Court considered a series of appeals in which applicants had sought a protective costs order at the outset of their cases on an ex parte basis (i.e. without the respondent or notice parties present, in order to avoid the possibility of the applicants being ordered to pay the other parties’ costs arising from the hearing to determine if a protective costs order would apply). The High Court had refused to grant such an order on an ex parte basis, holding that it would be unfair to make a final order of this kind without having given the EPA and any notice parties the opportunity to have been heard on the matter. The Supreme Court upheld the High Court’s conclusion.

In An Taisce v An Bord Pleanála [2015] IEHC 604, the applicant argued that it was not fair that the respondent public body was permitted by the court to raise a key legal issue only in person at the hearing, without having made the argument in the prior written procedure. An Taisce argued that Article 11(4) of the EIA Directive imports fairness and equity into planning decision review procedures. The High Court held (at para 50), however, that Article 11(4) applies only to review procedures prior to any judicial review and not to judicial review itself, such that there is no requirement for Irish judicial review to be fair and equitable pursuant to the EIA Directive. This is contradicted by, for example, the CJEU’s judgment in Obel Case C-470/16 Neppc. To the authors’ knowledge, the An Taisce judgment is the only Irish judgment to have considered the question of fairness/equity for Aarhus Convention/related EU law purposes outside the context of costs. While the judgment was not appealed and could be cited by litigants in future cases, it is fair to say that the relevant part of the judgment is widely considered to have been wrongly decided, may in any event be obiter, and has not been applied since. Further, the judgment does not reflect the treatment or practical application of Article 11(4) of the EIA Directive in Irish legislation or in other case law at the national level (e.g. application of Ireland’s special costs rules to judicial review raising EIA issues via 5.50B PDA 2000).

Aspects of fairness/equity remain of concern to applicants in environmental cases: e.g. applicants for judicial review have to meet tight, strictly-applied deadlines in order to commence proceedings: e.g. 8 weeks in the case of challenges to planning permission decisions. Thereafter, parties are not routinely required to keep to the statutory timelines as set down in the Rules of the Superior Courts - this flexibility after leave has been granted is applied equally to applicants as it is to respondents and notice parties.

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

The meaning of “timely” for EIA purposes has not been specifically transposed into Irish law for administrative review or judicial review purposes. Nor does guidance cover the point.

Administrative review
Planning permission: An Bord Pleanála has a statutory objective to reach decisions on appeals within 18 weeks (s.126 PDA 2000).

Forestry: the relevant legislation does not record a deadline for the Forestry Appeals Committee to determine appeals. A review of the afforestation approval process recorded that, in 2018, 26 of the 66 appeals decided by the Forestry Appeals Committee took over 53 weeks to determine – almost 40% of the total.

IED: the EPA must issue its proposed determination within 8 weeks (s.87(3) Environmental Protection Agency Act 1992; and the Environmental Protection Agency (Industrial Emissions) (Licensing) Regulations 2013 (S.I. 137/2013)). There is no administrative appeal mechanism akin to an appeal to ABP in the planning context; however, as set out above, the proposed determination may be objected to, and the EPA’s decision may be judicially reviewed before the High Court. The EPA’s decision must be given “as expeditiously as may be” (s.85).

Aquaculture licensing: on appeal, the Aquaculture Licences Appeals Board must endeavour to ensure that appeals are dealt with within four months.

**Judicial review**

The general time limit for judicial review applications in environmental law matters is three months (Order 84 of the Rules of the Superior Courts). The time limit for judicial review applications in planning law matters and in cases relating to IED decisions is eight weeks (s.50 PDA 2000 and s.87(10) of the Environmental Protection Agency Act 1992). In Irish Skydiving Club Ltd. v An Bord Pleanála (2016) IEHC 448 Baker J. noted that, in planning judicial review, the time limit is strict, and one in respect of which the power to grant an extension is also to be strictly construed. The time for challenging a planning decision runs from the date of the decision and not from the date on which the applicant first becomes aware of or fully understands the substance of the relevant decision: see SC SYM Fotovoltaic Energy Srl v-- Mayo County Council & Ors (No.1) (2018) IEHC 20 at para.72.

There is no statutory requirement that judicial review procedures, once commenced, must be timely although:

**Order 84**, r.24(3) of the Rules of the Superior Courts provides that on the hearing of an application for leave directed to be on notice or for judicial review (or on any adjournment of such hearing), the Court may give directions and make orders for the conduct of the proceedings as appear convenient for the determination of the proceedings in a manner which is just, expeditious and likely to minimise the costs of those proceedings. This applies to judicial review generally and would include decisions outside the scope of the EIA Directive.

In the planning law context, encompassing EIA (development projects) and SEA (development plans), amongst other things, Planning and Development Act 2000 provides that the Court shall, in determining an application for leave or an application for judicial review on foot of such leave, act as expeditiously as possible consistent with the administration of justice; and s.50A(11) provides that on an appeal from a determination of the Court in respect of an application referred to in s. 50A(10), the Court of Appeal shall in determining the appeal, act as expeditiously as possible consistent with the administration of justice (cf. s.74 of the Court of Appeal Act 2014). Similar provisions are included in a range of other environmental legislation: e.g. see the Forestry Regulations 2017 and the European Union (Access to Review of Decisions for Certain Bodies or Organisations promoting Environmental Protection) Regulations 2014.

The Courts Service’s latest statistics reveal the following:

In the High Court, judicial review cases in 2019 lasted on average 392 days from issue to disposal (p.100). In the Commercial List, where cases are expedited, 1 week to 6 months for a hearing in the High Court from the first return date.

In the Court of Appeal, in 2019 the average wait from when the appeal was entered in the court list to the hearing was 20 months (p.110). There is then of course a wait after the hearing for judgment.

In the Supreme Court, in 2019 the average wait from the determination of the leave application to the hearing of the appeal was 55 weeks (p.110). There is then of course a wait after the hearing for judgment.

**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 as a matter of general judicial review under Order 84 of the Rules of the Superior Courts but there are no special procedures or requirements for decisions under the EIA Directive. Order 84, r.18(2) of the Rules of the Superior Courts provides that an application for a declaration or an injunction may be made by way of an application for judicial review, and on such an application the Court may grant the declaration or injunction claimed if it considers that, having regard to:

- the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition, certiorari, or quo warranto,
- the nature of the persons and bodies against whom relief may be granted by way of such order, and
- all the circumstances of the case, it would be just and convenient for the declaration or injunction to be granted on an application for judicial review.

Order 84, r.20(8) also provides that where leave to apply for judicial review is granted then the Court, should it consider it just and convenient to do so, may, on such terms as it thinks fit:

- grant such interim relief as could be granted in an action begun by plenary summons, where the relief sought is an order of prohibition or certiorari, make an order staying the proceedings, order or decision to which the application relates until the determination of the application for judicial review or until the Court otherwise orders.

Section 160 PDA 2000 provides a general injunctive power in the planning law context. This is available where an unauthorised development has been, is being or is likely to be carried out or continued. In such circumstances, the High Court or the Circuit Court may, on the application of a planning authority or any other person, whether or not the person has an interest in the land, by order require any person to do or not to do, or to cease to do, as the case may be, anything that the Court considers necessary and specifies in the order.

A similar enforcement power is available under s.99H of the Environmental Protection Agency Act 1992, where, on application by any person to the High Court or the Circuit Court, the Court is satisfied that an activity is being carried on in contravention of the requirements of this Act. In such circumstances the Court may by order require the person in charge of the activity to do, refrain from or cease doing any specified act (including to refrain from or cease making any specified emission), and make such other provision, including provision in relation to the payment of costs, as the Court considers appropriate. The High Court or the Circuit Court when considering the matter may make such interim or interlocutory order as it considers appropriate.

More generally, the Supreme Court has set out the relevant principles for injunction applications in judicial review cases in Okunade v Minister for Justice, Equality and Law Reform [2012] 3 IR 152. It was held in that case that, in considering whether to grant a stay or an interlocutory injunction in the context of judicial review proceedings, the court should apply the following considerations:

- the court should first determine whether the applicant had established an arguable case; if not the application must be refused, but if so, then;
- the court should consider where the greatest risk of injustice would lie. The court set out a range of factors to consider in this regard;
- the court should, in those limited cases where it was relevant, have regard to whether damages were available and would be an adequate remedy and also whether damages could be an adequate remedy arising from an undertaking as to damages; and
- subject to the issues arising in the judicial review not involving detailed investigation of fact or complex questions of law, the court could place all due weight on the strength or weakness of the applicant’s case.
Although this decision was applied in the field of immigration law, it also applies in the area of environmental law. In Friends of the Irish Environment Ltd v. Minister for Communications, Climate Action and Environment [2019] IEHC 555 the High Court noted that some limited assessment should be made of the strength of the defence to the proceedings in the context of an EU law claim. The Okunade principles were also applied in Irish Coastal Environment Group Coastwatch CLG v The Sea Fisheries Protection Authority & Ors. [2019] IEHC 677 where an injunction application on notice was brought to restrain dredging for razor clams (Ensis siliqua) in Waterford estuary.

### 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

Decisions on applications for IED licences are made by the EPA. Sections 87(2) and (3) of the Environmental Protection Agency Act 1992 (as amended) require the EPA to notify the public of its proposed determination of a licence application within 8 weeks from the date of receipt of the application. The EPA’s final decision, following any objections and any oral hearing, must be given “as expeditiously as may be” (s.85).

Regulation 20 of the Environmental Protection Agency (Industrial Emissions) (Licensing) Regulations 2013 requires the notice to inform the public of the proposed determination and where and how an objection can be lodged.

Any person or body (including the applicant for a licence or a licensee) can make an objection within 28 days of the proposed determination being issued on payment of a fee of €126 (reduced to €63 for certain bodies). A person making a valid objection can request an oral hearing. A request must include the €100 fee and be received within the 28-day objection period. The EPA has absolute discretion to hold (or not) an oral hearing, whether or not a request has been made.

Regulation 37(2) and (3) of the Environmental Protection Agency (Industrial Emissions) (Licensing) Regulations 2013 (S.I. No. 137 of 2013) requires the EPA to publish its final decision and the reasons for its decision. Under regulation 37(3)(j), the notice of the final decision published by the EPA must state that leave for judicial review has to be instituted within 8 weeks of the date the final decision is made, in accordance with section 87(10) of the Environmental Protection Agency Act 1992 (as amended).

Under section 87(10) of the Environmental Protection Agency Act 1992 a person may question the validity of a decision of the EPA to grant or refuse a licence or revised licence by instituting proceedings within 8 weeks beginning on the date on which the licence or revised licence is granted or the date on which the decision to refuse or not to grant the licence or revised licence is made.

Section 87(10)(c) and (d) go on to provide the relevant standing rules: the High Court will not grant leave for judicial review unless it is satisfied that either the applicant has a sufficient interest in the matter (this is not limited to an interest in land or other financial interest) or, in the case of an environmental NGO, that the NGO has pursued environmental protection aims or objectives during the period of 12 months preceding the date of the application for leave.

Separately, section 99H of the Environmental Protection Agency Act 1992 provides a broad third party enforcement power in respect of IED/IPC licences, enabling “any person” to apply to the High Court or the Circuit Court where an activity is being carried on in contravention of the requirements of the Act, seeking an order—

requiring the person in charge of the activity to do, refrain from or cease doing any specified act (including to refrain from or cease making any specified emission),

making such other provision, including provision in relation to the payment of costs, as the Court considers appropriate.

The High Court or the Circuit Court when considering the matter may make such interim or interlocutory order as it considers appropriate. The effect is that anyone may at any time after a permit has been issued challenge the activity if it contravenes the rules contained in the Act.

The special costs rules set out in Part 2 of the Environment (Miscellaneous Provisions) Act 2011 (and also arguably section 50B PDA 2000) will in principle apply to proceedings under section 87 or 99H of the Environmental Protection Agency Act 1992 (see section 1.7.3(6) above).

#### 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?

There is no administrative appeal available in respect of IED decisions in Ireland. Rather, judicial review is the only means of challenge.

No specific definition of “the public” or “the public concerned” has been included in Ireland’s legislation. Any person (individuals, NGOs, other legal entities, ad hoc groups, as well as (it would seem) non-resident individuals and NGOs) may make submissions to the EPA on an application for an IED licence (or a review of a licence). Any person may also challenge the validity of an EPA licensing decision by way of judicial review within 8 weeks, provided they have a “sufficient interest” (cf. the Supreme Court’s decision in the Grace and Sweetman case in the planning context, discussed in 1.1(4) above). However, as described above, environmental NGOs that have been active over the previous 12 months are effectively deemed to have such an interest by statute for the purposes of certain consent regimes. Further, “any person” - without any standing requirement - may seek to enforce the requirements of the Environmental Protection Agency Act 1992 in court under section 99H, e.g. where an activity is ongoing without an IED/IPC licence or in breach of the conditions of such a licence.

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

There is no administrative appeal available in respect of IED decisions in Ireland. Rather, judicial review is the only means of challenge.

The European Union (Access to Review of Decisions for Certain Bodies or Organisations promoting Environmental Protection) Regulations 2014 (S.I. No. 352 of 2014) define the standing threshold for IED licensing purposes as a sufficient interest, with deemed standing for eNGOs whose aims and objectives relate to the promotion of the environment and who have pursued that objective over the previous 12 months. This relates to challenges by way of judicial review pursuant to s.87(10) of the Environmental Protection Agency Act 1992, which covers a decision of the EPA to grant or refuse an IED licence or revised licence; challenges must be brought within 8 weeks. Thus, this is the standing rule where a decision relating to screening is challenged as part of a challenge to decision to grant or refuse an IED licence.

Where a screening decision is challenged outside the scope of a challenge to a decision to grant or refuse an IED licence, the standing test would be sufficient interest under Order 84 of the Rules of the Superior Courts, and as a general rule an application for leave to apply for judicial review must be made within three months from the date when grounds for the application first arose.

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

The same rules apply as are described immediately above in the context of screening challenges.

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

Any person or body can make an objection within 28 days of the proposed determination on the IED licence being issued by the EPA, on payment of a fee of €126 (reduced to €63 for certain bodies). A person making a valid objection can request an oral hearing. A request must include the €100 fee and be received within the 28-day objection period. This period commences on the date of notification of the proposed determination by the EPA. The EPA has absolute discretion to hold (or not) an oral hearing, whether or not a request has been made.

In arriving at its final determination the EPA will consider the application and all objections, submissions received and, where an oral hearing has been held, the report and recommendation of the person/s who conducted the hearing.
No provision is made in the legislation for an administrative appeal in respect of the EPA’s decisions (also known as the “final determination”) on IED licence applications. Such decisions may however be challenged by way of judicial review within 8 weeks under section 87(10) of the Environmental Protection Agency Act 1992, as described above.

6) Can the public challenge the final authorisation?

No provision is made in the relevant legislation for an administrative appeal in respect of EPA decisions on IED licence applications. As described above, such decisions may however be challenged by way of judicial review. Special statutory rules apply to such challenges. An application for judicial review challenging the validity of a decision of the EPA to grant, or to refuse to grant, an IED licence, must be instituted within the period of eight weeks from the date on which the licence is granted or the date on which the decision to refuse to grant the licence is made: Environmental Protection Agency Act 1992 (as amended), section 87(10). The High Court may, on application to it, extend the eight-week period where it considers, in the particular circumstances, that there is “good and sufficient reason” for extending the time limit. As regards standing, the High Court must not grant leave to bring judicial review proceedings unless it is satisfied that the applicant has a “sufficient interest” in the matter to which the application relates: section 87(10) of the Environmental Protection Agency Act 1992. As discussed above, environmental NGOs that have been active over the previous 12 months are effectively deemed by section 87(10) to have such an 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?

In Sweetman v An Bord Pleanála [2008] 1 IR 277, the High Court concluded that current Irish judicial review law goes a long way towards (and indeed may well meet) the requirement to provide for a review of substantive legality as well as procedural legality. Judicial review proceedings can review whether it was, as a matter of law, open to the decision maker to come to the decision taken. It can review whether statutory obligations were complied with, whether all proper matters were taken into account and no improper matters taken into account. The limitation on the review is that the court is not permitted to “second guess” a judgment made by the decision maker on the basis of materials which could allow such a judgment to be reached. The Irish courts defer to the technical expertise of decision-makers such as planning authorities, ABP and the EPA and apply curial deference since the courts are not themselves experts on planning and environmental matters. As such, the courts generally will not review the scientific accuracy or validity of an environmental statement and will be deferential to the decision-maker, provided that the procedural requirements are met. Where the substance of a planning or environmental decision is challenged in judicial review proceedings, the High Court may quash such a decision where the decision in question is found to be “unreasonable” or “irrational”, applying either the general test in The State (Keegan) v Stardust Victims’ Compensation Tribunal [1986] IR 642 (whether the decision is “fundamentally at variance with reason and common sense”) or the narrower test in O’ Keeffe v An Bord Pleanála [1993] 1 IR 39, which applies where the review is of a decision of a technical or skilled or professional decision maker in the area of that special technical or skilled knowledge (see Denham J in the Supreme Court in Meadows v Minister for Justice, Equality and Reform [2010] 2 IR 701). Under this O’ Keeffe test, the onus is on an applicant for judicial review to establish that the public authority decision-maker had “no relevant material” (cf. the mention of the Halpin case in 1.2(3) above) before it to support its decision and in default of the applicant so establishing, the court cannot reach a conclusion that the decision was unreasonable/irrational.

It has been determined in a number of cases that a greater level of scrutiny than O’ Keeffe may potentially apply in planning/environmental cases, albeit accommodated within the existing judicial review regime: see Sweetman v An Bord Pleanála [2007] 2 ILRM 328, at 6.16 and 6.21; Klohn v An Bord Pleanála [2008] 2 ILRM 435, at 458; Keane v. An Bord Pleanála [2012] IEHC 324, paras 18 and 19. In cases relating to fundamental rights, the courts apply a proportionality test (see Meadows v Minister for Justice, Equality and Reform [2010] 2 IR 701 and AAA & anor v- Minister for Justice & ors [2017] ESC 80), providing for a more intensive form of review.

Regarding whether the court can act of its own motion, the general position in Irish law is that the scope of the proceedings is defined or limited by the arguments put forward to the court by the parties to the litigation. The courts have a discretion to raise points of law of their own motion (usually described as raising a point of law ex officio), but this occurs relatively rarely in practice. In cases where a court decides to raise a point ex officio, the parties will be invited to make submissions on the point.

6) At what stage are these challengeable?

The usual remedy where an administrative decision of the EPA is believed to be unlawful would be for the court to quash the invalid decision in judicial review proceedings. Under section 87(10) of the Environmental Protection Agency Act 1992, proceedings to challenge a decision to grant or refuse a licence or revised licence must be instituted within the period of 8 weeks beginning on the date on which the licence or revised licence is granted or the date on which the decision to refuse or not to grant the licence or revised licence is made. In terms of other acts or omissions, the court has inherent jurisdiction in judicial review matters under Order 84 of the Rules of the Superior Courts (S.I. No. 15 of 1986, as amended), and as a general rule an application for leave to apply for judicial review must be made within three months from the date when grounds for the application first arose.

8) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? Not applicable: there is no provision for an administrative review/appeal in the case of EPA decisions on IED/IPC licence applications.

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? As discussed, the courts will not grant leave to bring judicial review proceedings unless they are satisfied that the applicant has a “sufficient interest” in the matter to which the application relates (NGOs are deemed to have automatic standing if they meet the statutory criteria: namely that the NGO’s aims or objectives relate to the promotion of environmental protection and it has, during the 12 months preceding the date of the application, pursued those aims or objectives); see section 87(10) of the Environmental Protection Agency Act 1992.

In the planning permission context by way of parallel, in Grace and Sweetman v An Bord Pleanála [2017] IESC 10 the issue of standing arose in circumstances where neither applicant had participated in the planning permission process at all before bringing judicial review proceedings. The Supreme Court held that as a matter of national law, a failure to participate in the permission granting process does not of itself exclude a person from having standing but that it may be a factor which can, in an appropriate case, be taken into account. In that context the Court emphasised that participation in the process will undoubtedly confer standing. On the facts, the Court emphasised that participation in the process will undoubtedly confer standing. On the facts, standing was accorded to Ms. Grace even though she had not participated at all in the administrative process. It should be noted, however, that she lived within 1 km of the proposed development, had a long history of activism in relation to the development and was certainly directly affected. The decision of the Court should not therefore be regarded as authority for the proposition that the prior participation rule has been dispensed with. That said, the Court indicated that had Mr. Sweetman (the other challenger, who did not live near to the wind farm in question) participated in the permission granting process or given the Court some cogent explanation for non-participation, then it would have been much easier to resolve the standing question in his favour (ultimately the Court did not find it necessary to reach a final determination on the question of Mr. Sweetman’s standing). In January 2021, the CJEU in Case C-826/18 Stichting Varkens in Nood held that Article 9(2) of the Aarhus Convention precludes a prior participation requirement in respect of proceedings within the scope of
Article 9(2) brought by eNGOs which are part of the “public concerned”. The CJEU further held that Article 9(3) of the Convention does not preclude a prior participation requirement, unless the applicant cannot reasonably be criticised, in light of the circumstances of the case, for not having intervened in the earlier procedure.

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

order 84, r.24(3) of the Rules of the Superior Courts provides that on the hearing of an application for leave directed to be on notice or for judicial review (or on any adjournment of such hearing), the Court may give directions and make orders for the conduct of the proceedings as appear convenient for the determination of the proceedings in a manner which is inter alia just. There is no statutory guidance on what is meant by just (or fair and equitable) but there are of course many instances where the apply is practiced in. In [2] Coffey and others v. Environmental Protection Agency [2013] IESC 31, the Supreme Court considered a series of appeals in which applicants had sought the possibility of a protective costs order at the outset of their cases on an ex parte basis (i.e. without the respondent or notice parties present, in order to avoid the possibility of the applicants being ordered to pay the other parties’ costs arising from the hearing to determine if a protective costs order would apply). The High Court had refused to grant such an order on an ex parte basis, holding that it would be unfair to make a final order of this kind without having given the EPA and any notice parties the opportunity to have been heard on the matter. The Supreme Court upheld the High Court’s conclusion.

In [2] An Taisce v An Bord Pleanála [2015] IEHC 604, the applicant argued that it was not fair that the respondent public body was permitted by the court to raise a key legal issue only in person at the hearing, without having made the argument in the prior written procedure. An Taisce argued that Article 11(4) of the EIA Directive imports fairness and equity into planning decision review procedures. The High Court held (at para 50), however, that Article 11(4) applies only to review processes prior to any judicial review and not to judicial review itself, such that there is no requirement for Irish judicial review to be fair and equitable pursuant to the EIA Directive. This is contradicted by, for example, the CJEU’s judgment in [2] Case C-470/16 NEPPC. To the authors’ knowledge, the An Taisce judgment is the only Irish judicial review to have considered the question of fairness/equity for Aarhus Convention/related EU law purposes outside the context of costs. While the judgment was not appealed and could be cited by litigants in future cases, it is fair to say that the relevant part of the judgment is widely considered to have been wrongly decided, may in any event be obiter, and has not been applied since. Further, the judgment does not reflect the treatment or practical application of Article 11(4) of the EIA Directive in Irish legislation or in other case law at the national level (e.g. application of Ireland’s special costs rules to judicial review raising EIA issues via [2] s.50B PDA 2000).

Aspects of fairness/equity remain of concern to applicants in environmental cases: e.g. applicants for judicial review have to meet tight, strictly-applied deadlines in order to commence proceedings: e.g. 8 weeks in the case of challenges to planning permission decisions. Thereafter, parties are not routinely required to keep to the statutory timelines as set down in the [2] Rules of the Superior Courts - this flexibility after leave has been granted is applied equally to applicants as it is to respondents and notice parties.

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

The meaning of “timely” for IED purposes has not been specifically transposed into Irish law for administrative review or judicial review purposes. Nor does guidance cover the point.

Administrative review

The EPA must issue its proposed determination within 8 weeks (s.87(3) Environmental Protection Agency Act 1992; and the Environmental Protection Agency (Industrial Emissions) (Licensing) Regulations 2013 (S.I. 137/2013)). There is no administrative appeal mechanism akin to an appeal to ABP in the planning context; however, as set out above, the proposed determination may be objected to, and the EPA’s decision may be judicially reviewed before the High Court.

Judicial review

There is no statutory requirement that judicial review procedures must be timely although [2] Order 84, r.24(3) of the Rules of the Superior Courts provides that on the hearing of an application for leave directed to be on notice or for judicial review (or on any adjournment of such hearing), the Court may give directions and make orders for the conduct of the proceedings as appear convenient for the determination of the proceedings in a manner which is just, expeditious and likely to minimise the costs of those proceedings. This applies to judicial review generally and would include decisions outside the scope of the IED Directive.

The Courts Service’s latest statistics reveal the following: In the High Court, judicial review cases in 2019 lasted on average 392 days from issue to disposal (p.100). (In the Commercial List, where cases are expedited, 1 week to 6 months for a hearing in the High Court from the first return date.) In the Court of Appeal, in 2019 the average wait from when the appeal was entered in the court list to the hearing was 20 months (p.110). There is then of course a wait after the hearing for judgment. In the Supreme Court, in 2019 the average wait from the determination of the leave application to the hearing of the appeal was 55 weeks (p.110). There is then of course a wait after the hearing for judgment.

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?

An applicant seeking leave to bring judicial review proceedings to challenge a decision of the EPA to grant, or to refuse to grant, an IED licence, may seek interim or interlocutory relief from the High Court. The Rules of the Superior Courts provide that where leave for judicial review is granted, the court, where it considers it just and convenient to do so, may grant interim relief on such terms as it thinks fit: [2] Order 84, rule 20(8).

Separately, section 99H of the Environmental Protection Agency Act 1992 provides a broad third party enforcement power in respect of IED/IPC licences, enabling “any person” to apply to the High Court or the Circuit Court where an activity is being carried on in contravention of the requirements of the Act, seeking an order—

(a) requiring the person in charge of the activity to do, refrain from or cease doing any specified act (including to refrain from or cease making any specified emission).

(b) making such other provision, including provision in relation to the payment of costs, as the Court considers appropriate.

The High Court or the Circuit Court when considering the matter may make such interim or interlocutory order as it considers appropriate.

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

The EPA provides information regarding judicial review of its decisions on its website - Licensing Process Explained.
entitled to seek actions taking place in furtherance of the grant of development consent or licence. There is no reason in principle why such an NGO would not equally be

An NGO in an affected country would be in precisely the same position as an Irish NGO in seeking injunctive relief and/or a stay on any development or other
decision to the EIA. There is no requirement, for example, that the NGO has to be incorporated in Ireland, and the standing rules are identical.

The standing rules for an NGO in an affected country are the same as for an NGO based in Ireland. These are that any such NGO with aims and objectives

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

The [2020] IEHC 454 decision must be notified in writing, giving reasons and advising the person of the period for bringing review or other legal proceedings in relation thereto pursuant to Regulation 16. No time limit is set for the EPA to notify its decision.

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

Ireland’s ELD Regulations provide in Regulation 15(1) for the possibility of a request for action to be made in cases of imminent threat. In other words, Ireland has not exercised the option in Art 12(5) ELD to exclude cases of imminent threat from the scope of the national ELD regime in this regard.

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

The EPA is the competent authority.

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

There is no administrative review procedure in Ireland in the ELD context.

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?

It should be noted that because of Ireland’s location and industrial/infrastructural profile the number of projects that involve transboundary consultation is very small. The jurisprudence around the questions raised under this heading 1.8.4 is therefore notably underdeveloped by comparison with continental Member States.

Ireland’s Planning and Development Regulations 2001 (as amended) (“PDR 2001”) provide for a process by which any transboundary State (EU Member State or other party to the Espoo Convention) is informed of a proposed development project (Art 124 et seq) or a development plan (Art 14F), local area plan (Art 14F) or regional planning guidelines (Art 15E) likely to have significant transboundary impacts on that State, before the consent decision is taken. (For simplicity, the remainder of this section discusses the case of development plans as representative of the rules for local area plans and regional planning guidelines.) If a submission is made by a person, NGO or other interested party in a transboundary State to the planning authorities in Ireland those submissions are treated in exactly the same way as if they had been made by a person living or based in Ireland.

In the IED regime reg. 15 of the Environmental Protection Agency (Industrial Emissions) (Licensing) Regulations 2013 (S.I. 137/2013, as amended) (“the IED Regulations”) provides for transboundary consultation where required.

Generally speaking all procedural rights which accrue apply equally to participants in the consent process that are based in a potentially affected transboundary State. Thus, the possibility to challenge environmental decisions arises as soon as the relevant decision is taken.

2) Notion of public concerned?

Insofar as consent as a development project is concerned the PDR 2001 frames the participation exercise in terms of the “views of the transboundary State” (art. 126(2)(e)) rather than the views of the public concerned.

In the context of development plans, Art 13F PDR 2001 cross-refers to the public referred to in Art 6(4) of the SEA Directive; that is, “Member States shall identify the public for the purposes of paragraph 2, including the public affected or likely to be affected by, or having an interest in, the decision-making subject to this Directive, including relevant non-governmental organisations, such as those promoting environmental protection and other organisations concerned.”

The IED Regulations use the (undefined) expression “the public concerned” to define those who may wish to participate.

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

The standing rules for an NGO in an affected country are the same as for an NGO based in Ireland. These are that any such NGO with aims and objectives relating to the promotion of the environment and who have pursued those aims over the previous 12 months have a right of standing in the case of development subject to EIA. There is no requirement, for example, that the NGO has to be incorporated in Ireland, and the standing rules are identical. Such an NGO would be in precisely the same position as an Irish NGO and could appeal or institute judicial review proceedings within the statutory time-limit. An NGO would not be eligible for legal aid on the basis that only natural persons are eligible: see Friends of the Irish Environment v Legal Aid Board [2020] IEHC 454. In that case an eNGO was not eligible to apply for legal aid on the basis that it is a company – the judgment has been appealed to the Court of Appeal

An NGO in an affected country would be in precisely the same position as an Irish NGO in seeking injunctive relief and/or a stay on any development or other actions taking place in furtherance of the grant of development consent or licence. There is no reason in principle why such an NGO would not equally be entitled to seek pro bono assistance or “no win, no fee” representation from solicitors and barristers.
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)?

The standing rules for an individual in an affected country are the same as for an individual based in Ireland – in each case, the test is sufficient interest. As a rule, participating in the administrative procedure will confer standing.

The Supreme Court in “Grace and Sweetman v An Bord Pleanála [2017] IESC 10” held that a failure to participate in the permission granting process does not of itself exclude a person from having standing but that it may be a factor which can, in an appropriate case, be taken into account. In that context the Court emphasised that participation in the process will undoubtedly confer standing. On the facts, standing was accorded to Ms. Grace even though she had not participated at all in the administrative process. It should be noted, however, that she lived within 1 km of the proposed development, had a long history of activism in relation to the development and was certainly directly affected. (This aspect could pose difficulties for an individual in an affected country.) The decision of the Court should not therefore be regarded as authority for the proposition that the prior participation rule has been dispensed with. That said, the Court indicated that had Mr. Sweetman (the other challenger, who did not live near to the wind farm in question) participated in the permission granting process or *given the Court some cogent explanation for non-participation*, then it would have been much easier to resolve the standing question in his favour (ultimately the Court did not find it necessary to reach a final determination on the question of Mr. Sweetman’s standing).

Subsequently, the High Court held in “Conway v An Bord Pleanála [2019] IEHC 525” that there is nothing in Article 11 of the EIA Directive or in C-263/08 Djurgården or C-137/14 Commission v. Germany which would preclude a national court, as a matter of EU law, from considering as among the factors to be taken into account in determining standing, the non-participation by the applicant in the prior administrative or planning process which led to the impugned decision and any explanation for that non-participation (factors, which, as the Supreme Court in “Grace and Sweetman” confirmed, can be considered under Irish national standing rules). Indeed, the Court held, C-664/15 Protect Natur suggests that a prior participation requirement may not infringe the right of access to effective judicial mechanisms, at least under Article 9 of the Aarhus Convention and potentially also under Article 11 of Directive 2011/92.

However, the Court did not reach a definitive conclusion on that point. Subsequently, in January 2021, the CJEU in Case C-826/18 “Stichting Varkens in Noord” held that Article 9(2) of the Aarhus Convention precludes a prior participation requirement in respect of proceedings within the scope of Article 9(2) brought by NGOs which are part of the “public concerned”. The CJEU further held that Article 9(3) of the Convention does not preclude a prior participation requirement, unless the applicant cannot reasonably be criticised, in light of the circumstances of the case, for not having intervened in the earlier procedure.

As noted above, in order to have standing an individual must demonstrate that they have a sufficient interest in the decision. That interest does not need to relate to a financial or land-based interest but some degree of physical proximity or impact is one of the elements assessed, as described above. Equally, a Court will look at the reasons for the individual seeking judicial review of the administrative decision. Courts will generally look to identify either a personal and proximate interest and/or a genuine environmental concern and give standing if those factors are present. If, on the other hand, the proposed development does not engage any personal interest of the individual, they are not directly impacted and the Court perceives that a professed environmental concern is simply a proxy to interfere in the development process, standing may be refused. The absence of any definition of “sufficient interest” makes predicting in advance whether an individual will have standing a difficult exercise at times, and particularly so in the context of an individual in another country. However, as the Supreme Court emphasised in “Grace and Sweetman”, participation in the earlier process will undoubtedly confer standing. To the authors’ knowledge, no cases have been brought by individuals overseas in this context so it is not possible to provide any definitive information from practical experience in relation to the standing of such persons.

Any individual in an affected country accorded standing would, however, be in exactly the same position as an individual in Ireland in relation to their entitlement to apply for injunctive relief and to seek to access, for example, pro bono or “no win, no fee” representation. Individuals based outside Ireland are eligible to apply for legal aid – see here. That said, as Clarke J commented in the Supreme Court at para 2.30 of “Conway v Ireland, the Attorney General & Ors [2017] IESC 13”, the evidence suggests that, at a very minimum, the grant of legal aid in environmental cases is an extreme rarity in Ireland.

5) At what stage is the information provided to the public concerned (including the above parties)?

In the case of consent for development projects, the PDR 2001 treats the transboundary State rather than the public concerned as the Irish authorities’ interlocutor. The relevant planning authority or An Bord Pleanála as appropriate must provide information on a proposed development referred to in articles 124 or 125 to the transboundary State concerned and shall enter into consultations with that State in relation to the potential transboundary effects of the proposed development: (a) at the same time as notifying the Minister under article 124(1) that, in its opinion, the proposed development would be likely to have significant effects on the environment in a transboundary State (this obligation arises “as soon as may be after receipt of a planning application”), or (b) upon request for such information by the transboundary State under article 125.

In the case of a development plan, a planning authority must, following consultation with the Minister, forward a copy of the draft development plan and associated environmental report to a Member State—(a) where the planning authority considers that implementation of the plan is likely to have significant effects on the environment of such Member State, or (b) where a Member State, likely to be significantly affected, so requests.

In the case of IED licensing, the EPA must, “as soon as may be after receipt of the application or request,” notify the appropriate competent authority in the Member State concerned.

6) What are the timeframes for public involvement including access to justice?

In the case of development plans, the PDR 2001 (reg 130) specify that a planning authority shall, notwithstanding the 8 week deadline for a decision specified section 34(8) of the PDA 2000, not decide to grant or refuse permission in respect of a planning application to which transboundary consultation applies, or An Bord Pleanála shall not determine an appeal, an application for approval to which transboundary consultation applies or an application for strategic infrastructure development, until after (a) the views, if any, of any relevant transboundary State have been received in response to consultations under article 126(1), or (b) the consultations are otherwise completed.

In the case of development plans, the PDR 2001 (reg 13F) require that the authority must agree with the other State (i) a reasonable timeframe for the completion of the consultations and (ii) detailed arrangements to ensure that the environmental authorities and the public likely to be affected in the other Member State are informed and given an opportunity to forward their opinion within a reasonable timeframe.

In the case of IED licensing, where a Member State indicates that it intends to participate, the EPA must, before giving any notification indicating the manner in which it proposes to determine the IED application, consult with the Member State for the purposes inter alia of making arrangements, including the establishment of time-frames for consultations to inter alia enable the members of the public concerned in the territory of the affected Member State to participate effectively in the environmental decision-making procedure (reg. 15 of the IED Regulations, as amended).

7) How is information on access to justice provided to the parties?

As regards development projects, reg 131 of the PDR 2001 requires any relevant transboundary State to be sent various notices issued by planning authorities where they have approved development. How the transboundary State communicates this information onwards to the public concerned in that State is not addressed. In the case of planning permission granted by a planning authority, reg 31(1) PDR 2001 requires the notice to specify inter alia that an appeal against the decision may be made to An Bord Pleanála within the period of 4 weeks beginning on the date of the decision of the planning authority. In the case of An Bord Pleanála’s decisions on ordinary planning appeals, reg 74 does not require the notice to mention the possibility of judicial
review. However, in the case of its decisions relating to strategic infrastructure (art. 220 PDR 2001) and strategic housing s.10(2) of the Planning and Development (Housing) and Residential Tenancies Act 2016, the relevant notices are required to mention the possibility of questioning the validity of the decision by way of judicial review.

As regards development plans, following any transboundary consultations, reg 13(2) PDR 2001 requires that any Member State consulted must be sent the plan and a statement summarising inter alia how any transboundary consultations have been taken into account in the making of the plan. However, there is no requirement to provide information on access to justice – e.g., how the decision may be challenged.

As regards IED licensing, under reg 21(1) of the IED Regulations the EPA must notify the competent authority of a potentially affected Member State of its proposed determination within 3 working days of the giving of the notification of the proposed determination. The notification must state that objections can be made and must specify the timeframe. Thereafter, once the EPA finally determines the application the EPA must notify the competent authority in the potentially affected Member State and this notice must mention the possibility of challenging the decision by way of judicial review (reg 37).

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

The detailed rules in relation to how transboundary consultation will take place are not prescribed in the PDR 2001 or as regards IED licensing. There is therefore no prima facie requirement that the notices informing the potentially affected country and the substantive underlying documentation are provided in the national language(s) of the potentially affected Member State.

This issue may however be less proximate in Ireland owing to its geographic position and the common language as between Ireland and the United Kingdom. The authors are unaware of any transboundary consultation that has been undertaken further afield in respect of an Irish project or plan. It is worth noting in this regard that the use of nuclear fission for electricity generation is effectively prohibited in Ireland by section 18 of the Electricity Regulation Act 1999.

9) Any other relevant rules?

There are no other relevant rules.

[1] Cost protection via s5OB has been specifically applied to two consent regimes outside the planning law context: judicial review of forestry development involving EIA (cost protection under s5OB PDA by virtue of reg 18 of the Forestry Regulations 2017), and judicial review in respect of certain on-farm impact assessment decisions/acts/omissions (cost protection under s5OB PDA by virtue of Regulation 22 of the European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011, S.I. 456/2011. Whether this was necessary is unclear given that s5OB appears to apply to any statutory provision that gives effect to the relevant provision(s) of one of the listed Directives.

[2] See also case C-529/15.
County Council (No. 1) [2006] 1 IR 294 in the planning law context, in which the Court held that certain issues are not matters appropriate to An Bord Pleanála. On the facts of the case, Kelly J cited in this category points relating to vires, fair procedures and bias, which, the Court held, should properly be determined by a court rather than by An Bord Pleanála. The relevant passage was recently referred to with approval by the Supreme Court in Friends of the Irish Environment v An Bord Pleanála [2020] IESC 14. While the High Court’s decision in Harding related to An Bord Pleanála on the facts, its reasoning would seem applicable to other administrative review procedures.

Judicial review: in Sweetman v An Bord Pleanála [2008] 1 IR 277, the High Court concluded that current Irish judicial review law goes a long way towards (and indeed may well meet) the requirement to provide for a review of substantive legality as well as procedural legality. Judicial review proceedings can review whether it was, as a matter of law, open to the decision maker to come to the decision taken. It can review whether statutory obligations were complied with, whether all proper matters were taken into account and no improper matters taken into account. The limitation on the review is that the court is not permitted to “second guess” a judgment made by the decision maker on the basis of materials which could allow such a judgment to be reached. The Irish courts defer to the technical expertise of decision-makers such as planning authorities, ABP and the EPA and apply curial deference since the courts are not themselves experts on planning and environmental matters. As such, the courts will generally not review the scientific accuracy or validity of an environmental statement and will be deferential to the decision-maker, provided that the procedural requirements are met.

Where the substance of a planning or environmental decision is challenged in judicial review proceedings, the High Court may quash such a decision where the decision in question is found to be “unreasonable” or “irrational,” applying either the general test in The State (Keegan) v Stardust Victims’ Compensation Tribunal [1986] IR 642 (whether the decision is “fundamentally at variance with reason and common sense”) or the narrower test in O’Keeffe v An Bord Pleanála [1993] 1 IR 39, which applies where the review is of a decision of a technical or skilled or professional decision maker in the area of that special technical or skilled knowledge (see Denham J in the Supreme Court in Meadows v Minister for Justice, Equality and Reform [2010] 2 IR 701). Under this O’Keeffe test, the onus is on an applicant for judicial review to establish that the public authority decision-maker had “no relevant material” (cf. the mention of the Halpin case in 1.2(3) above) before it to support its decision and in default of the applicant so establishing, the court cannot reach a conclusion that the decision was unreasonable/irrational.

It has been determined in a number of cases that a greater level of scrutiny than O’Keeffe may potentially apply in planning/environmental cases, albeit accommodated within the existing judicial review regime: see Sweetman v An Bord Pleanála [2007] 2 ILRM 328, at 6.16 and 6.21; Klokhn v An Bord Pleanála [2008] 2 ILRM 435, at 458; Keane v An Bord Pleanála [2012] IEHC 324, paras 18 and 19.

In cases relating to fundamental rights, the courts apply a proportionality test (see Meadows v Minister for Justice, Equality and Reform [2010] 2 IR 701 and AAA & anor v Minister for Justice & ors [2017] IESC 80), providing for a more intensive form of review.

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

Some legislation provides for an administrative appeal, for instance to An Bord Pleanála (ABP) in the planning permission context; to the Aquaculture Licences Appeals Board (ALAB) in respect of aquaculture licensing; and to the Forestry Appeals Committee in the context of certain forestry activities. There is a doctrine that one must generally exhaust administrative remedies before leave will be granted by the High Court to pursue judicial review proceedings (for a discussion, see Simons 2014). While it is possible for an applicant to pursue judicial review proceedings without first exhausting administrative appeal possibilities, often an applicant would be advised to pursue the administrative route first owing to the risk of being refused leave to bring the action for judicial review (or ultimately refused relief by the court exercising its discretion) for failing to exhaust administrative remedies before resorting to court.

However, if for example the available administrative review procedure is not capable of addressing the particular issue(s) arising, then there is nothing to prevent an individual/NGO from proceeding directly to judicial review.

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

Participation in the process will undoubtedly confer standing (see the judgment in Grace and Sweetman, cited below). However, having participated is not always a necessary precondition.

As regards individuals: in a number of cases the Irish Courts have considered standing requirements where the applicants have not participated in the administrative process. In Grace and Sweetman v. An Bord Pleanála [2017] IESC 10 the Supreme Court stated that the requirement to establish a sufficient interest on the part of an applicant for leave to bring judicial review proceedings now defines the limits of standing to bring a judicial review challenge irrespective of the form of order sought. The Supreme Court further observed that the Irish courts have traditionally applied the same rules on standing which were identified in respect of constitutional cases in Cahill v. Sutton [1980] IR 269, in judicial review proceedings not involving a constitutional dimension. As noted by the Supreme Court, the overall approach to standing in judicial review proceedings can fairly be described as “reasonably flexible”. Applying traditional Irish standing rules, and without considering the impact of EU law, standing was accorded to Ms. Grace even though she had not participated in all the administrative process. It should be noted, however, that she lived within 1 km of the proposed development, had a long history of activism in relation to the development and was certainly directly affected. The decision of the Supreme Court should not therefore be regarded as authority for the proposition that the prior participation rule has been dispensed with. That said, the Court indicated that had Mr. Sweetman (the other challenger, who did not live near to the wind farm in question) participated in the permission granting process, then it would have been much easier to resolve the standing question in his favour (ultimately the Court did not find it necessary to reach a final determination on the question of Mr. Sweetman’s standing).

Whilst this arose in the EIA context, by way of parallel it is worth noting that, subsequently, the High Court held in Conway v An Bord Pleanála [2019] IEHC 525 that there is nothing in Article 11 of the EIA Directive or in C-263/08 Djurgården or C-137/14 Commission v. Germany which would preclude a national court, as a matter of EU law, from considering as among the factors to be taken into account in determining standing, the non-participation by the applicant in the prior administrative or planning process which led to the impugned decision and any explanation for that non-participation (factors which, as the Supreme Court in Grace and Sweetman confirmed, can be considered under Irish national standing rules). Indeed, the Court held, C-664/15 Protect Natura suggests that a prior participation requirement may not infringe the right of access to effective judicial mechanisms, at least under Article 9 of the Aarhus Convention and potentially also under Article 11 of Directive 2011/92. However, the Court did not reach a definitive conclusion on that point. Subsequently, in January 2021, the CJEU in Case C-826/18 Stichting Varkens in Noord held that Article 9(2) of the Aarhus Convention precludes a prior participation requirement in respect of proceedings within the scope of Article 9(2) brought by eNGOs which are part of the “public concerned”. The CJUE further held that Article 9(3) of the Convention does not preclude a prior participation requirement, unless the applicant cannot reasonably be criticised, in light of the circumstances of the case, for not having intervened in the earlier procedure.

As regards NGOs: with the exception of situations in which an NGO has deemed standing (see section 1.8.1(1) above), it would be prudent to proceed on the basis that an NGO will need to satisfy the court that it has a sufficient interest in order to have standing rather than expecting that they will effectively be deemed in practice to have standing in all environmental/planning cases.

5) Are there some grounds/arguments precluded from the judicial review phase?
Respondents in planning/environmental judicial review regularly argue that applicants may only raise points before the courts that they raised previously during the administrative process. Applicants argue that this is inconsistent with the CJEU’s judgment in C-137/14 *Commission v. Germany*. For example, such an exchange arose recently in the proceedings that ended in a judgment of the Supreme Court in *Friends of the Irish Environment v Government of Ireland & Ors.* [2020] IESC 49. However, the Government of Ireland dropped its objections before the case came to hearing before the High Court.

In *M28 Steering Group v An Bord Pleanála* [2019] IEHC 929 the High Court held that as a matter of law there is no general rule that a prior participant who has not raised particular points before An Bord Pleanála is automatically precluded from raising such points before the court. On the other hand, neither do the authorities establish an unrestricted right to raise new points, held the Court. This is particularly so, as was recognised in C-137/14 *Commission v. Germany*, where there is evidence of bad faith or a deliberate decision to withhold a point.

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

*Order 84*, r.24(3) of the Rules of the Superior Courts provides that on the hearing of an application for leave directed to be on notice or for judicial review (or on any adjournment of such hearing), the Court may give directions and make orders for the conduct of the proceedings as appear convenient for the determination of the proceedings in a manner which is *inter alia* just. There is no statutory guidance on what is meant by just (or fair and equitable) but there are of course many instances where the principle is applied in practice.

In *Coffey and others v. Environmental Protection Agency* [2013] IESC 31, the Supreme Court considered a series of appeals in which applicants had sought a protective costs order at the outset of their cases on an *ex parte* basis (i.e. without the respondent or notice parties present, in order to avoid the possibility of the applicants being ordered to pay the other parties’ costs arising from the hearing to determine if a protective costs order would apply). The High Court had refused to grant such an order on an *ex parte* basis, holding that it would be unfair to make a final order of this kind without having given the EPA and any notice parties the opportunity to have been heard on the matter. The Supreme Court upheld the High Court’s conclusion.

In *An Taisce v An Bord Pleanála* [2015] IEHC 604, the applicant argued that it was not fair that the respondent public body was permitted by the court to raise a key legal issue only in person at the hearing, without having made the argument in the prior written procedure. An Taisce argued that Article 11(4) of the EIA Directive imports fairness and equity into planning decision review procedures. The High Court held (at para 50), however, that Article 11(4) applies only to review processes *prior to* any judicial review and not to judicial review itself, such that there is no requirement for Irish judicial review to be fair and equitable pursuant to the EIA Directive. This is contradicted by, for example, the CJEU’s judgment in *Case C-470/16 NEPPC*. To the authors’ knowledge, the An Taisce judgment is the only Irish judgment to have considered the question of fairness/equity for Aarhus Convention/related EU laws purposes outside the context of costs. While the judgment was not appealed and could be cited by litigants in future cases, it is fair to say that the relevant part of the judgment is widely considered to have been wrongly decided, may in any event be *obiter*, and has not been applied since. Further, the judgment does not reflect the treatment or practical application of Article 11(4) of the EIA Directive in Irish legislation or in other case law at the national level (e.g. application of Ireland’s special costs rules to judicial review raising EIA issues via *s.50B PDA 2000*).

Aspects of fairness/equity remain of concern to applicants in environmental cases: e.g. applicants for judicial review have to meet tight, strictly-applied deadlines in order to commence proceedings: e.g. 8 weeks in the case of challenges to planning permission decisions. Thereafter, parties are not routinely required to keep to the statutory timelines as set down in the *Rules of the Superior Courts* - this flexibility after leave has been granted is applied equally to applicants as it is to respondents and notice parties.

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

There is no statutory requirement that judicial review procedures must be timely in respect of decisions falling within the scope of EU environmental legislation but outside the scope of the EIA and IED Directives although:

*Order 84*, r.24(3) of the Rules of the Superior Courts provides that on the hearing of an application for leave directed to be on notice or for judicial review (or on any adjournment of such hearing), the Court may give directions and make orders for the conduct of the proceedings as appear convenient for the determination of the proceedings in a manner which is just, expeditious and likely to minimise the costs of those proceedings. This applies to judicial review generally and would include decisions outside the scope of the EIA and IED Directives.

In the planning law context, which could cover decisions within the scope of EU environmental legislation but outside the scope of the EIA and IED Directives, *s.50A(10) Planning and Development Act 2000* provides that the Court shall, in determining an application for leave or an application for judicial review on foot of such leave, act as expeditiously as possible consistent with the administration of justice; and *s.50A(11)* provides that on an appeal from a determination of the Court in respect of an application referred to in *s.50A(10)*, the Court of Appeal shall in determining the appeal, act as expeditiously as possible consistent with the administration of justice (cf. s.74 of the Court of Appeal Act 2014).

The Courts Service’s *latest statistics* reveal the following:

- In the High Court, judicial review cases in 2019 lasted on average 392 days from issue to disposal (p.100). (In the Commercial List, where cases are expedited, 1 week to 6 months for a hearing in the High Court from the first return date.)

- In the Court of Appeal, in 2019 the average wait from when the appeal was entered in the court list to the hearing was 20 months (p.110). There is then of course a wait after the hearing for judgment.

- In the Supreme Court, in 2019 the average wait from the determination of the leave application to the hearing of the appeal was 55 weeks (p.110). There is then of course a wait after the hearing for judgment.

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?**

It is possible to seek interlocutory injunctive relief in judicial review proceedings and this is provided for by *Order 84* of the Rules of the Superior Courts. There are no special rules applicable to each sector mentioned in the area of judicial review. However, there are special statutory rules for injunctive relief as a means of enforcement. *Section 160 PDA 2000* provides a general injunctive power in the planning law context. This is available where an unauthorised development has been, is being or is likely to be carried out or continued. In such circumstances, the High Court or the Circuit Court may, on the application of a planning authority or any other person, whether or not the person has an interest in the land, by order require any person to do or not to do, or to cease to do, as the case may be, anything that the Court considers necessary and specifies in the order.

In the area of waste management law, *s.57 of the Waste Management Act 1996* provides that where, on application by any person to the High Court, that Court is satisfied that waste is being held, recovered or disposed of in a manner that causes or is likely to cause environmental pollution or a waste permit or licence is contravened, it may by order— (a) require the person holding, recovering or disposing of such waste to carry out specified measures to prevent or limit, or prevent a recurrence of, such pollution or contravention, within a specified period, (b) require the person holding, recovering or disposing of such waste to do, refrain from or cease doing any specified act, or to refrain from or cease making any specified omission, (c) make such other provision, including provision in relation to the payment of costs, as the Court considers appropriate. Such applications may include applications for interim and interlocutory orders, as appropriate.
Section 11 of the Local Government (Water Pollution) Acts 1977-1990 also provides that where a contravention of s.3(1) or s.4(1) of that Act has occurred or is occurring, the High Court may by order prohibit the continuance of the contravention on the application of a local authority or any other person, whether or not the person has an interest in the waters. There is no standing requirement for such applications and they can be made by any person.

More generally, the Supreme Court has set out the relevant principles for injunction applications in judicial review cases in Okunade v Minister for Justice, Equality and Law Reform [2012] 3 IR 152. It was held in that case that, in considering whether to grant a stay or an interim interlocutory injunction in the context of judicial review proceedings, the court should apply the following considerations:

- the court should first determine whether the applicant had established an arguable case; if not the application must be refused, but if so, then
- the court should consider where the greatest risk of injustice would lie. The court set out a range of factors to consider in this regard;
- the court should, in those limited cases where it was relevant, have regard to whether damages were available and would be an adequate remedy and also whether damages could be an adequate remedy arising from an undertaking as to damages; and
- subject to the issues arising in the judicial review not involving detailed investigation of fact or complex questions of law, the court could place all due weight on the strength or weakness of the applicant’s case.

Although this decision was applied in the field of immigration law, it also applies in the area of environmental law. In Friends of the Irish Environment Ltd. v. Minister for Communications, Climate Action and Environment [2019] IEHC 555 the High Court noted that some limited assessment should be made of the strength of the defence to the proceedings in the context of an EU law claim. The Okunade principles were also applied in Irish Coastal Environment Group Coastwatch CLG v The Sea Fisheries Protection Authority & Ors. [2019] IEHC 677 where an injunction application on notice was brought to restrain dredging for razor clams (Ensis siliqua) in Waterford estuary. 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?

There is no express statutory reference in Irish law to the effect that costs should not be prohibitive. As described above, the High Court in Heather Hill [2019] IEHC 166 held that the special costs rules under s.50B Planning and Development Act 2000 apply to the entirety of proceedings, of course and not just those relating to the directives listed in s.50B (EIA, SEA, IPPC (IED) and Art 6 (3)(4) Habitats Directive). In other words, where the impugned decision is made pursuant to a statutory provision that gives effect to the relevant provision(s) of any of the four named EU Directives, then the special costs rules apply to all grounds of challenge. This judgment is under appeal to the Court of Appeal. For now, the effect of the judgment is essentially that all planning permission challenges will have cost protection. With the exception of:

- judicial review of planning decisions (cost protection under s.50B, though this is under appeal to the Court of Appeal in Heather Hill);
- enforcement actions in respect of the licences/permits listed in s.4(4) of the Environment (Miscellaneous Provisions) Act 2011 (cost protection under Part 2 EMPA 2011)

which in the case of enforcing statutory requirements must be future-looking only to have cost protection: see the discussion of O'Connor v Offaly County Council [2020] IEECA 72 in section 1.7.3(6) above;

- judicial review of forestry development decisions involving EIA (cost protection under s.50B PDA by virtue of reg 18 of the Forestry Regulations 2017); and judicial review in respect of certain on-farm impact assessment decisions/acts/omissions (cost protection under s.50B PDA by virtue of Regulation 22 of the European Communities (Environmental Impact Assessment) (Agriculture) Regulations 2011, S.I. 456/2011), the scope of cost protection in Ireland remains unclear.

Applicants who proceed despite the uncertainty may choose in such circumstances to point to the litigation in the CJEU’s judgment in C-470/16 NEPPC, where the CJEU held that, where the application of national environmental law is at issue, it is for the national court to give an interpretation of national procedural law which, to the fullest extent possible, is consistent with the objectives laid down in Article 9(3) and (4) of the Aarhus Convention, so that judicial procedures are not prohibitively expensive. Applicants may argue that the national courts have a strong duty of interpretation to exercise their discretion in considering costs under Order 99 of the Rules of the Superior Courts in such a way so as to avoid prohibitive expense. See the High Court’s discussion in Heather Hill of the use of the court’s discretion under Order 99 in such circumstances. However, the uncertainty means that applicants will decide in some cases to litigate (or not) unsure whether cost protection will apply. The EMPA 2011 allows for a determination to be made re cost protection by the court upfront, though s50B PDA 2000 does not provide for this; also, there is no cost protection for any hearing required to determine upfront whether cost protection applies In the Matter of an Application by Dymphna Maher [2012] IEHC 445. Coffey and others v. Environmental Protection Agency [2013] ESC 31. Further, there are areas of environmental litigation where it is unclear whether the strong duty of interpretation set down by the CJEU in C-470/16 NEPPC applies: e.g. does environmental litigation raising constitutional rights or human rights under the ECHR amount to the application of ‘national environmental law’?

The consequences of losing a case where all or part of the proceedings did not benefit from cost protection would be a costs order on the normal ‘loser pays’ basis, subject to the court’s discretion.

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?


Decisions or failures relating to strategic environmental assessment of planning decisions are subject to the standing rules in s.50A of the PDA 2000—generally a sufficient interest must be demonstrated; there is deemed standing for NGOs active over the past 12 months; plus substantial grounds must be demonstrated in all cases. However, challenges under the SEA Directive are not confined to planning. General challenges brought by way of judicial review are subject to the standing rules in Order 84 of the Rules of the Superior Courts, where the test is simply a sufficient interest. Where a planning decision is challenged on the basis that it breaches the SEA Directive, the applicant must raise substantial grounds and bring the challenge within eight weeks (subject to any extension), and an NGO applicant may be deemed to have standing. In the case of a non-planning decision, where the SEA Directive is relied upon, the applicant is subject to the lower threshold of arguability and a time limit of three months, but will need to demonstrate a sufficient interest.
An example of a recent action for judicial review on inter alia SEA grounds can be found in [2020] IEHC 225 where the applicant challenged the validity of the assessments that were carried out by the respondents and alleged that due to shortcomings in the various assessments and due to the lack of certain monitoring and other provisions, the assessments themselves and the resultant National Planning Framework (NPF) were fatally flawed. However, the High Court found that there was no breach of the SEA Directive. Access to the courts is relatively good in respect of SEA challenges, particularly in the planning context where s.50B PDA 2000 clearly provides cost protection. However, compared to cases raising issues in respect of the EIA and Habitats Directives there have been relatively few cases relating to SEA in Ireland.

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? Administrative review is not provided for in respect of plans/programmes subjected to SEA in Ireland. Regarding judicial review, please see the answer under section 2.1(2) above.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? N/A - while there is public participation/consultation in such procedures, administrative review is not provided for, and the only mechanism by which to challenge the decision of a public authority is by way of judicial review proceedings in the High Court.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.? Decisions or failures relating to strategic environmental assessment of planning decisions are subject to the standing rules in s.50A of the PDA 2000 - generally a sufficient interest must be demonstrated; there is deemed standing for eNGOs active over the past 12 months; plus substantial grounds must be demonstrated in all cases. However, challenges under the SEA Directive are not confined to planning. General challenges brought by way of judicial review are subject to the standing rules in Order 84 of the Rules of the Superior Courts, where the test is simply a sufficient interest. For more details regarding standing for individuals and NGOs, please see the answer to section 2.1(4) above. As will be clear from that discussion, in certain cases it may be possible to demonstrate a sufficient interest without having participated in the administrative process.

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 as a matter of general judicial review under Order 84 of the Rules of the Superior Courts but there are no special procedures or requirements for decisions under the SEA Directive. Order 84, r.18(2) of the Rules of the Superior Courts provides that an application for a declaration or an injunction may be made by way of an application for judicial review, and on such an application the Court may grant the declaration or injunction claimed if it considers that, having regard to: the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition, certiorari, or quo warranto, the nature of the persons and bodies against whom relief may be granted by way of such order, and all the circumstances of the case, it would be just and convenient for the declaration or injunction to be granted on an application for judicial review. Order 84, r.20(8) also provides that where leave to apply for judicial review is granted then the Court, should it consider it just and convenient to do so, may, on such terms as it thinks fit: grant such interim relief as could be granted in an action begun by plenary summons, where the relief sought is an order of prohibition or certiorari, make an order staying the proceedings, order or decision to which the application relates until the determination of the application for judicial review or until the Court otherwise orders. The Supreme Court has set out the relevant principles for injunction applications in judicial review cases in Okunde v Minister for Justice, Equality and Law Reform [2012] 3 IR 152. It was held in that case that, in considering whether to grant a stay or an interlocutory injunction in the context of judicial review proceedings, the court should apply the following considerations: (a) the court should first determine whether the applicant had established an arguable case; if not the application must be refused, but if so, then; (b) the court should consider where the greatest risk of injustice would lie. The court set out a range of factors to consider in this regard; (c) the court should, in those limited cases where it was relevant, have regard to whether damages were available and would be an adequate remedy and also whether damages could be an adequate remedy arising from an undertaking as to damages; and, (d) subject to the issues arising in the judicial review not involving detailed investigation of fact or complex questions of law, the court could place all due weight on the strength or weakness of the applicant's case.

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? There is no general express statutory reference in Irish law to the effect that costs should not be prohibitive. However, challenges on SEA grounds should benefit from cost protection under s.50B of the Planning and Development Act 2000.

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:

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? Article 7 of the Aarhus Convention has not been given effect in Ireland beyond the scope of SEA: see Ireland's Implementation Table in respect of the Convention.

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? Where (despite not having transposed Art. 7 of the Aarhus Convention beyond the scope of SEA) the public is given the opportunity to participate in the adoption of a plan or programme not subject to SEA: there is no administrative review possibility; and judicial review would be available and its scope would be as described in section 1.8.1(5) above.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? Not applicable.

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 relation to plans or programmes that do not engage the terms of the SEA Directive the standing requirements are the same as described above in section 2.1(4).
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?

Please see the answer to section 2.2(5) above.

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 a judicial review challenging a plan or programme not subject to SEA on the basis of national law relating to the environment, applicants may point to the CJEU’s judgment in C-470/16 NEPPC, where the CJEU held that, where the application of national environmental law is at issue, it is for the national court to give an interpretation of national procedural law which, to the fullest extent possible, is consistent with the objectives laid down in Article 9(3) and (4) of the Aarhus Convention, so that judicial procedures are not prohibitively expensive. Applicants will argue that the national courts have a strong duty of interpretation to exercise their discretion, in considering costs under Order 99 of the Rules of the Superior Courts, in such a way so as to avoid prohibitive expense. See the High Court’s discussion in Heather Hill v. An Bord Pleanála (2019) IEHC 525, but cf. the CJEU’s subsequent judgment in Case C-826/18 Stichting Varkens in Nood. Uncertainty regarding cost protection might put some off litigating – more below.

However, the uncertainty means that applicants will decide to litigate (or not) unsure whether cost protection will apply. The consequences of losing a case where all or part of the proceedings did not benefit from cost protection would be a costs order on the normal ‘loser pays’ basis, subject to the court’s discretion.

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

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?

Administrative review: there is no administrative review available in respect of such plans/programmes.

Legal challenge before court: there are no specific procedures for decisions, acts or omissions concerning plans and programmes required to be prepared under EU environmental legislation. The standing rules are the same as the general rules in judicial review, as set out in Order 84 of the Rules of the Superior Courts: a sufficient interest. Injunctive relief may also be sought under the general judicial review rules in Order 84, as described above.

In terms of effectiveness, access to national courts would be reasonably good, albeit both individuals and NGOs would need to demonstrate a sufficient interest. Where the prospective litigant has not participated in the earlier administrative process, this could cause difficulties in terms of establishing standing: see the High Court’s decision in Conway v An Bord Pleanála [2019] IEHC 525, but cf. the CJEU’s subsequent judgment in Case C-826/18 Stichting Varkens in Nood.

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)?

Please see answer under 1).

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?

Please see the answer under section 2.1(2) above.

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

N/A - while there is public participation/consultation in such procedures, administrative review is not provided for, and the only mechanism by which to challenge the decision of a public authority is by way of judicial review proceedings in the High Court.

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

The standing rules are the same as the general rules in judicial review, as set out in Order 84 of the Rules of the Superior Courts: the applicant must have a sufficient interest. While there is no mandatory requirement for prior participation (Supreme Court in Grace and Sweetman), such participation is one of the factors that may be assessed in considering the sufficiency of a person’s interest for this purpose according to the High Court in Conway v An Bord Pleanála [2019] IEHC 525 (also see the CJEU’s later judgment in Case C-826/18 Stichting Varkens in Nood).

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

Please see the answer to section 2.1(5) above.

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

Please see the answer to section 1.8.1(9) above.

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

Please see the answer to section 2.1(7) above.

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

Please see the answer to section 2.2(5) above.

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?

Please see the answer to section 2.3(6) above.

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

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?

There are no specific procedures for decisions, acts or omissions concerning executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts. The standing rules are the same as the general rules in judicial review, as set out in Order 84 of the Rules of the Superior Courts – the test is a sufficient interest. Injunctive relief may also be sought under the general judicial review rules in Order 84. Both primary and secondary legislation can be challenged by way of judicial review (subject to time limits) or plenary proceedings. Where primary legislation is challenged, the reliefs will be declaratory in nature and the applicant will have to demonstrate that it has standing to challenge the legislation.

The general position is that a party only has locus standi to challenge the constitutionality of a statutory provision if imminently affected by a decision made or about to be made under it (Cahill v Sutton [1980] IR 269). The question of whether or not a person has a sufficient interest depends upon the circumstances of each particular case. In each case, the question of sufficient interest is a mixed question of fact and law which must be decided upon legal principles but
there is greater importance attached to the facts because it is only by an examination of the facts that the court can come to a decision as to whether there is a sufficient interest in the matter to which the application relates (The State (Lynch) v Cooney [1982] IR 337).

There is authority for the proposition that an NGO can directly challenge secondary legislation in judicial review proceedings on the basis inter alia of a contravention of EU law. For example, in Friends of the Irish Environment Ltd v Minister for Communications, Climate Action and the Environment [2019] IEHC 646, the applicant, in judicial review proceedings, challenged the validity of two statutory instruments. The High Court concluded that the Ministerial Regulations were invalid as they were inconsistent with the requirements of the EIA Directive and the Habitats Directive, and the use of secondary legislation to introduce the legislative amendments required to give effect to the new licensing regime was ultra vires.

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 in this context. Please see the answer to section 2.1(2) regarding judicial review.

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

N/A - administrative review is not provided for, and the only mechanism by which to challenge in this context is by way of judicial review proceedings in the High Court.

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

The standing rules are the same as the general rules in judicial review, as set out in Order 84 of the Rules of the Superior Courts: the applicant must have a sufficient interest. While there is no mandatory requirement for prior participation (Supreme Court in Grace and Sweetman), such participation is one of the factors that may be assessed in considering the sufficiency of a person’s interest for this purpose according to the High Court in Conway v An Bord Pleanála [2019] IEHC 525 (also see the CJEU’s later judgment in Case C-826/18 Stichting Varkens in Nood).

In the context being considered here – the making of a legislative decision – while there will be a parliamentary process, there may not always be an opportunity for public participation as such. In those circumstances, clearly non-participation would not represent a bar to standing.

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?

Please see the answer to section 2.2(5) above. For a recent example of injunctive relief being granted in this context, see Friends of the Irish Environment v Minister for Communications, Climate Action and Environment & Ors [2019] IEHC 555, where an interlocutory injunction was granted restraining the implementation of certain Regulations.

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?

The precise jurisdictional basis for a costs order in this context is unclear and will depend to some extent on the underlying nature of the legislation that is challenged. For example, in the Friends of the Irish Environment case cited in 5) immediately above, the legislation challenged related to the EIA and Habitats Directives. The State conceded that an order for costs should be made in favour of Friends and the court therefore did not have to resolve whether an order for costs should be made under s.50B PDA 2000 (special cost protection rules pursuant to the Aarhus Convention) or under the general provision governing costs (Order 99 of the Rules of the Superior Courts): see Friends of the Irish Environment v Minister for Communications, Climate Action and Environment & Ors [2019] IEHC 685.

For a discussion of s.50B, please see the answer to section 1.7.3(6) above.

For a discussion of Order 99, please see the answer to section 2.3(6) above.

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?

It is possible to bring such a challenge. There is however no specific procedure provided to allow that to occur and the very first validity reference in Ireland was instituted in January 2020 (Friends of the Irish Environment v Minister for Communications, Climate Action and the Environment & Ors. [2020] IEHC 383). This challenged the validity of the decision of the European Commission to include Shannon LNG Terminal on the Union list of Projects of Common Interest in November 2019. It also challenged the domestic decision-making in respect of the inclusion of the Terminal. The latter element allowed the proceedings to be brought to Court as this element provided a domestic respondent that allowed for the proceedings to be instituted. However, the main respondent party was the European Commission who were not, for reasons of comity, named in the proceedings. The proceedings are judicial review proceedings which seek reliefs against the domestic respondents and ask that the matter be referred to the CJEU for a determination on the validity of the Commission’s measure. The High Court rejected the challenge on the basis that, in the absence of a domestic implementing measure, the High Court had no jurisdiction to refer to the matter to the CJEU. The authors understand it is the intention of the applicant to appeal.

[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 Boxsus 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
There are no rules in relation to what is termed “administrative contempt”. There is no mechanism by which the Courts (or any other administrative body) can impose penalties on State parties that frustrate access to justice or fail to take the necessary steps to facilitate access to justice. The only way for that to occur is for individual litigants to bring an action that alleges a failure to vindicate access to justice rights. These types of action are relatively commonplace – i.e. that notice of a potential development was not provided or that submissions were not considered as part of litigation impugning the validity of a grant of a licence or development consent.

However, this type of litigation tends to focus on the failure to provide access to justice in particular instances or as regards particular cases and not in relation to systemic failures to vindicate access to justice requests. That means that access to justice points are used tactically by litigants seeking to quash the development consent or licence, but without any requirement to guard against administrative passivity on a national or macro scale. There is no other State watchdog or body with a remit to ensure that access to justice measures are enacted and applied.

While there are no specific rules or penalties which the Courts can impose for breaches of the principle of access to justice, the High Court can, in an action for judicial review, grant damages in addition to, or in lieu of, certiorari or prohibition, or a declaration or an injunction [Order 84 r.24, Rules of the Superior Courts]. The courts also have coercive powers to attach and commit for breaches of court orders.

Non-compliance with a court judgment amounts to civil contempt of court. This can result in the party in default being open to punitive sanctions for being in contempt. The court can commit the party to prison for an indefinite, as opposed to a definite (as occurs in criminal contempt of court), period, which will end when the person agrees to comply with the court order/judgment. It is worth noting that public bodies are subject to liability for civil wrong in the same way as private companies and individuals and are also responsible for the acts and omissions of their employees and agents under principles of vicarious liability. To the extent that a public body deliberately breached a court judgment, it is possible that persons such as its CEOs, directors, board members (depending on how that particular body is constituted), could be held liable for contempt of court. Where a public body is a company, the procedure in s.53 of the Companies Act 2014 could potentially be used to enforce a judgment against the company and its officers – remedies include sequestration and attachment (i.e. bringing the directors/officers before the High Court to answer their contempt).

The purpose of imprisonment in civil contempt is not punitive but rather coercive. However, in practice the boundary between civil and criminal contempt has become blurred in the Irish courts. Currently, the law appears to provide the broadest possible range of sanctions for civil contempt. These stretch from punitive sanctions imposed on the basis of the public interest (as set out in Laois County Council v. Hanrahan, SC No. 411 of 2013) to unlimited powers of coercive imprisonment.

Hogan, Morgan and Daly comment in Administrative Law (5th Ed., 2019) that “in principle, a Minister can be found guilty of contempt of court, although there is (to our knowledge) no recorded instance of this having occurred.”

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etc., the law covers civil and criminal liability issues and administrative and penal sanctions. L 1650/1986 has been amended by L 3010/02 in order to comply with Directives 97/11/EU and 96/61/EU, L 393/2011, known as the Biodiversity Law, and L 4042/2012 on the protection of the environment through criminal law, on waste management and other provisions, in compliance with EU Directives. Law 4042/12 aims at harmonising the Greek legislative framework with Directives 2008/99/EC and 2008/98/EC as regards the protection of the environment through criminal law and waste management. The law is divided into four parts. Part I incorporates into the national legislative framework the provisions made under EU Directive 2008/99/EC. Articles 2 to 9 (Part I) establish penalties for environmentally harmful activities, which typically cause or are likely to cause substantial harm to the environment.

The protection of wildlife and nature reserves is further supplemented by additional legislative acts, such as Law 4519/2018 for Protected Areas Management Bodies, the Forest Code and Law 743/1977 for the protection of the marine environment and Law 4685/2020 for the modernisation of environmental legislation.

Law 1650/1986 includes a set of criminal civil and administrative sanctions but does not require the adoption of remedial measures for the restoration of the environment by the polluter. In other words, its scope remains limited to the establishment of liability to punish the damage and pollution rather than to remedy the environmental damage and/or impose measures to prevent or compensate for the loss of environment caused by the damage. Those aspects are covered by Presidential Decree 148/2009 transposing the Environmental Liability Directive 2004/35/EC into Greek law and introducing an environmental liability based on the “polluter pays” principle focused on the prevention and remediation of environmental damage.

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

In the context of resolving and addressing environmental problems, the decisions of the Supreme Administrative Court (Council of State) play a very important role.

Examples of national cases:


The Ymittos case: The 1992 study and mapping of the Ymittos Regional Road in the Attica region raised serious problems for the local ecosystem and the surrounding municipalities, as it envisaged the construction of an avenue cutting through the middle the Ymittos mountain. Following appeals to the Council of State, the Court annulled the Environmental Team’s decision and all related approvals resulting in a new study of the road in 1994.

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?

According to Article 28 of the Greek Constitution, the generally recognised rules of international law and international conventions constitute an integral part of Greek law and prevail over any contrary provision in this law. The international agreements do not need to be translated into domestic law as, under Article 28 section 1 of the Constitution, ratification of international conventions makes them directly applicable. They become an integral part of domestic Greek law and prevail over any contrary provision in that law. Greece has ratified most international conventions regarding environmental protection and implements EU law on the protection of the environment. The Supreme Administrative Court, in its jurisdiction, recognises the direct application of ratified international conventions and EU Directives.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

Courts are divided into administrative, civil and criminal courts, and they are organised by special statutes. The sessions of all courts shall be public, except when the court decides that publicity would be detrimental to good usage or special reasons call for the protection of the private or family life of the litigants. Every court judgment must be specifically and thoroughly reasoned and must be pronounced in a public session. Publication of the dissenting opinion is compulsory. Justice is administered by courts composed of regular judges who enjoy functional and personal independence. The substantive administrative disputes fall under the jurisdiction of the existing ordinary administrative courts (first instance courts, courts of appeal, Council of State).

Civil courts have jurisdiction on all private disputes (first instance courts, courts of appeal, Areios Pagos - the Supreme Civil and Criminal Court of Greece). Criminal courts have jurisdiction on criminal offenses (first instance courts, courts of appeal, Areios Pagos – the Supreme Civil and Criminal Court of Greece).

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)?

According to the Code of Administrative Procedure (Art. 7), jurisdiction in the first and last instance rests with the court in whose district the authority is established, by an act, omission or material act on which the dispute was founded. This jurisdiction is maintained even in cases where an administrative appeal is filed against these acts or omissions. According to public law, an annulment request can be brought before the Council of State or the administrative courts in order to annul an administrative act. After that, a suspension request can be submitted asking for a stay of execution of the offended administrative act. The Council of State is at the top of the hierarchy of ordinary administrative courts (administrative courts of first instance and administrative courts of appeal). The Council of State and the ordinary administrative courts decide on all administrative law disputes: money claims, the function of the civil service, social security claims, procurement of public works and supplies, compensation claims against the State, and challenges to the legality of administrative acts in general. The judgments of the Council of State constitute the highest authority on legal precedent for the lower administrative courts and set the standards for the interpretation of the Constitution and the laws and for the advancement of legal theory and practice. Like all judicial decisions, the judgments of the Council of State carry the authority of “res judicata” and are subject to compulsory enforcement against the public sector, local government agencies and legal persons under public law.

The jurisdiction of the Supreme Administrative Court (Council of State) pertains mainly to:

- Annulling administrative acts of administrative authorities for excess of power or violation of the law.
- Reversing or confirming administrative acts of administrative authorities, colonial, or of the administrative courts of general jurisdiction.
- Concluding the substantive administrative disputes submitted to them as provided by the Constitution and the statutes.
- The decision of a public authority is contradictory to the Constitution.

The administration is bound to comply with the annuling judgments of the Supreme Administrative Court. The courts are bound not to apply a law whose content is contrary to the Constitution.

3) Specialities as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges
There are no special judicial procedures for environmental matters. The civil courts examine and recognise right relating to the environment. The recourse to civil courts is intended to safeguard the living space of the affected individual from harmful effects on the environment.

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.
Only the Prosecutor can act ex officio in case of criminal offences relating to environmental insults, as he can do so for any other non-environmental offence. The Greek Ombudsman can also act ex officio in case of environmental damage. The Greek courts act only upon appeal, there is no action on their own motion.
According to Article 35 of the Administrative Procedural Law, the court reviews the procedural issues on its own motion. The scope of the case and the completion of the trial depend, in principle, on the will of the parties and not on the ex-officio action of the court. Concerning the subject-matter of the proceedings: procedural conditions, procedural obstacles and, in particular, the admissibility of the remedy, define the procedural scope of the proceedings, which is reviewed ex officio by the court in order to proceed to the substantive content of the proceedings.
According to Article 79 of the Administrative Procedure Law, the court examines the contested act or omission in accordance with law and substance, within the limits of the appeal determined by its reasons and request. Exceptionally, statutory control of the contested act or omission may also be ex officio in its entirety, in order to verify: whether the act has been issued by an incompetent body or by a collective body that does not have a legal composition b) whether the act is defective on its legal basis, or c) whether there is a violation of a court ruling.

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 Environment and Energy (MoEEN) is mainly responsible for a wide range of governmental policy areas in environmental matters, including preparing legislation and transposing directives of the European Union into national law, as well as issuing presidential decrees, laws and administrative regulations. The Ministry of Environment has general Secretariats for the natural environment and water, spatial planning and urban development, energy and raw materials, and waste management co-ordination. The decentralised administrations have general directorates for spatial and environmental policy, forestry and agriculture. Other Ministries (Ministry of Health, Ministry of Development, Ministry of Rural Development and Food, Ministry of Tourism, Ministry of Maritime Affairs and Insular Policy, Ministry of Interior, Ministry of Infrastructure and Transport) develop and implement policies affecting the environment. There are also a number of horizontal co-ordination mechanisms on environmental matters. Every regional authority has a directorate for development planning, environment and infrastructure. Regions sometimes produce strategies and plans on key environmental issues. They are also responsible for issuing permits for certain activities and ensuring compliance with them.
In the case of disputed public administration decisions, citizens may appeal before the competent administration under specific terms and conditions. They may appeal to the relevant authority which issued the act and ask for remedy in order to rectify an injustice or an illegal situation. With this application, the grounds of legality of the act or substantive grounds can be invoked.
An administrative appeal is addressed to the administrative authority that issued the act or to the authority above the one that issued the act. It requests revocation or amendment of the administrative act.
Types of administrative actions for appeal against administrative decisions:

Remedy request: submitted to the same administrative body which issued the act. Rectification of an injustice or lifting of an illegal situation caused by the administrative act. The administrative authority receiving the appeal must notify its decision to the person concerned within 30 days. If the person concerned asks for the annulment of the administrative act, the decision is taken by the supervising (hierarchically superior) authority (hierarchical appeal). Individuals whose legitimate interests were harmed by an individual administrative act must file this kind of administrative appeal. The appeal may be submitted to the authority which issued the act or the authority above it. The objective is the withdrawal or amendment of the act. For the submission of this kind of appeals there is no specified deadline.

Special administrative appeal: provided by a special legal provision setting a deadline within which the appeal must be filed. According to Art. 227 of L 3852 /2010 on the function of local authorities – Kallikratis (as amended by 4555/2018 - Kleisthenes), anyone who has a legal interest may challenge the decisions of the collective or single-member bodies of municipalities, regions and their associations, for reasons of legality, before the Local Authority Supervisor, within a period of fifteen (15) days from publication of the decision or its posting on the internet or from its notification or after it has become fully aware of it. The competent administrative body reviews only the legality of the case (see related decisions of the Council of State 3642/1999, 1669/2012, 1974/2016).

Quasi-judicial action: This action is reviewed not only the legitimacy, but also the substance of the case. It is provided for by a special legal provision, submitted to the same administrative body which issued the act and filed within a certain time-limit set by law. The decision on the action is delivered by the administration within a time limit set by law or otherwise within three months (see related decisions of the Council of State 1038/88, 1171/97, 4064/2012, 2829 /2012, 4304/2010) An example of a quasi-judicial action is the appeal by the owner of an illegal construction against the inspection report of the Town Planning Administrative Service before the Town Planning and Disputes Council (ΣΥΡΟΤΗ- ΣΥΜΒΟΥΛΙΟ ΠΟΛΕΟΔΟΜΙΚΩΝ ΕΘΝΙΚΩΝ & ΑΜΦΙΣΒΗΤΗΣΕΩΝ ΕΥ.Π.Ο.Θ.Α. Art. 30 of L 4030/2011 as amended).
An administrative remedy suspends the deadline for filing the cancellation request and the appeal to the court, provided of course that it is filed within the deadline. A special administrative appeal also suspends the deadline, provided that it was filed within the period prescribed by the provisions in force.
The case can be essentially reopened, while the special administrative appeal checks only the legality of the contested act in the quasi-judicial redress. Acts adopted on the basis of the appeal are always enforceable.
If a quasi-judicial appeal is allowed, its submission is a prerequisite for the admissibility of the cancellation request or appeal to the court. The appeal may be brought only against the act issued directly within the deadline provided or, if there is no time limit, within three months of its submission.. The appeal gives rise to the issuance of a new administrative act and leads to a new judgment on the case,. The appeal shall be deemed to have been rejected after the expiry of the specified time limit, otherwise after the lapse of three months (Article 25 of the Code of Civil Procedure).

2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?
Greek law provides the following remedies against the administration before the administrative courts:
A cancellation request against an act or omission of the administration due to abuse of power or violation of the law (Council of State or exceptionally Court of Appeal or First Instance Court)
An appeal against an act or omission by the administration before the first instance administrative court or exceptionally before the Administrative Court of Appeal and the Council of State
An action for recognition of the existence or absence of a pecuniary claim
Objection against administrative execution (first instance administrative court)
Suspension of enforcement of an administrative act where a cancellation request or appeal has been already initiated
Request for injunctive relief

There are no special judicial procedures for environmental matters. The civil courts examine and recognise right relating to the environment. The recourse to civil courts is intended to safeguard the living space of the affected individual from harmful effects on the environment.
An appeal is allowed only against judgments at first instance. If the appellant lives in Greece the deadline for appeal is 30 days, if not it is 60 days. The decision of the court cannot be executed until the expiration date.

Pursuant to Article 94 of the Greek Constitution, as in force after its revision in 2001, administrative disputes fall under the sole jurisdiction of the Council of State and the administrative courts, while the division of responsibilities has been entrusted to the common legislator, without prejudice to the powers of the Court of Auditors. The Council of State adjudicates on cases that reach it: directly, by an application for annulment against an executable administrative act filed by someone who has a legal interest, in which case it can either annul the act or reject the application for annulment; or after an appeal against a decision of a regular administrative court (administrative court of first instance or administrative court of appeal), where a citizen has appealed against an administrative act or other act of the State.

The interim injunctive relief is determined in specific proceedings and granted only where it is absolutely necessary to protect the legal rights of a party in a particular case. It can also be requested during the trial of the case.

The ordinary administrative courts are responsible for:

i. Substantive administrative disputes, the adjudication of which is governed by the provisions of the Administrative Procedure Code,

ii. Annulment disputes transferred to these courts by law the Council of State, that means that cancellation requests are brought before the Council of State except for certain categories of cases which the legislature has delegated to the ordinary administrative courts (three-member administrative court, first instance court), while the Council of State retains competence in the second degree. Environmental annulment disputes are adjudicated by the Council of State.

The jurisdiction of the Supreme Administrative Court (Council of State) pertains mainly to:

Annulment of enforceable acts of administrative authorities for excess of power or violation of the law.

Reversal of final judgements of administrative courts for excess of power or violation of the law.

Hearing of substantive administrative disputes submitted thereto as provided by the Constitution and the statutes.

Elaboration of all decrees of a general regulatory nature.

The administration is bound to comply with the annulling judgments of the Supreme Administrative Court

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

There are no special courts to decide in environmental matters. There is only a Prosecutor responsible for environmental matters, but he has been appointed with no further structure or service.

Following the adoption of Law 4042/12 on criminal environmental protection, a network of administrative bodies and the prosecutor was formed, assisted by the police, working to reduce environmental crime. Indicatively, it is stated that simple cases that do not require specialised knowledge are usually handled by general pre-investigators. The Environmental Protection Department of the Greek Police also plays an important role. The most complex cases are handled by the Environmental Inspectors either by conducting an audit to ascertain infringements, by obliging the relevant Public Prosecutor to investigate any criminal offenses, or by conducting a preliminary investigation. In the same direction, the environmental inspection of projects and activities in their territorial jurisdiction is carried out by the Environmental and Quality Control Bodies of the competent Region as well as by the competent services of the Decentralised Administrations and Regions.

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

There are no special means of appeal in environmental cases.

There are no special judicial procedures for environmental matters. Hierarchical appeal is considered as an appeal to a superior administrative body against an administrative decision. This appeal can be brought before the superior administrative authority which issued the act. This authority may be the Minister of the Environment for environmental cases, and the appeal requests the annulment of the administrative act. The lodging of a hierarchical appeal will interrupt the time limit for the court appeal if it is lodged within 60 days. After 30 days, a new time period (60 days) for recourse to the administrative courts is set.

The civil courts examine and recognise rights relating to the environment. The recourse to civil courts is intended to safeguard the living space of the affected individual and goods from harmful effects on the environment.

In the framework of public law, an annulment request can be brought before the Council of State or before the administrative courts to annul an administrative act. After that, a suspension request can be submitted asking for a stay of execution of the offending administrative act.

An appeal is allowed only against judgments at first instance. If the appellant lives in Greece the deadline for the appeal is 30 days, if not it is 60 days. An injunction is granted only where it is absolutely necessary to protect the legal rights of a party in a particular case. It can also be requested during the trial of the case and is ordered by first instance courts. The decision is provisional and does not affect the main case.

The cancellation request is brought before the Council of State except for certain categories of cases which the legislature has delegated to the ordinary administrative courts (three-member administrative court, first instance court) while the Council of State retains competence in the second degree.

The administrative courts have only cassation rights against administrative decisions. The court can annul the act and send the case back to the administration in order to achieve conformity. However, the court has the possibility to interpret the law with binding power.


When a court is uncertain as to the interpretation or validity of an act adopted by the European Union it will refer the issue to the European Court of Justice to request a preliminary ruling according to Art. 267 TFEU. Following the decision of the European Court of Justice on the interpretation or the validity of the provisions in question, the national court will continue its own proceedings. Although the national court retains jurisdiction to take interim measures, when the question referred relates to the validity of an act, the reference for a preliminary ruling entails a suspension of the national proceedings pending a decision by the Court.

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

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

The Greek Ombudsman mediates between the public administration and citizens in order to help citizens to exercise their rights effectively. The Quality of Life Department is concerned with violations of environmental and urban planning legislation affecting the natural and cultural environment and public health, in the following fields: illegal interventions in environmentally protected areas; licensing and operation of industries; licensing and operation of food and leisure premises; protection of forest and coastal areas; construction and operation of infrastructure projects; illegal construction; installation and operation of mobile phone base stations; access to environmental information; delays in compensation for expropriated private property; protection of cultural heritage and archaeological sites.
When actions or missions by the public administration infringe upon an individual's rights or harm his/her legal interests, the individual may file a complaint to the Ombudsman. Before submitting a complaint, however, applicants should first seek redress from the public administration unit involved. On completion of the investigation, if required by the nature of the case, the Ombudsman shall draw up a report on the findings, to be communicated to the relevant Minister and authorities, and shall mediate in every expedient way to resolve the citizen’s problem.

As a mediator, the Greek Ombudsman makes recommendations and proposals to the public administration. The Ombudsman does not impose sanctions or annul illegal actions by the public administration.

The Ombudsman may proceed ex officio to the investigation of cases which have aroused particular public interest (i.e. landslides at the Amyntaio brown coal mines). The Ombudsman's decision defines the case to be investigated, as well as the reasons that have led to that decision. The decision may also include a timetable for the investigation. The Ombudsman's decision is communicated to the involved services and is published in at least one daily newspaper. The Ombudsman, if he considers it necessary, may make public the relevant decision. Upon completion of the investigation, the relevant findings and recommendations from the Ombudsman are made public through all possible means.

The criminal offences related to attacks on the environment are normally prosecuted ex officio by the competent public prosecutor. Citizens can apply to the competent authorities to terminate the commission of such offences by submitting a complaint to the competent public prosecutor or the police.

The Greek Ombudsman investigates individual administrative actions or omissions or material actions taken by government departments or public services that infringe upon the personal rights or violate the legal interests of individuals or legal entities. Before submitting a complaint to the Greek Ombudsman, the complainant should first contact with the public service involved in his or her case. Only if the problem is not resolved by the service concerned should a complaint be submitted to the Ombudsman.

Another body contains the Inspector-Auditors dealing with inspections, audits and investigations. The body's main task involves preliminary tests or investigations at the public prosecutor's request. The audit process is activated by command of the Special Secretary ex officio, or on the orders of the Minister or the General Secretary for the Region. Investigations may also be requested by the General Inspector of Public Administration, the Ombudsman, or the head of an independent administrative authority.

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)?
   Article 24 of the Constitution (after the 2001 Constitutional revision) underlines that “the protection of the natural and cultural environment is an obligation of the State and everyone’s right”. That means that anyone, or a group of people acting together or an NGO has the right to appeal before the courts in order to protect the environment by proving a particular legitimate interest regarding their case.

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?
   There are no different rules applicable in sectoral or procedural legislation for any of the actors.

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

   Administrative procedure: in case of disagreement with the administrative decisions, any individual has the right to appeal and file a request for remedy or a special administrative appeal.

   NGOs may appeal before the administrative authorities.

   Corporations, associations, trade unions and groups and entities affected may also appeal. Ad hoc groups may also appeal before the administrative authorities.

   According to Law 3422/2005 (Aarhus Convention ratification), foreign NGOs can apply for environmental information.

   Judicial procedure:

   Administrative: any person who has a monetary claim against the State or other public entity by virtue of a legal relationship governed by public law (Art. 71 Administrative Procedure Code).

   The claim may be in any form (direct, compensatory, unjust enrichment) that may be brought against the State for the purpose of satisfying a pecuniary claim in a public law relationship. A pecuniary claim of an individual against the State due to delinquency, failure to act, misconduct, detrimental action by the authority, unilateral change of the terms of an administrative contract or unexpected change of circumstances can be satisfied through a legal remedy before the administrative courts.

   Civil: Whoever has the capacity to be the subject of rights and obligations and has ability to be a party (art. 62 Civil Procedure Code)

   Criminal: The civil action for damages and recovery from the crime and the compensation for moral damage or mental anguish can be brought before the criminal courts by the beneficiaries in accordance with the Civil Code. According to the new Penal Code (Article 588 par. 1), civil action is allowed only to support accusation and not for monetary satisfaction due to moral injury.

   The Greek Constitution, after its revision in 2001, gives NGOs the right to legal standing in environmental cases. Concerning NGOs, in most cases the Greek courts have considered that the protection of the environment must be generally described in the statutory objective of the legal entities without being their sole or predominant purpose.

   Corporations, associations, trade unions and groups and entities affected, or which are legally able to defend legitimate collective rights and interests, have standing.

   Criminal judicial procedure:

   Any legal person since action is public. Legal persons can bring private prosecution stricto sensu.

   Associations serving a specific purpose without being unions or companies having no legal personality, may be parties (Art. 62.2 CPC).

   It is worth noting that according to article 28 par. 7 of Law 1650/1986 in cases of a crime (environmental pollution), public administration, the Local Authorities in the region in which the crime was committed, the Technical Chamber of Greece, the Geotechnical Chamber of Greece, universities or other scientific bodies, bar associations, the protected area management bodies, non-governmental organizations and natural persons may be the civil party to the proceedings, regardless of whether they have suffered a property damage, only in support of the accusation and asking for restoration.

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

   According to the law all foreigners are equal before the law. No other languages are allowed in court procedures. Greek is the official language. Foreigners have to have a translator who is not paid by the government except if the accused is a beneficiary of legal aid. There is one other case where the translator is paid by the government: when the court appoints a translator ex officio.

   If a witness, expert or someone from the attending parties or their legal representatives or the accused does not speak Greek, an interpreter is hired. Interpreters are appointed by the judge or by the President of the court.

1.5. Evidence and experts in the procedures

Overview of 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 Greece, there are no special rules for provision of evidence in judicial cases in environmental matters. Standard court procedures rules apply.

2) Can one introduce new evidence?
Parties can introduce new evidence. The court acts only on the application of a party and decides on the basis of the factual claims made and demonstrated by parties and of the applications that they submit. However, the court may of its own motion order the submission of any evidence allowed by law, even if it has not been adduced by a party. After the taking of evidence the court decides on the substance of the case, unless it finds that the evidence was insufficient, in which case it may order new, additional evidence to be submitted. If the court finds that the existing evidence is sufficient or if the party has not managed to submit it within the legal deadline, the court may reject a party's request for evidence.

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts.
Anyone can ask for an expert opinion. The court can also ask for an expert opinion if it considers that there are issues for the understanding of which special expertise is required. The court can appoint an expert if this is requested by any of the parties and it considers that specific knowledge of science or art is required (art 368 Civil Procedure Code).

One of the best known lists of expert is that of the Greek Technical Chamber.

The Inspection Bodies of Northern and Southern Greece are also considered as experts. The preliminary examination and investigation of criminal offences, provided for in Article 28 of L 1650/1986, is also performed by the Environmental Inspectors, assisted, if necessary by invitation, by the competent preliminary investigation officers, always under the supervision of the Public Prosecutor whose district is the place of performance. The Environmental Inspectors have responsibility for the whole country.

According to the Circular of the Prosecutor AP 8/2013: The simple cases that do not need specialised knowledge to investigate them have to be handled entirely by the preliminary investigation officers, possibly with the assistance and guidance of the Inspection Bodies, if necessary. The Greek Police Environmental Protection Department (established by Article 16 PD 42/2011) could take on an important role. The most complex cases that relate to very serious or widespread environmental problems and need specialised knowledge for their investigation have to be sent to the Inspection Bodies, either a) at the request of the investigator through audit, given the fact that if the audit confirms violations, the relevant Prosecutor for the investigation of any criminal acts must be informed, either b) at the request of a preliminary examiner.

3.1) Is the expert opinion binding on judges, is there a level of discretion?
The experts carry out public duties in their area of expertise. This has a practical bearing on the evidentiary strength of the public documents (Articles 438, 440 Civil Procedure Code) alongside the experts' opinions which are assessed freely by the judge (Art. 387).
Expert opinion does not constitute evidence, but it constitutes assistance for the judge.

According to case law, the expert opinion, even if ordered by the court, is for the court to assess and has no priority over other evidence which would oblige the court to accept the evidence it relates to. The court may reach a judicial conviction contrary to the expertise, and the relevant court judgment regarding the assessment of the expertise do not have to be justified, as it has no special probative force compared to the other means of proof (Decision 1020/2014 AP Areios Pagos).

As regards the binding nature of the expertise in the criminal courts, it should be noted that in case law (e.g. AP Areios Pagos Decisions 740/2012 and 1637 /2010) it is accepted that the opinion of the experts is not binding on the court, but when the court does not agree with the experts’ opinion, it “must justify the contrary to his belief, based on proven facts which exclude those raised by the experts as the basis of their opinion”.

3.2) Rules for experts being called upon by the court
A list of experts is maintained in each court. Decrees issued at the instigation of the Minister of Justice define the way that lists are drawn up and kept (Art. 371 CPC). The court shall appoint the experts from the list of experts, but if there is no list or if the court considers it appropriate, it shall appoint these experts that it deems appropriate for the case (art. 372).

Those who have been a) convicted of a felony or misdemeanour and deprived of their political rights under Articles 59 to 63 of the Criminal Code, as well as those who have been referred to parliament for such acts, b) convicted and deprived of the right to pursue their profession and for as long as this deprivation lasts; c) have been denied the right to freely dispose of their property (Art. 373), may not be registered in the list of experts nor be appointed as experts (Art. 373).

Those who are in the list of experts, as well as those practising the profession whose field of expertise is included, are required to perform the tasks assigned to them by the decision. Those who do not belong to these categories may refuse their appointment unless they have stated that they accept or have not taken the legal oath (Art. 374).

Regarding the expert's role in the penal procedure, Article 185 of the Penal Code defines the method of compiling a list of experts, while Article 360 refers to the reading of expert reports after examining the witnesses and the possibility of summoning them to the court, which is often exploited particularly in court practice. It is a common practice of the criminal courts for environmental officials from the Regional Environmental Departments to be summoned as witnesses in the hearing process. Their reports often are notified to the Public Prosecutor's Offices for the investigation of the environmental crimes and are read by the criminal court as documents (Art. 362 Penal Code).

3.3) Rules for experts called upon by the parties
Parties can get expert opinions in the procedures if they find experts in specialised offices and pay them.

3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?
Expert fees depend on the case and the specification you may need. For more complex cases they may be 10,000-30,000 euros. For less difficult cases, fees are lower.

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

According to Law 4194/2013 (Code of Lawyers), the lawyer’s role constitutes a cornerstone of the rule of law. His role is the representation and defence of his client before any court, authority or service or extra judicial institution, providing legal advice and service. The role of the lawyer hired by an individual or a company or by the state is to be the trusted advisor and representative of the client: a professional who is appreciated by others and a necessary participant in the fair administration of justice. The lawyer, who faithfully serves the interests of his/her client and protects their rights, also discharges the duties of lawyers in society, namely the prevention and avoidance of conflict, ensuring that conflicts are resolved according to the recognised principles of civil, public or criminal law and taking full account of rights and interests, the development of law and defence of freedom, justice and the rule of law.

Lawyers are part of the judicial system. In administrative procedures, the presence of a lawyer is not obligatory. Lawyers are compulsory for cases before the supreme courts, but not in some lower level courts, i.e. in the courts for small scale criminal offences. In the criminal procedure, legal counsel is compulsory for the accused.
However, most environmental law cases are conducted with the assistance of a lawyer because environmental procedures are so complex that people cannot grasp all of the legal consequences. Specialised environmental lawyers give advice at all stages of the procedure. The Quality of Life Department of the Greek Ombudsman plays also a very important consultative and investigative role in crucial environmental cases.

The Bar associations guarantee enforcement of the Code and can impose disciplinary sanctions. It should be noted that according to Article 28 par. 7 of L 1650/1986, in case of a criminal offence (environmental pollution), civil plaintiffs may be the State, as well as the local authorities in the district in which the crime was committed, the Technical Chamber of Greece, the Geotechnical Chamber of Greece, universities, other scientific bodies, Bar associations, management bodies of protected areas, non-governmental organisations and individuals, regardless of whether they have suffered property damage, in support of the charges and only with a view to restitution.

1.1 Existence or not of pro bono assistance

There is no pro bono legal assistance provided by law firms. The only case of pro bono court representation is provided by certain human rights NGOs in particular cases concerning migrants and refugees. Nor are there any public interest environmental law organisations or lawyers available to the public in Greece.

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.)?

1.3 Who should be addressed by the applicant for pro bono assistance?

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

There are law offices and known lawyers specialised in environmental cases and matters. There are also NGOs dealing with environmental protection, but no NGO has a permanent legal service.

The Bar of Athens is the official association. There are also the regional bars at the big Greek cities (Θεσσαλονίκη, Πάτρα, Ιωάννινα, Ηρακλείο, Κρήτη). Certain NGOs provide the public with legal guides to help them in the procedure to claim a clean environment (ex. WWF, Ecocity).

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

There is no official list of environmental NGOs. The most active are:

- WWF
- The Hellenic Ornithological Society
- Arcturos
- EcoCity
- Ecorec
- Society for the Environment and Cultural Heritage
- The Hellenic Society for the Study and Protection of the Monk seal
- The Sea Turtle Protection Society of Greece
- http://www.eco-net.gr
- ANIMA

See also this list of environmental organizations.

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

Some international NGOs are active in Greece, i.e. Greenpeace, WWF Hellas.

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 appeal is submitted to the competent authority or to the supervisory authority and its object is the withdrawal or amendment of the administrative act.

Generally, an administrative appeal must be brought within sixty (60) days. Filing of the appeal within the time-limit interrupts the time-limit for a judicial appeal.

2) Time limit to deliver decision by an administrative organ

The administration must consider the appeal and notify the person concerned of the decision within 30 days unless there are special provisions. In cases where a Minister exercises control after submission of a special administrative appeal, the deadline is 60 days. If the body competent to rule on the appeal is another administrative organ, the administrative body to which the appeal is lodged must forward it to the competent authority within 5 days. In the case of a quasi-judicial action, the decision shall be delivered within a time limit set by law or otherwise within three (3) months.

Sanctions against administrative organs delivering actions in delay are applied according to the Public Servants Code (Law 3528/2007). For judicial procedures in environmental matters, both for the court and for the parties, there are no time limits provided by law.

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

In the case of a quasi-judicial action, its timely and lawful lodging is a prerequisite for a further admissible appeal to the administrative courts. The right to lodge a quasi-judicial action is specifically provided by law. It is a formal administrative appeal and its procedure is explicitly provided by law. It is obligatory to lodge it within a certain time period provided by law, otherwise it is inadmissible to lodge an appeal to the court.

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

There is no deadline set for the court to deliver its judgment. There are long delays in judicial decisions. However, there is the means of temporary suspension where the Council of State immediately stops the harmful actions against the environment until the court’s final decision.

Greek citizens can addressed themselves to the Human Rights Court of Strasbourg. According to Articles 53-60 of Law 4055/2012 on fair trial, any party other than the State and public legal entities, which are governmental agencies within the meaning of Article 34 of the European Convention on Human Rights, who have participated in administrative proceedings may apply for equitable relief under the condition that the procedure for the trial was delayed unreasonably, namely that it lasted beyond the reasonable time required to analyse the factual and legal issues raised in the trial. The application is directed against the Greek government, legally represented by the Minister of Finance.

The first appeal was filed in the Supreme Administrative Court (under the abovementioned legislative framework), by which a Greek citizen had asked the Greek government to pay 30,000 euros in damages as the Council of State delayed delivering its judgment for 8 years, 6 months and 18 days. This first judicial decision imposing a sum of 4.800,00 euros for moral damage due to a long delay in the administration of Justice was issued by the Council of State.

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

The deadline for the cancellation request is 60 days. If at the beginning of this period, the applicant is resident abroad, the period is extended by 30 days.

In the case of a quasi-judicial appeal, three months after the filing of the appeal, presuming its dismissal, an appeal to the court can be filed.
1.7.2. Interim and precautionary measures, enforcement of judgments

1) When does the appeal challenging an administrative decision have suspensive effect?
The execution of an administrative act can be suspended if it has been appealed against. However, the suspension is potential and has to be ordered by the administration or the court.

When challenging an administrative decision, the appeal has no suspensive effect on the challenged decision. However, a special action for suspension has to be submitted jointly with the main action. The president of the court or the president of the special chamber of the Council of State has the right to proceed immediately to the suspension by his own individual act.

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

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?
Where the time-limit or the lodging of an appeal does not legally entail suspension of execution of the individual administrative act, and if no suspension has been granted by the competent administrative authority in that particular case, the administrative act, at the request of the person lodging the appeal, may be suspended in whole or in part, by a reasoned judgment of the court. The court before which the appeal is pending is competent to grant the suspension if it is competent to hear the main proceedings. The application for suspension must state the reasons justifying the suspension. The application must be lodged with the secretariat of the court and must be accompanied by three (3) simple copies.

4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?
The execution of an administrative act can be suspended if it has been appealed against. However, the suspension is potential and has to be ordered by the administration or the court.

5) Is the administrative decision suspended once challenged before court at the judicial phase?
The precautionary measures may also be ordered during the proceedings of the main trial.

The majority of environmental cases that have been discussed by the civil courts have been brought to trial in the context of injunctive relief. The inability to fully restore the ecological damage and the fact that the compensation to repair the damage covers only private legal goods makes the injunctive relief the only available means to prevent or at least to limit the environmental damages or charges.

According to Article 681 of the Civil Procedure Code “the courts in case of emergency or in order to prevent imminent danger may order injunctive relief for the preservation or extinction of a right or to regulate a situation and to reform or to withdraw it”. The need for interim relief should be treated as a precautionary judicial protection of the environment, so as to prevent an irreversible damage that would make the final judicial decision without substance.

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?
Civil courts are competent to rule on the relief only if they are competent to hear the main case.

During the special procedure for injunctive relief, courts in urgent cases or in order to prevent imminent danger can order interim measures to secure or preserve a right or to regulate a situation and to restore it. The right may be subject to a condition or deadline. The injunction may also be ordered during the trial concerning the main case.

If the provisional measures have been ordered before filing the claim for the main case, the applicant shall, within thirty days from the decision that ordered the provisional measure, sue for the main action, unless the court specified a longer period for filing the claim at its own discretion. If the deadline expires, the interim measure shall be lifted automatically, unless the applicant within this period obtained the summary judgment.

If the request for injunctive relief is accepted, the opposing party can ask for annulment based on data that are not brought to the court. If it is rejected, the applicant may lodge a new request based on new additional evidence.

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.
Law 4194/2013 (JO 2013 A/279-9-2013) provides in its annex a table with the lawyers’ fees for representation in courts. The costs depend on the level of the judiciary.

To file an annulment request in the Council of State costs at least 330 euros, while the submission of a suspension request costs at least 150 euros. The submission of a statement/memorandum prior the trial costs 100 euros, while the notification costs 50 euros for the Attica region (150 euros outside Athens).

For important environmental problems, decisions are made by several Ministries. That means that the public involved, companies etc. are numerous and consequently notifications are more than one.

The representation by a lawyer in the Council of State costs at least 500 Euros. Minimum costs vary: The minimum of costs at the lower judiciary is approximately 200 euros and for the Supreme Administrative Court, 500 euros.

Lawyers’ fees depend on the specification of the case.

2) Cost of injunctive relief/interim measure, is a deposit necessary?
The cost of an injunctive relief/interim measure is about 400 euros. The submission of a request for injunction costs 50 Euros, while the notifications costs 50 euros for the Attica region. If it is out of the capital region, it will cost approximately 150 euros.

3) Is there legal aid available for natural persons?
There is a general mechanism of legal aid, not a special one for environmental matters.

According to Law 3226/2004, as amended by Law 4596/2019, legal aid beneficiaries are low-income citizens. Any national of an EU Member State can apply for legal aid, as well as nationals of third countries who are legally domiciled in the EU. Low-income citizens qualifying for legal aid are those whose the annual family income does not exceed two-thirds of the minimum annual personal pay stipulated by the national general Collective Labour Agreement. When applying for legal aid, a person must submit supporting documentation showing their financial situation.

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?
Public interest corporate bodies, non-profit organisations, and groups of persons that have the right to take part in court proceedings may also get legal aid if the costs of the proceedings would make it impossible to accomplish the aims of the group.

Requests for legal aid are submitted at the competent court of first instance (or in criminal cases to the president of the court before which the case is pending).

There is no pro bono legal assistance provided by law firms. The only case of pro bono court representation is provided by certain human rights NGOs in cases concerning migrants and refugees. Nor are there any legal clinics dealing with environmental cases or public interest environmental law organisations or lawyers available to the public in Greece.
5) Are there other financial mechanisms available to provide financial assistance?
There is no special legal aid mechanism available in environmental matters. The conditions are the general ones.

The legal assistance is provided at the request of the beneficiary. The application shall indicate briefly the subject of the proceedings or the operation and data certifying the conditions for aid.

The application shall be accompanied by the necessary supporting evidence of economic situation (a copy of a tax return or a certification that the inspector is not required to submit a statement, a copy of a statement of financial situation, tax return, certificates from welfare services, affidavits) and proof pursuant to the first paragraph of Article 1 of domicile or residence, for a citizen of a third country.

The application and supporting documents should be submitted at least fifteen days before the trial or action for which legal assistance is sought. The deadline may be shortened for a subsequent summons. The proceedings are free and representation by a lawyer is not mandatory.

6) Does the 'loser pays principle apply'?

The loser pays principle prevails and is applied by the courts. The meaning is that the loser pays all court's expenses.

7) Can the court provide an exemption from procedural costs, duties, filing fees, taxation of costs, etc.?

There are no specific provisions relating to such exemptions from procedural costs.

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?

The Greek judicial system conforms to the principles of the Aarhus Convention. People are quite aware if this although information on access to justice is basic and it is not given in an active way.

The official site of the Ministry of Environment provides relevant information and includes hyperlinks to other relevant sites (http://www.ypeka.gr/Default.aspx?tabid=467&language=el-GR & https://ypen.gov.gr/perivlil/gerikiki-grammateia-fysikou-periva/). It provides mostly general information on the implementation of the Aarhus Convention in Greece. Additional information including case law may be found on the Council of State site.

Since 2009, citizens can be informed of the legislative initiatives of the Ministries – including the Ministry of Environment and Energy - and can participate in public consultation through the website Open Governance.

In order to ensure the diffusion of information and to involve all citizens and stakeholders in the decision-making mechanism, a website has been created giving them the opportunity for participation in consultation on draft laws, ministerial decisions etc.

Opengov.gr (Diavgeia) has been designed to serve the principles of transparency, deliberation, collaboration and accountability. Since October 2009 almost every piece of draft legislation or even initiative by the government, has been posted on opengov.gr, open to public consultation.

Law 4727/2020 (OJ 184/A/23.09.2020) on Electronic Governance, transposing Directives 2016/2102 and 2019/1024, and on Electronic Communication, transposing Directive 2018/1972, according to the explanatory memorandum, aims at drawing up a single legislative text to regulate e-governance issues in the public sector, removing regulatory barriers to enable, efficient and remote access to public services and information, as well as establishing confidence and transparency by expanding digital applications.

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

According to Article 3 of Joint Ministerial Decision 11764/653/2006 (OJ B 327 / 17-3-2006): Public access to environmental information in accordance with the provisions of Directive 2003/4/EC, any natural or legal person shall have the right, at his written request, to approach the public authorities to obtain information and/or to request information on the environment without invoking any legitimate interest. The authority addressed shall provide the applicant with a protocol number and indicate the time limit within which to provide the information and the possibility of seeking remedies provided for in Article 6 of the Decision.

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

Article 24 of the Constitution underlines that the protection of the environment is an obligation of the State and everyone’s right. That means that a citizens or group of people together have the right to appeal to the administration or the courts in order to protect the environment.

Regarding plans and programmes (EIA, IPPC/IED, SEA etc.), the competent environmental authorities shall provide the public concerned with timely information and the possibility of participating in the related procedures.

The decision on whether or not to approve an SEA shall be made public in a manner consistent with the provisions of Article 5 par. 9 of the JMD in order to inform the public (Article 7 par.11 of the Joint Ministerial Decision (JMD) 107017/2006 (OJ 1225B) of Environmental Impact Assessments for plans and programmes amended by L 3894/10 and JMD 40238/17 (OJ 375B), transposing Directive 2001/42/EC). The recitals to the SEA JMD, the JMD 11784/653 /2006 on public access to the environmental information in accordance with the provisions of Directive 2003/4.

With regard to EIAs, according to Article 8 of the recent Law 4685/2020, from 1 January 2021, all documents related to the issuance, renewal or modification of Approval of Environmental Terms (AEPO) and Standard Environmental Commitments (SEC), including applications, environmental impact studies, opinions of management bodies, AEPO plans, and any relevant correspondence, are circulated exclusively through the Electronic Environmental Register (EER). Public consultation, where required, will be conducted through the EER.

Furthermore, JMD 164945/14 (OJ 45 B / 15-1-2014) defines the ways of informing the public and the participation of the public concerned in the public consultation during the environmental licensing of projects and activities of Category A of Ministerial Decision 1998/2012, in accordance with the provisions of Article 19 par.9 of L 4014/2011 on Environmental licensing.

Regarding IED, the procedure and the manner of information and public participation are defined in paragraphs 2.3.5.7 and 8 of Article 19 and Article 19a of L 4014 / 2011.

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

An administrative act may state whether an appeal is possible. Refusal of a request for information must be duly reasoned, but does not have to include information on the remedies available.

According to Art. 16 par. 1 of the Code of Administrative Procedure, the individual administrative act mentions whether a special administrative or quasi-judicial appeal is possible, the competent authority and time-limits, as well as the consequences of failure to exercise them. Failure to mention the provisions in force shall not lead to the invalidity of the act.

The duty to inform arises only when these are administrative acts are challenged by a quasi-judicial appeal, and not by other types of administrative appeals. Decision 2892/1993 of Council of State (plenary) was a breakthrough in the issue of the public administration obligation to inform citizens of the possibility and the conditions for bringing an appeal.

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

Greek is the official language. No other languages are allowed in court procedures. Foreigners must have a translator who is not paid by the government except if the accused receiving legal aid. There is one other case where the translator is paid by the government: when the court appoints a translator ex officio.
If a witness, expert or someone from the attending parties or their legal representatives or the accused does not speak Greek, an interpreter is hired. Interpreters are appointed by the judge or by the President of the court.

1.8. Special procedural rules


Country-specific EIA rules related to access to justice

1) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)
The courts can review screening decisions, but they cannot be annulled because these acts are not enforceable administrative acts. Consequently, the court annuls only the enforceable administrative acts on which the EIA scoping decisions are based (i.e. Ministerial decisions etc.). There are no special rules on standing and access to justice. General rules are applicable. The same procedure applies to final decisions. Courts do not examine the administration’s technical assessments. However, courts can check EIA deficiencies or whether EIA decisions are contrary to the law.

2) Rules on standing relating to scoping (conditions, timeframe, public concerned)
The same applies to scoping. The courts can review scoping decisions, but these decisions cannot be annulled because these acts are not enforceable administrative acts. Consequently, the court annuls only the enforceable administrative acts on which the EIA scoping decisions are based (i.e. Ministerial decisions etc.). There are no special rules on standing and access to justice. General rules are applicable.

3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?
The public can challenge the administrative decisions as to legality or on substantive grounds provided by law. The deadline is usually sixty (60) days from knowledge of the act.

4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO?
The same procedure applies to final authorisation. Courts do not examine the administration’s technical assessments. However, courts can check EIA deficiencies or whether EIA decisions are contrary to the law. Citizens or NGOs can invoke their constitutional right to a good environment directly in the judicial procedure.

5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?
Courts can check procedural and substantive legality. There are no special rules, and general provisions are applicable. Only the prosecutor can act ex officio in case of criminal environmental offences. The Greek courts act upon appeal, there is no act on own motion. The court may of its own motion order the submission of any evidence allowed by law, even if it has not been adduced by a party (Art. 344 Civil Procedural Code). After the taking of evidence the court decides on the substance of the case, unless it finds that the evidence was insufficient, in which case it may order new, additional evidence to be submitted. If the court finds that the existing evidence is sufficient or if the party has not managed to submit it within the legal deadline, the court may reject the party's request for evidence. The court may of its own motion order the examination of witnesses (Art. 179 Code of Administrative Procedure - APC).

The court may, in any case, assess the circumstances, and exempt the losing party in whole or in part from the costs (Art. 275 APC).

6) At what stage are decisions, acts or omissions challengeable?
The environmental decisions are usually challenged in the administrative procedure or using legal remedies against administrative decisions. The public can challenge administrative decisions for legality or on substantive grounds provided by law. The deadline is usually sixty (60) days from knowledge of the act.

7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
No requirements of exhaustion of administrative review procedures prior to recourse to judicial review procedures exist for EIA.

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?
It is not necessary to participate in the public consultation phase in order to have standing before the courts. Citizens can invoke their constitutional right to the environment directly in the judicial procedure independently on their participation in the consultation phase or not.

9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
Article 4 (1) of the Greek Constitution underlines that Greek citizens are equal before the law, establishing the principle of equality of arms between the parties. The right to a fair trial, as provided by Article 6 (1) of the ECHR, ratified by the legislative decree 53/1974, reinforced by Article 47 of the Charter of Fundamental Rights of the European Union and Article 14 (1) of the International Covenant on Civil and Political Rights, ratified by Law 2467/1997, constitutes a fundamental right which has been incorporated into the Greek law, in accordance with Article 28 (1) of the Constitution.

10) How is the notion of "timely" implemented by the national legislation?
Sanctions against administrative organs for non-timely response are applied according to the Public Servants Code (Law 3528/2007). Concerning judicial procedures for environmental cases, both for the court and the parties, there are no time limits provided by law.

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 also available in EIA procedures without any special rules. General rules are applicable.

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

General rules are applied.

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?
Citizens or NGOs can challenge administrative decisions for legality or on substantive grounds provided by law. The deadline is usually sixty (60) days from knowledge of the act. The same procedure applies to final decisions. Courts do not examine the administration’s technical assessments. However, courts can check IPPC/IED deficiencies or whether IPPC/IED decisions are contrary to the law. Citizens or NGOs can invoke their constitutional right to the environment directly in the judicial procedure.

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)
(3.4) Courts can review final IPPC/IED decisions or authorisations, but the screening/scoping decisions cannot be annulled because these acts are not enforceable administrative acts. Consequently, the court annuls only the enforceable administrative acts on which the final IPPC/IED decisions or authorisations are based (for instance Ministerial Decisions etc). Courts can also review the procedural and substantive legality of IPPC/IED decisions according to the general provisions.

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?
The public can challenge the administrative decisions (permits) for legality or on substantive grounds provided by law. The deadline is usually sixty (60) days from knowledge of the act.

6) Can the public challenge the final authorisation?
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?

Courts control the legitimacy of the administrative decisions. Courts have no control beyond the administrative decision and cannot review the technical findings of the administration. Only the prosecutor can act ex officio in case of criminal offences relating to environmental damage, as he can do for any other non-environmental offense.

8) At what stage are these challengeable?

Only the final environmental decisions can be challenged.

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

There is no requirement of exhaustion of administrative review procedures.

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?

It is not necessary to participate in the public consultation phase in order to have standing before the courts. Citizens can invoke their constitutional right to the environment directly in the judicial procedure independently of their participation or otherwise in the consultation phase.

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

Article 4 (1) of the Greek Constitution underlines that Greek citizens are equal before the law, establishing the principle of equality of arms between the parties. The right to a fair trial, as provided by Article 6 (1) of the ECHR, ratified by the legislative decree 53/1974, reinforced by Article 47 of the Charter of Fundamental Rights of the European Union and Article 14 (1) of the International Covenant on Civil and Political Rights, ratified by Law 2467/1997, constitutes a fundamental right which has been incorporated into the Greek law, in accordance with Article 28 (1) of the Constitution.

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

Sanctions against administrative organs for non-timeously responding to applications are applied according to the Public Servants Code (Law 3528/2007). Concerning judicial procedures for environmental cases, both for the court and the parties, there are no time limits provided by law.

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 also available in IPPC/IED procedures. There are no special provisions.

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

The Greek judicial system conforms to the principles of the Aarhus Convention. People are quite aware of this although information on access to justice is very poor and is not given in a systematic way.

There is the official site of the Ministry of Environment, but it does not provide enough information.

1.8.3. Environmental liability

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?

According to Art. 13 par. 1 of Presidential Decree 148/09, which incorporated the EU ELD Directive, any natural or legal person who (a) is affected or may be affected by environmental damage; or (b) has a legitimate interest in deciding on environmental damage, is entitled to submit in writing to the competent Division of the Special Inspectorate of Environmental Inspection, the information available to him on the environmental damage perceived, as well as inviting the competent authority to take action under this Decree.

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

There are no special provisions. General rules are applicable.

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

The request for action shall be accompanied by relevant information and evidence sufficient to substantiate claims made for environmental damage (Art. 13 par. 2 of PD 148/09).

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

There are no specific requirements. However, the Environmental Inspectors examine the request for action and the accompanying information and if they find that the environmental damage is sufficiently proven, by decision of the General Inspector of the Environment the relevant request for action is accepted and the operator becomes liable for environmental damage. This decision shall be forwarded immediately to the competent authority for action to prevent and remedy the environmental damage, in accordance with the relevant provisions of this PD. If the environmental damage is not sufficiently proven, the decision of the General Inspector of Environment to reject the relevant request for action must be reasoned. This decision shall be notified immediately to the competent authority.

5) Is there 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)?

President Decree 148/09 on ELD sets out the notion of a reasonable time as regards the notification of the decision to accept or reject an action concerning the environmental damage. Art. 13 par. 6 PD 148/09. The Special Service of Environmental Inspectors (E.Y.E.P.) informs, within a reasonable time, the persons referred to in par. 1 of the decision to accept or reject their application for action.

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?

In case of imminent threat of environmental damage, the competent authority may at any time take precautionary measures itself and, in the event that the operator cannot be identified or is not required to do so under Article 11 (par. 4 and 5-Defences) of this Decree, bear the relevant costs, or may authorise or require third parties to carry out those precautionary measures (Art. 8 par. 3 of PD 148/09).

In case of particular seriousness or urgency, the Ministry of Environment may coordinate the action of the competent authorities and bodies at the central and local levels or take the necessary measures in cooperation with them in the implementation of this Decree, to prevent irreparable environmental damage and to protect human life (Art. 6 (1)).

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

ELD was transposed into Greek law by Presidential Decree 148/2009. The competent authorities established at national and regional level are:
at national level: Ministry for Environment and Energy, Coordination Office for ELD, on cases of national importance, exceptional-particular significance or cases between regions
at regional level: decentralised authorities - Committees for ELD, for cases within their territorial competency (13 regional committees have been established).

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?
The MS does not necessarily 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?
Greece operates under a monist legal system by which its international agreements do not need to be translated into domestic law as, under Article 28 section 1 of the Constitution, the ratification of International Agreements makes them directly applicable. Greece has ratified most international treaties regarding environmental protection and implements EU law on the protection of the environment. As the countries have signed the relevant treaties, the generally accepted rules of international law are applicable. Otherwise, the interested party should challenge the final decision in the polluting country.

2) Notion of public concerned
Concerning the notion of public concerned, generally accepted rules of international law are applied. The public concerned means the public affected or likely to be affected by or having an interest in environmental decision-making. Non-governmental organisations promoting environmental protection and meeting any conditions under national law shall be have an interest.

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)?

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)?
(3,4) Greeks and foreigners fall under the jurisdiction of the Greek civil courts, provided that there is jurisdiction of a Greek court (Art. 3 of the Civil Procedural Code). In a trial conducted in Greece, legal standing of a foreign person is judged according to the law of his home country and of a foreign company under the law of the country where it is located. If it concerns an association without legal personality, Art. 62 of the civil procedural code (CPC) is applied to standing. According to Art. 64 CPC, unions of persons pursuing a purpose without being associations, and companies without legal personality can be litigants. In environmental cases, there are no special provisions. International conventions and the provisions of treaties’ are applicable. The request for injunctive relief follows the general rules.

According to Art. 276a of the Code of Administrative Procedure, at the request of a party who meets the criteria laid down in Article 276 (1), the competent body referred to in Article 276 (5) shall appoint a lawyer, a notary and a bailiff, either by his act of discharge or by another with the order to assist the needy party and to provide the necessary assistance in the execution of the necessary procedural acts. They have the obligation to accept the order and provide legal assistance, without claiming an advance.

5) At what stage is the information provided to the public concerned (including the above parties)?
According to Art. 3 (1) of Law 2540/97 (OJ 249A) on Ratification of the Espoo Convention, for a proposed activity which may cause significant adverse transboundary effects, the party of origin, in order to ensure adequate and effective consultation under Article 5, shall notify any party which it considers may be affected as soon as possible and no later than informing its own public of this proposed activity. Art. 5 stipulates that after drafting the Environmental Impact Assessment, the party of origin shall initiate, without undue delay, consultations with the party concerned on the transboundary effects of the proposed activity and appropriate measures to reduce or eliminate such effects. The responsible authority for implementation of the Convention is the Ministry of the Environment and Energy.

6) What are the timeframes for public involvement including access to justice?
The same timeframes as in section 1.7.

7) How is Information on access to justice provided to the parties?
The Greek judicial system conforms to the principles of the Aarhus Convention. People are quite aware of this although information on access to justice is very poor and it is not given in a systematic way.

There is the official site of the Ministry of Environment, but it does not provide enough information.

In addition, the official website of the Ministry of Justice provides more information and hyperlinks to the websites of the respective courts.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?
Foreigners must have a translator who is not paid by the government except if the accused is receiving legal aid. There is one other case where the translator is paid by the government: when the court appoints a translator ex officio. If a witness, expert or someone from the attending parties or their legal representatives or the accused does not speak Greek, an interpreter is hired. If it is a little-known language, an interpreter can be hired. Interpreters are appointed by the judge or by the President of the court.

9) Any other relevant rules?

[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 Directive[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?
There are no different rules applicable in sectoral or procedural legislation for any actor (individuals and NGOs). Article 24 of the Constitution (after the 2001 revision) underlines that "the protection of natural and cultural environment is an obligation of the State and everyone’s right". That means that any individual or group of people has the right to appeal before the administrative authorities and the courts in order to protect the environment, subject to a legitimate interest regarding their case.

Any individual who disagrees with the administrative decisions may file an appeal to the competent authority and file a request for remedy or a special administrative appeal. NGOs may appeal before the administrative authorities.

Concerning NGOs, in most cases the Greek courts have considered that the protection of the environment must be generally described in the statutory objective of the legal entities without being the sole or predominant purpose.

In Greece, the judicial system conforms to the principles of the Aarhus Convention, as it ensures judicial protection for environmental cases, whether the dispute concerns an act or omission challenged by individuals or NGOs and whether it concerns averting environmental harm or restoring damage or claiming compensation.

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?

Concerning the administrative review, the remedy from the quasi-judicial action - provided by a special legal provision - reviewing not only the legality but also the substance of the case. Courts can check procedural and substantive legality according to the general provisions. Courts do not check beyond the administrative decisions. Material or technical findings, calculations and technical assessments are beyond the jurisdiction of the courts.

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 such requirement, except if a quasi-judicial action is expected. In this case, the administrative review appeal has to be lodged before filing a court action.

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.?

It is not necessary to participate in the public consultation phase to make comments, participate in a hearing etc. in order to have standing before the courts.

Citizens can invoke their constitutional right to the environment directly in the judicial procedures independently of their participation in the public consultation etc.

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

There are not.

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

Article 4 (1) of the Greek Constitution underlines that Greek citizens are equal before the law, establishing the principle of equality of arms between the parties. The right to a fair trial, as provided by Article 6 (1) of the ECHR, ratified by the legislative decree 53/1974, reinforced by Article 47 of the Charter of Fundamental Rights of the European Union and Article 14 (1) of the International Covenant on Civil and Political Rights, ratified by Law 2467/1997, constitutes a fundamental right which has been incorporated into the Greek law, in accordance with Article 28 (1) of the Constitution.

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

Sanctions against administrative organs for non timely response are applied according to the Public Servants Code (Law 3528/2007). Concerning judicial procedures for environmental cases, both for the court and the parties, there are no time limits provided by law.

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

During the special procedure of injunctive relief, courts in urgent cases, or in order to prevent imminent danger, can order interim measures to secure or preserve a right or to regulate a situation and to reform, or to withdraw. The right may be subject to a condition or deadline (e.g. the issuance of a final decision, a compromise on the main case or a deadline of 30 days after the end of the trial or the termination of the trial in another way). The injunction may also be ordered during the trial concerning the main case. If the provisional measures have been ordered before filing the claim for the main case, the applicant shall, within thirty days from the decision that ordered the provisional measure, sue for the main action, unless the court specified a longer period for filing the claim at its own discretion. If the deadline expires, the interim measure shall be lifted automatically, unless the applicant within this period obtained the summary judgment.

The execution of an administrative act until a court decision is published on the appellant may cause significant and often irreparable effects on the environment. The interim measures are provided by the administrative judge either in the form of a suspension of execution of the administrative act or by any other means that the judge deems appropriate in that case in accordance with the conditions laid down in Article 52 of Presidential Decree 18/1989 on environmental disputes, which are generally annulled before the Council of State. General rules are applicable.

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 fees to the Council of State are 1300 euros. The minimum costs at the lower courts are approximately 500 euros and for the Supreme Administrative Court, 2000 euros.

According to Art. 58 of Law 4194/2013 (Lawyers’ Code), the lawyer’s fees shall be freely determined by a written agreement with his client or his representative. Expert fees depend on the case and the specification you may need. For more complex cases, they can be 10,000-30,000 euros. For less difficult cases, fees are lower. Lawyer’s fees depend on the specification of the case. There are no safeguards against prohibitive costs.

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[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?

There are no different rules applicable in sectoral or procedural legislation for any actor (individual and NGOs). Article 24 of the Constitution (after the 2001 revision) underlines that “the protection of natural and cultural environment is an obligation of the State and everyone’s right”. That means that any individual or group of people has the right to appeal before the administrative authorities and the courts in order to protect the environment subject to a legitimate interest regarding their case.

Any individual who disagrees with the administrative decisions has the right to appeal and file a request for remedy or a special administrative appeal. NGOs may appeal before the administrative authorities.

Concerning NGOs, in most cases the Greek courts have considered that the protection of the environment must be generally described in the statutory objective of the legal entities without being the sole or predominant purpose.
In Greece, the judicial system conforms to the principles of the Aarhus Convention, as it ensures judicial protection for environmental cases, whether the dispute concerns an act or omission challenged by individuals or NGOs and whether it concerns averting environmental harm or restoring damages or claiming compensation.

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? Concerning the administrative review, the remedy of the quasi-judicial action -provided by a special legal provision – reviews not only the legality but also the substance of the case. Courts can check procedural and substantive legality according to the general provisions. Courts do not check beyond the administrative decisions. Material or technical findings, calculations and technical assessments are beyond the jurisdiction of the courts.

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 such requirement, except if a quasi-judicial action is expected. In this case, the administrative review appeal has to be lodged before filing a court action.

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.? It is not necessary to participate in the public consultation phase, to make comments, participate at hearing etc. in order to have standing before the courts. Citizens can invoke their constitutional right to the environment directly in the judicial procedures independently of their participation in the public consultation etc.

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? Citizens can invoke their constitutional right to the environment directly in the judicial procedures independently of their participation in the public consultation etc.

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?

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Any individual who disagrees with the administrative decisions has the right to appeal and file a request for remedy or a special administrative appeal. NGOs may appeal before the administrative authorities. Concerning NGOs, in most cases the Greek courts have considered that the protection of the environment must be generally described in the statutory objective of the legal entities without being the sole or predominant purpose.

In Greece, the judicial system conforms to the principles of the Aarhus Convention, as it ensures judicial protection for environmental cases, whether the dispute concerns an act or omission challenged by individuals or NGOs and whether it concerns averting environmental harm or restoring damages or claiming compensation.

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? Concerning the administrative review, the remedy of quasi-judicial action - provided by a special legal provision – reviews not only the legality but also the substance of the case. Courts can check procedural and substantive legality according to the general provisions. Courts do not check beyond the administrative decisions. Material or technical findings, calculations and technical assessments are beyond the jurisdiction of the courts.

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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?
During the special procedure of injunctive relief, courts in urgent cases, or in order to prevent imminent danger, can order interim measures to secure or preserve a right or to regulate a situation and to reform, or to withdraw. The right may be subject to a condition or deadline. The injunction may also be ordered during the trial concerning the main case.

If the provisional measures have been ordered before filing the claim for the main case, the applicant shall, within thirty days from the decision that ordered the provisional measure, sue for the main action, unless the court specifies a longer period for filing the claim at its own discretion. If the deadline expires the interim measure shall be lifted automatically, unless the applicant within this period obtained the summary judgment.

The execution of an administrative act until a court decision is published on the appellant may cause significant and often irreparable effects on the environment. The interim measures are provided by the administrative judge either in the form of a suspension of execution of the administrative act or by any other means that the judge deems appropriate in that case in accordance with the conditions laid down in Article 52 of Presidential Decree 18/1989 on environmental disputes, which are generally annulled before the Council of State. General rules are applicable.

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 fees at the Council of State are at least 331 euros. The minimum costs at the lower judiciary are approximately 200 euros and, for the Supreme Administrative Court, 500 euros.

According to Art. 58 of Law 4194/2013 (Lawyers’ Code), the lawyer’s fees shall be freely determined by a written agreement with his client or his representative. Expert fees depend on the case and the specification you may need. For more complex cases, they may be 10,000-30,000 euros. For less difficult cases, fees are lower. Lawyer’s fees depend on the specification of the case. There are no safeguards against prohibitive costs.

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?

There are no different rules applicable in sectoral or procedural legislation for any actor (individual and NGOs). Article 24 of the Constitution (after the 2001 revision) underlines that “the protection of natural and cultural environment is an obligation of the State and everyone’s right”. That means that any individual or group of people has the right to appeal before the administrative authorities and the courts in order to protect the environment subject to a legitimate interest regarding their case.

Any individual who disagrees with the administrative decisions has the right to appeal and file a request for remedy or a special administrative appeal. NGOs may appeal before the administrative authorities.

Concerning NGOs, in most cases the Greek courts have considered that the protection of the environment must be generally described in the statutory objective of the legal entities without being the sole or predominant purpose.

In Greece, the judicial system conforms to the principles of the Aarhus Convention, as it ensures judicial protection for environmental cases, whether the dispute concerns act or omission challenged by individuals or NGOs and whether it concerns averting environmental harm or restoring damages or claiming compensation.

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)?

The form in which the plan or programme is adopted does not make a 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?

Concerning the administrative review, the remedy of quasi-judicial action - provided by a special legal provision - reviews not only the legality but also the substance of the case. Courts can check procedural and substantive legality according to the general provisions. Courts do not check beyond the administrative decisions. Material or technical findings, calculations and technical assessments are beyond the jurisdiction of the courts.

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 requirement, except if a quasi-judicial action is expected. In this case, the administrative review appeal has to be lodged before filing a court action.

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.?

It is not necessary to participate in the public consultation phase, to make comments, participate at hearing etc. in order to have standing before the courts. Citizens can invoke their constitutional right to the environment directly in the judicial procedures independently of their participation in the public consultation etc.

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

There are no arguments precluded.

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

Article 4 (1) of the Greek Constitution underlines that Greek citizens are equal before the law, establishing the principle of equality of arms between the parties. The right to a fair trial, as provided by Article 6 (1) of the ECHR, ratified by the legislative decree 53/1974, reinforced by Article 47 of the Charter of Fundamental Rights of the European Union and Article 14 (1) of the International Covenant on Civil and Political Rights, ratified by Law 2467/1997, constitutes a fundamental right which has been incorporated into the Greek law, in accordance with Article 28 (1) of the Constitution.

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

Sanctions against administrative organs for non timely response are applied according to the Public Servants Code (Law 3528/2007). Concerning judicial procedures for environmental cases, both for the court and the parties, there are no time limits provided by law.

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

During the special procedure of injunctive relief, courts in urgent cases, or in order to prevent imminent danger, can order interim measures to secure or preserve a right or to regulate a situation and to reform, or to withdraw. The right may be subject to a condition or deadline. The injunction may also be ordered during the trial concerning the main case.

If the provisional measures have been ordered before filing the claim for the main case, the applicant shall, within thirty days from the decision that ordered the provisional measure, sue for the main action, unless the court specified a longer period for filing the claim at its own discretion. If the deadline expires the interim measure shall be lifted automatically, unless the applicant within this period achieved the summary judgment.
The execution of an administrative act until a court decision is published on the appellant may cause significant and often irreparable effects on the environment. The interim measures are provided by the administrative judge either in the form of a suspension of execution of the administrative act or by any other means that the judge deems appropriate in that case in accordance with the conditions laid down in Article 52 of Presidential Decree 18/1989 on environmental disputes, which are generally annulled before the Council of State. General rules are applicable.

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 fees to the Council of State are at least 331 euros. The minimum of costs at the lower courts are approximately 200 euros and, for the Supreme Administrative Court, 500 euros.

According to Art. 58 of Law 4194/2013 (Lawyers’ Code), the lawyer’s fees shall be freely determined by a written agreement with his client or his representative. Expert fees depend on the case and the specification you may need. For more complex cases, they may be 10,000-30,000 euros. For less difficult cases, fees are lower. Lawyer’s fees depend on the specification of the case. There are no safeguards against prohibitive costs.

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

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?

There are no different rules applicable in sectoral or procedural legislation for any actor (individual and NGOs). Article 24 of the Constitution (after the 2001 revision) underlines that “the protection of natural and cultural environment is an obligation of the State and everyone’s right”. That means that any individual or group of people has the right to appeal before the administrative authorities and the courts in order to protect the environment subject to a legitimate interest regarding their case.

Any individual who disagrees with the administrative decisions has the right to appeal and file a request for remedy or a special administrative appeal. NGOs may appeal before the administrative authorities.

Concerning NGOs, in most cases the Greek courts have considered that the protection of the environment must be generally described in the statutory objective of the legal entities without being the sole or predominant purpose. In Greece, the judicial system conforms to the principles of the Aarhus Convention, as it ensures judicial protection for environmental cases, whether the dispute concerns act or omission challenged by individuals or NGOs and whether it concerns averting environmental harm or restoring damages or claiming compensation.

The right to judicial protection is based on article 20 par. 1 of the Constitution. Effective judicial protection is provided:

in the field of public law, specifically of environmental law, in order to control its implementation by the judge and ensure environmental protection in the field of private law, with the possibility to appeal to the civil courts for the protection of the affected person’s living space and his personal property from harmful impacts on the environment.

An admissible remedy is one that meets all the procedural requirements of the trial, mainly, that is at the same time: substantial, addressed to the proper jurisdiction and to a competent Court, it is introduced on the basis of the required written pretrial. It is introduced by a party having legal standing and a direct legal interest, there is no pending trial and it is not in its entirety in conflict with a precedent ruling.

Generally, the deadline for filing a legal remedy is 60 days starting:
in the case of an explicit act: from its service or from a proven complete knowledge of its content in case of omission: from its completion (Art. 66 of Administrative Procedure Code)

The deadlines within which the legal remedies are filed in accordance with the special provisions for them, are extended by sixty (60) days in the cases in which the legalized persons reside abroad.

Finally, Law 4727/2020 on Digital Governance (transposition into the Greek Legislation of Directive (EU) 2016/2102 and Directive (EU) 2019/1024) - Electronic Communications (transposition into the Greek Law of Directive (EU) 2018/1972) and other provisions, as well as the new strategy for digital justice, which aims to improve the efficiency and quality of services provided by the justices system, gradually enhances the efficiency of the system, the main manifestation of which is undoubtedly the speed of its delivery, judicial transparency through digital services, its independence and finally, quality.

Particular goals set in the implementation of this strategy are the speed of completion of cases, the improvement of the quality of decisions with respect to the independence of the judiciary and transparency for all (businesses, citizens, professionals, etc.), the improvement of the conditions for the Justice officials, but also of the professionals and citizens involved, the consolidation, defence and diffusion of the “value” of human rights.

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?

Concerning the administrative review, the remedy of quasi-judicial action - provided by a special legal provision – reviews not only the legality but also the substance of the case. Courts can check procedural and substantive legality according to the general provisions. Courts do not check beyond the administrative decisions. Material or technical findings, calculations and technical assessments are beyond the jurisdiction of the courts.

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 such requirement, except if a quasi-judicial action is expected. In this case, the administrative review appeal has to be lodged before filing a court action.

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.?

It is not necessary to participate in the public consultation phase, to make comments, participate at hearing etc. in order to have standing before the courts. Citizens can invoke their constitutional right to the environment directly in the judicial procedures independently of their participation in the public consultation etc.

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?

During the special procedure of injunctive relief, courts in urgent cases, or in order to prevent imminent danger, can order interim measures to secure or preserve a right or to regulate a situation and to reform, or to withdraw. The right may be subject to a condition or deadline. The injunction may also be ordered during the trial concerning the main case.
If the provisional measures have been ordered before filing the claim for the main case, the applicant shall, within thirty days from the decision that ordered the provisional measure, sue for the main action, unless the court specified a longer period for filing the claim at its own discretion. If the deadline expires the interim measure shall be lifted automatically, unless the applicant within this period achieved the summary judgment. The execution of an administrative act until a court decision is published on the appellant may cause significant and often irreparable effects on the environment. The interim measures are provided by the administrative judge either in the form of a suspension of execution of the administrative act or by any other means that the judge deems appropriate in that case in accordance with the conditions laid down in Article 52 of Presidential Decree 18/1989 on environmental disputes, which are generally annulled before the Council of State. General rules are applicable.

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 fees to the Council of State are at least 331 euros. The minimum costs at the lower courts are approximately 200 Euros and, for the Supreme Administrative Court, 500 euros. According to Art. 58 of Law 4194/2013 (Lawyers’ Code), the lawyer’s fees shall be freely determined by a written agreement with his client or his representative. Expert fees depend on the case and the specification you may need. For more complex cases, they may be 10,000-30,000 euros. For less difficult cases, fees are lower. Lawyer’s fees depend on the specification of the case. There are no safeguards against prohibitive costs.

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]?

As Article 267 TFEU determines that the courts whose judgments are not subject to further legal remedies must apply to the European Court of Justice for a preliminary ruling, the Supreme Administrative Court, the Council of State, must apply for this if there is a question of interpretation of European law in the case (see e.g. Case C-81/15). The first instance courts may, if such an issue [interpretation of EU law] arises, if they deem that a decision on the matter is necessary for issuing their own decision, refer the matter to European Court of Justice to rule on it (see case C-689/18: Order of the Court (Sixth Chamber) of 7 March 2019 (request for a preliminary ruling from the Dioikitiko Protodikeio Patron the First Instance Administrative Court of Patras — Greece — XT v Elliniko Dimosio).
From the combination of Article 95 par. 5 of the Constitution and Article 3 par. 1 of Law 3068/2002, it is concluded that the administration, complying with the annulment decision of the Council of State, is obliged not only to consider the legislative act that was deemed contrary to the constitutional provisions or the annulled administrative act null and void, but also to take positive actions to reform the legal situation resulting directly or indirectly from these acts. The administration is required to revoke or amend the acts issued in the meantime or to issue others with retroactive effect, in order to restore things to the previous situation, as if the annulled administrative act had not been in force from the outset.

Despite these obligations, the public administration often refuses to comply. It is difficult to accept decisions that oblige the administration to change a specific policy. A typical example is Decision 2337/2016 of the Council of State concerning objective real estate values. If the public administration does not comply with the decision within the set time limit, the three-member Council shall certify that the administration has not complied with the court decision and shall determine a sum of money to be paid to the person concerned as a sanction for non-compliance with the court decision.

**Other institutional bodies:** The Greek Ombudsman is called on to deal with a large proportion of the public’s reactions/complaints against the silence of public services or any form of maladministration. The Law 3094/2003 on the Greek Ombudsman’s operation states that the mission of the Greek Ombudsman is to mediate between the public sector and private individuals, in order to protect the latter’s rights, to ensure the former’s compliance with the rule of law, and to combat maladministration.

The Ombudsman intervenes in problems faced by citizens in their dealings with the public sector, such as insufficient provision of, or refusal to provide, information; excessive delay in the processing of requests; infringement of laws or use of illegal procedures; unfair discrimination against citizens.

The Ombudsman is responsible for citizens’ issues with the services of a) the public administration; b) primary and secondary level local government authorities (communities – municipalities, prefectures); c) other public law legal entities; d) Private law corporate entities; the enterprises and organisations which are controlled by the state or by public law legal entities.

According to Art 3 par. 3 of the Law, “The Ombudsman shall investigate individual administrative acts or omissions or material actions of public officials, which violate rights or infringe upon the legal interests of physical or legal persons. In particular, the Ombudsman shall investigate cases in which an individual or collective public body: i) by an act or omission, infringes upon a right or interest protected by the Constitution and the legislation; ii) refuses to fulfill a specific obligation imposed by a final court decision; iii) refuses to fulfill a specific obligation imposed by a legal provision or by an individual administrative act; iv) commits or omits a due legal act, in violation of the principles of fair administration and transparency or in abuse of power.

The reluctance of the administration to comply with the court decisions constitutes a real and serious problem for the legislator who, in Art. 3 par. 3 iii) of Law 3094/2003, emphasises the need to monitor the administrative action against the court decisions and, despite the explicit reference of the constitution to this obligation, includes this obligation in the special cases controlled by the Greek Ombudsman. The Greek Ombudsman institution is well respected by all citizens, as shown by the ever-increasing number of complaints filed to the institution (11,502 complaints in 2015 rising to 16,976 complaints in 2019; see [Greek Ombudsman annual report for 2019](#)).

Finally, the Consumer Ombudsman - an independent state authority - has as his main role to mediate for a friendly settlement of disputes arising between private companies and consumers. It is an extrajudicial body for consensual resolution and regulation of consumer disputes against both the private and the public sector (e.g. green products, public services).

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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
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. Legal order – sources of environmental law**

Based on the principles of autonomy and territorial decentralization, the State (or General Administration of the State) and the Autonomous Communities or Comunidad Autónoma ("CA") hold competences at different levels for different issues. The distribution of competences between the State and the CAs is established by the Constitution. The Constitution also recognizes the autonomy of municipalities, whose competences cannot be usurped by a CA or the State (Article 140 of the Constitution). Municipalities also have regulatory powers. Spanish public administration is therefore composed of:

- General administration at the State (central) level.
- The CA administration
- The Local administrations

The distribution of competences between the CAs and the State is extremely complex in the area of environmental protection. The Spanish Constitution provides that the State is competent to establish basic legislation in the area of environment, consumer protection, mines and energy and health, and has exclusive competence for maritime fisheries, ports and airports of general interest, modes of transport and trains running through more than one CA, and public works of general interest. The State will also have exclusive competence to develop and manage waterways that run through more than one CA. The State retains competences in other general aspects such as food, chemicals (pharmaceuticals, pesticides, biocides) regulation and authorization. The main authority at the State level is the Ministry for Ecological Transition and Demographic Challenge. This does not mean that it is the only one. For example, the Ministries for Industry and for Agriculture and Fisheries also hold competences with an impact on the environment.
A CA will normally be competent to develop basic legislation or to adopt more stringent and complementary rules that will preferentially apply. A CA can also assume exclusive competence in certain areas (e.g., mineral waters, waterways running in their entirety within the territory of one CA). In general, CAs will be competent to issue permits (IPPC but also other permits), EIA, and more general rules regarding the protection of the environment. CAs are also the competent authorities for implementation and enforcement of environmental legislation, with the exception of waste management, which is handled at the municipal level or by the State administration. Each CA’s Statute of Autonomy specifies the areas for which it has assumed competences. Normally, the main authority for environmental protection is the regional ministry in which the environmental protection competence lies. Local authorities have also many areas of competence, including regulatory competence in the area of environment. Especially important is their role in waste management and certain authorisations and permits (e.g., classified facilities), as well as land-use planning. Many municipalities have environmental attaché.

Article 24 of the Spanish Constitution provides for the fundamental right of access to justice or due process for all persons including natural and legal persons [1]. NGOs are legal persons.

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

The 1978 Spanish Constitution included the protection of the environment within Part I on Fundamental Rights of Duties. Article 45, which establishes the right to enjoy a suitable environment, was included in Chapter 3 of that Part, on Principles Governing Economic and Social Policy. That Article also provides for the duty of public authorities to preserve and restore the environment as well as for criminal and administrative sanctions to be imposed on those that impair the enjoyment of a healthy environment[2].

It is important to note that the right to enjoy a suitable environment does not enjoy the same level of protection as fundamental rights such as the right to life, freedom of expression or the right to privacy and intimacy. This is because Article 53.3, included in Chapter 4 on Guarantees of Fundamental Rights provides that recognition, respect and protection of the governing principles of economic and social policies shall inform the legislation, the judicial practice and the actions of the administrations and those principles only shall be invoked in the ordinary courts according to the legislation developing them. Meanwhile, citizens have access to justice through a preferential and summary procedure before the ordinary courts and, where appropriate, through a procedure to protect fundamental rights before the Spanish Constitutional Court when fundamental rights provided in Article 14 as well as Section one of Chapter 2 are violated.

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

The law regulating access to justice in environmental matters is Law 27/2006 of 18 July on the rights to access to information, public participation and access to justice in environmental matters (the Aarhus Law). Title IV of this Law is devoted to access to justice and administrative procedures on environmental matters. The following laws also apply to judicial procedures to defend the environment:

- Law 29/1998, of 13 July, on administrative judicial procedure (or administrative courts).
- Law 1/2000, of 7 January, on civil judicial procedure.
- Royal Decree of 14 September of 1882 approving the Law on Criminal Procedure.

In the administrative jurisdiction, before bringing a case to a court of law, on many occasions it is necessary to file an administrative review (or appeal). The law regulating the administrative review procedure is Law 39/2015, of 1 October, on the common administrative procedure of public administrations.

In Spain, most of the judicial proceedings related to the protection of the environment are brought before the administrative jurisdiction.

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

The Spanish Supreme Court recognized access to justice in environmental matters for environmental NGOs even before Spain ratified the Aarhus Convention. One example is the judgment of 24 December of 2001 in case 347/1999 in which it recognized standing for Greenpeace Spain and Ecologist in Action in a case concerning the authorization of a nuclear waste storage site. Later the Supreme Court has recognized, based on the Aarhus Convention and the Aarhus Law, a wide access to justice in environmental matters for environmental NGOs, specifically in the matter of standing to sue, in a series of judgments such as:

- its judgment of 25 June of 2008 (cassation 905/2007) on the standing of the organization GECEN in a case concerning violation of the environmental impact statement for the Airport of Castellón, and
- the judgment of 25 May 2010 (cassation 2185/2006) on the standing of the Association for the Defence of Sustainable and Ecological Development concerning the challenge to a Decree of the Madrid regional government on the exploitation of a granite mine.

In its judgment of 7 July 2017, cassation 1783/2015, the Supreme Court stated in the case Fundación Oceana vs. Ministry of Public Works that environmental NGOs also have standing to intervene as a concerned party in an infringement procedure (Judgment). That case concerned an illegal discharge of ballast water by two vessels in Spanish territorial waters, against the provisions of the MARPOL Convention.

In a decision of 13 March 2019, the Spanish Supreme Court stated that plaintiff environmental NGOs do not have to pay the costs of a case if they have been granted legal aid.

The third chamber of the Spanish Supreme Court deals with administrative judicial procedure. This chamber can hear environmental cases at first instance against acts and norms from the Council of Ministers, the Government Delegated Commissions. It also acts in cassation. The first chamber, for civil affairs, and the second, for criminal matters, act in cassation.

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 to an administrative or judicial procedure can rely directly on international agreements once they have been published in the Spanish Official Journal (Boletín Oficial del Estado - BOE), according to Article 96.1 CE, 1.5 Spanish Civil Code and Article 28.2 of Law 25/2014, of 27 November, on International Treaties and Agreements, as they become part of the legal order. International treaties also have primacy over national law except for constitutional norms (Art. 32, Law 25/2014).

1.2. Jurisdiction of the courts

1) Number of levels in the court system

Although Spain is divided into CAs, the judicial power is unitary based on the principle of “jurisdictional unity” (Article 117.5.1.5 CE and Article 3.1 of Organic Law 6/1985, of 1 July, on the Judicial Power (LOPJ)). CAs do not have judicial power and their courts are courts of the State. Justice is administered only by judges and magistrates (Article 117.1 CE and Article 1 LOPC) and the exercise of judicial authority in any kind of action is vested exclusively in the courts and tribunals laid down by the law (Article 117.3 CE and Article 2.1. LOPJ). The judicial system is governed by the General Council of the Judiciary (Consejo General del Poder Judicial, CGPJ). At each judicial level, specialized chambers or juzgados/tribunales[3], the so-called órdenes (branches), deal with specific issues. The branches of the judiciary are:

- Civil
- Criminal
Spanish territory is divided for jurisdictional purposes into (Article 30 and et seq. LOPJ):

- Municipalities
- Autonomous communities (Comunidades Autónomas/CA)

The different types of courts are (Article 26 LOPJ):

1.3. Organisation of justice at administrative and judicial level

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

Administrative procedure is regulated by Law 39/2015, of 1 October, on the Common Administrative Procedure. It can be initiated of the own motion of the administrations or by application from a concerned or interested party, which may be a natural or legal person.

According to Article 149.1.18 of the Spanish Constitution, the State holds the exclusive competence to regulate the common administrative procedure without prejudice to the peculiarities derived from the separate administrative organization of the Autonomous Communities.

There are many administrations with powers to issue environmental acts at the municipal, autonomous community and state level.

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

After an administrative environmental decision concludes the administrative procedure, the plaintiff has two months to file for a judicial review. This has to be done in writing citing the challenged act or omission.

The average time for a judicial review procedure is around 2 to 2.5 years. But if the judgment is appealed this may take between 2 and 3 years.

Therefore, a final judgment can take 5 years on average.

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

In Spain there are no special environmental courts.

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

Law 39/2015, of 1 October, on the Common Administrative Procedure regulates the administrative review procedure. An administrative review procedure can be filed against administrative decisions and administrative procedural acts in specific circumstances.

The main categories of administrative review are:

- Review by the hierarchical superior (recurso de alzada): this review has to be filed when the challenged act was issued by a public servant having a hierarchical superior. This review is compulsory when the challenged act does not bring to an end the administrative means of redress and must be filed...
before filing a judicial review. This happens when the administrative decision has been adopted by a body that is not the top organ in the agency and it is compulsory to file this administrative appeal before having recourse to the courts. The administrative appeals must therefore be exhausted. Review by the same administrative authority that issued the act: this review is optional as it can only be filed against an administrative act concluding the administrative procedure. However, an act concluding the administrative procedure can also be directly challenged through judicial review. Judgments issued at first instance by judges or magistrates for judicial review of administrative acts (Juzgados de lo contencioso-administrativo) can be appealed before the Administrative Chamber of Autonomous Communities’ Supreme Courts. Those issued at first instance by central judges for judicial review of administrative acts (Juzgados Centrales de lo contencioso-administrativo) can be appealed before the Administrative Chamber of the National Court (Audencia Nacional). In both cases, if the value of the case is below 30,000 euros, those judgments cannot be appealed. However, judgments declaring those cases inadmissible can be appealed as well as those deciding on an administrative review of a normative act[6]. Judgments in single instance by judges or magistrates for judicial review of administrative acts and those issued in single instance or on appeal by the Administrative Chambers of the National Court and of the Supreme Courts of the Autonomous Communities can be subject to cassation before the Administrative Chamber of the Spanish Supreme Court. Also subject to cassation may be specific decisions (autos) taken by the Administrative Chambers of the National Court and of the Autonomous Communities Supreme Courts if those decisions:
Declare the case inadmissible or make its continuation impossible. Finalize an incident of suspension or of an injunction. Are taken in the proceedings for executing a judgment and resolve issues not decided, directly or indirectly, in that execution, or are contradictory to the judgment being executed. Are issued in preliminary execution proceedings. The rules for a cassation to be admitted by the Supreme Court are very strict. The judgments and decisions must represent an infringement of the legal order or of jurisprudence and must have an objective “cassational interest”.

5) Extraordinary means of appeal. Rules in the environmental area. Rules for introducing preliminary references. An extraordinary administrative review can be filed against a final (non-appealable) administrative act before the same body that issued that decision when:
That body erred on the facts when considering the documents included in the administrative file. New documents appear evidencing errors in the challenged decision which are essential for deciding on the object of the procedure. The decision was taken based on documents and testimonies declared fraudulent by a final judgment issued before or after the challenged decision. The decision was issued as a result of abuse of authority, violence, fraud or any other criminal conduct declared as such by a final judgment. In the civil and criminal jurisdiction there is an extraordinary means of appeal when a procedural infringement has taken place. Preliminary references to the EU Court of Justice can be requested by any of the parties in a judicial procedure or can be instigated ex-officio by the judges or courts. According to Article 4bis paragraph 2 of Organic Law 6/1985, of 1 July, on the Judicial Power[7], when courts decide to submit a preliminary ruling to the CJEU, this must be done in line with the jurisprudence of the later and issuing an “auto” (auto is one of the kind of decisions taken by courts) after having heard the parties in the case.

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)? In the environmental area, there are no mediation mechanism regarding administrative acts and omissions and normative acts.

7) How can other actors help (ombudsman (if applicable), public prosecutor), accessible link to the sites?
In addition to the administrative review and judicial review procedures, in Spain there are other remedies available in environmental matters. These are: the Ombudsman (Defensor del Pueblo) at the national level; also some Autonomous Communities also have their own Ombudsman such as in Aragón -the Justicia de Aragón[8]. The public prosecutor (see below for the role environmental public prosecutors play)
The Spanish Ombudsman is a high commissioner of the Parliament and Senate Chambers tasked with defending the fundamental rights and freedoms included in Title I of the Spanish Constitution, which includes Article 45. A claim can be submitted to the Spanish Ombudsman when acts and decisions of public administrations do not serve the general interest, do not comply with the principles of their functioning or do not respect the fundamental rights and freedoms in Title I of the Spanish Constitution. Therefore, an environmental complaint can be lodged before the Spanish Ombudsman. The Fiscalía General del Estado (State Prosecutor’s Office) has a specialist in environment matters, the Fiscal de Sala Coordinador de Medio Ambiente y Urbanismo (Prosecutor of Chamber Coordinating Environmental and Land Planning Matters) with delegated environmental prosecutors in the Autonomous Communities. The public prosecutors may initiate an investigation by themselves or after receiving reports of an environmental crime from citizens or NGOs. The environmental prosecutors generally and mainly intervene before the criminal jurisdiction exercising the public action. Law 29/1998, of 13 July, on the Administrative Judicial Procedure provides that the Public Prosecutor may intervene before this jurisdiction in the processes determined by the Law. For example, Law 26/2007, of 23 October, on Environmental Liability provides for the legal standing of the public prosecutor in any administrative judicial procedures aimed at enforcing this Law.

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)?
According to Article 19(1)(a) of Law 29/1998, of 13 July, regulating the Administrative Judicial Review Procedure[8], legal and natural persons (individuals) having a right or legitimate interest have standing to appear before the administrative judicial courts and judges. This also applies to a challenge to an environmental administrative decision. Nevertheless, some legal benefit must derive from the intended reparation[10]. It has been stated that legitimate interest is something more than the simple interest any citizen may have in enforcing legality (Supreme Court Judgment of 28.12.99). However, the exception to this rule is found in those cases in which Law allows the exercise of actio popularis or public action. Spanish environmental protection laws only recognize a general public action available to any individual to challenge acts or omissions in very limited fields such as urban planning[11], hunting[12], and coastal protection[13] among others. Associations and groups which may be affected by the challenged administrative act or regulation or are legally entitled to defend collective rights and legitimate interests have legal standing[14]. Thus, legal recognition is required in order to have legal standing. Law 27/2006, of 18 July regulating the rights on access to information, public participation and access to justice in environmental matters[15] (the “Aarhus Law”) established an actio popularis in environmental matters[16] to challenge certain acts and omissions in certain areas including air pollution. This actio popularis only grants standing to not-for-profit legal persons meeting a set of requirements. These requirements for not-for-profit legal persons provided by Article 23(1) are the following:
Having among their objectives stated in their by-laws the protection of the environment in general or of one of its elements. Having been legally established at least two years before the initiation of the legal challenge and having been active during that period to accomplish the objectives provided in their by-laws[17].
According to their by-laws, develop their activity within the territorial scope affected by the administrative act or omission. Therefore, NGOs complying with the Aarhus Law requirements can be a plaintiff in a judicial review of an environmental administrative decision.

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?
There are no different rules as explained above.

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.)
Standing rules are those explained in answer number 1.

To have standing, foreign NGOs have to show a right or legitimate interest, as the conditions for actio popularis include a geographical requirement which is difficult to fulfil by foreign NGOs.

4) What are the rules for translation and interpretation if foreign parties are involved?
According to Art 142 of the Law on Civil Judicial Procedure, in all judicial proceedings judges, magistrates, lawyers of the justice administration, and other public servants working for judges and courts shall use Spanish (Castilian), the official language of Spain. However, the official language of any Autonomous Community can be used if the parties in the judicial procedure do not oppose this.

Article 143 of that Law provides for the assistance of interpreters where a person does not understand Spanish or any of the official languages of the Autonomous Communities. It also provides for the appointment of an interpreter in transboundary cases.

Documents in a judicial procedure which are not in Castilian or any official language of the Autonomous Communities must be accompanied by a translation (Art. 144 LEC).

1.5. Evidence and experts in the procedures

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

2) Can one introduce new evidence?

In the administrative judicial procedure, most of the rules on evidence, including evaluation of evidence, are provided in the LEC which is complementary to the Law on the Administrative Judicial Procedure.

The evaluation of evidence must be requested in the lawsuit and the written allegations to the lawsuit by the defendant. The plaintiff can ask for the evaluation of new evidence only if, from allegations by the defendant, new points on the facts arise which may be relevant for the procedure. The plaintiff has a period of five days after he/she is notified of the defendant's allegations.

The evaluation of the evidence shall take place when there are discrepancies in the facts and the judge consider those discrepancies relevant to decide on the case.

The judge or court can request the evaluation of any evidence they might consider relevant to delivering their judgment. Once the period for evaluating the evidence ends which normally takes 30 days, and before the proceedings are concluded to prepare the judgment, the judge or court can examine any new evidence if this is considered necessary.

Evidence based on documents must be submitted with the lawsuit and the written allegations to the lawsuit. If they do not have the documents available, they must point out the files where to find them. This includes documents prepared by experts.

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

Expert opinions can be filed with the lawsuit and the written allegations to the lawsuit. The plaintiff and the defendant have to state that they want to file expert opinions when they cannot obtain the expert opinions within the period granted to submit their reports.

Expert opinions can also be filed if, after the filing of the lawsuit and the allegations by the defendant, the parties consider those opinions are necessary and ask the judge or court to allow them.

The court can appoint a judicial expert when the plaintiff or the defendant requests this in the lawsuit or the statement of allegations respectively. For the appointment of judicial experts there are lists of experts and the judge select them by lot.

The evidence including expert opinions is gathered at the instigation of the parties (the parties request them). When the law so determines in specific cases, a judge or court can request expert opinions of its own motion.

In administrative judicial procedures, the most common procedure is the ordinary one in which hearings are not carried out. Thus, the expert opinion is filed as a written opinion.

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

Judges and courts must evaluate expert opinions based on the principle of the "healthy critic" (sana critica, Art. 348 LEC). This implies that the judge or court is not obliged to follow what the expert reflected in his/her opinion.

3.2) Rules for experts being called upon by the court

See answer to number 3.

3.3) Rules for experts called upon by the parties

See answer to number 3

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

In both cases, expert opinions have to be paid for by the party who filed them or who requested the court to appoint a judicial expert. This does not apply when legal aid has been granted to the party requesting the appointment of a judicial expert.

There are no regulated fees for expert opinions, including for judicially designated experts, as this is contrary to Law 15/2007, of 3 July, on the defence of competition.

1.6. Legal professions and possible actors, participants to the procedes

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

In Spain legal representation before judges and courts of law is generally assigned to the procuradores (procurators), a kind of intermediary between the judge or court, and the lawyer. The procuradores and the abogados (lawyers) must hold a Law degree. Lawyers provide legal assistance to their clients, are free and independent and are subject to the good faith principle (Article 542, Organic Law on the Judicial Power). In the administrative judicial procedure when intervening before a judge, representation by a procurador is not compulsory because the lawyer can act in both roles (Article 23.1, Law on the Administrative Judicial Procedure). Before courts, parties must be represented by a procurador and, be assisted by a lawyer (Article 23.2 LJCA).

The bar associations has a database of admitted lawyers who must be found through a search engine but in general the database is not structured by area of specialization. The Association of bar associations has a directory of lawyers available here.

1.1 Existence or not of pro bono assistance

There are some lawyers and law firms which offer pro bono assistance.
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.)?

Normally lawyers doing pro bono work in environmental litigation are voluntary lawyers linked to environmental NGOs.

There are two foundations in Spain doing pro bono work:

- **TrustLaw from the Thomson Reuter Foundation**
- **Probono Foundation**

but they are more focused on providing legal advice to NGOs than on litigation. If an NGO needs pro bono assistance, it must contact these foundations first.

1.3 Who should be addressed by the applicant for pro bono assistance?

TrustLaw Spain and Fundación Probono.

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

There are many companies offering expert services which are accessible on the internet. In addition, experts appointed by judges and courts, known as judicial experts, are included in lists sent every year by the professional associations and academic institutions and scientific organizations to judges and courts. One example of those lists is [http://www.apajcm.com/listado-de-peritos.html](http://www.apajcm.com/listado-de-peritos.html)

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

There is no list of NGOs active in the field of environmental litigation.

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

There is no such a list available.

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 decision, i.e. to file an administrative review, is one month. If the administrative decision is taken through administrative silence (tacit decisions), there is no time limit and the challenge has to be filed after the effects of administrative silence take place.

2) Time limit to deliver decision by an administrative organ

The administrative body has three months to decide on the administrative review after it is lodged with the hierarchical superior. When the administrative review is filed before the same authority that took the challenged decision, the time limit to take a decision is one month.

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

This is possible when the first level administrative decision closes or brings to an end the administrative means of redress. This happens in the following cases:

- decisions taken in procedures in which a specific law has substituted the hierarchical superior challenge for another procedure
- decisions of administrative bodies not having a hierarchical superior
- agreements, pacts, conventions or contracts considered as finalizing the procedure
- administrative decisions in procedures related to liability of the Administration
- decisions in complementary procedures related to infringements
- other administrative decisions when a law or a regulation establishes that they end the administrative procedure.

The decision or act was issued by a Minister or a Secretary of State.

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

There is a 10-day deadline for issuing the ruling after the proceedings have been declared closed by the court, which usually is not respected. Beyond that provision, there is no legal deadline for the general handling and resolution of judicial proceedings, which can take years.

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

There are time limits in the administrative review procedure and the administrative judicial review procedure which parties always must comply with. This is not the case for the administrative authorities and the judges and courts, which never respect those time limits.

Time limits are:

- Filing of an administrative review before a hierarchical superior: one month after notification of the appealed administrative decision.
- Announcement of the intention to file an administrative judicial review procedure: two months from the date when the administrative act ending the administrative procedure was taken, published or notified.
- The sued administration has 20 days to submit the administrative file after the judicial secretary request.
- The plaintiff has 20 days to file his/her lawsuit after receiving the administrative file from the judge or court.
- The defendant has 20 days to file his/her allegations to the lawsuit after the judicial secretory notifies the lawsuit to him/her.
- The period for evaluating evidence is 30 days if one the parties so requested in their lawsuit or allegations to it.

If the parties ask in their lawsuit or allegation to submit conclusions on the case, the judicial secretary provides a 10 day period to each party consecutively.

The judge or court has to issue its judgment within 10 days after the proceedings are declared concluded.

1.7.2. Interim and precautionary measures, enforcement of judgments

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

Article 117.1 of the Law on the Administrative Procedure provides that the filing of an administrative review does not have a suspensive effect except when a legal provision provides so.

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

The competent body to decide on the administrative review can suspend the challenged administrative decision ex officio or at the request of the appellant. The competent body has to take into account and weigh in a reasoned manner the damage the execution of the appealed administrative decision could cause to the public interest or a third-party interest against the damage that execution could cause to the claimant. After that, the suspension can take place when any of the following circumstances apply:

- the execution might cause damages which cannot be repaired, or their reparation would be very difficult.
- the appealed decision is based on a violation of fundamental human rights which makes the act null.

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?

As explained above, the appellant can request such a measure. The suspension is normally requested in the writ of appeal which must be filed within a month after the administrative decision was notified to the appellant or was published in an official journal. If the administrative decision was taken through “administrative silence” the writ of appeal can be filed at any moment after the day the effects of that administrative silence takes place.

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

If suspension of the administrative decision is not requested, the administrative decision can be executed at any time, except when:
It is a decision of an infringement procedure which can be subject to an administrative review.
A legal provision establishes otherwise.

The approval or authorisation of a hierarchical superior is required.

5) Is the administrative decision suspended once challenged before court at the judicial phase?
The administrative decision is not suspended when challenged before a court at the judicial phase.

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?
The parties in the procedure can request injunctive relief at any moment in the judicial procedure to guarantee the effectiveness of the future judgement. If the challenged administrative decision is a regulation or ministerial order, that request must be introduced in the notification of the judicial review or in the text of the lawsuit.

When damage of any nature could derive from the injunctive measure, the judge or court can impose adequate measures to avoid or reduce that damage. The judge or court can impose a financial deposit or any other kind of guarantee to respond to that damage. The order for injunctive relief is adopted through an “auto”. An auto is a judicial decision by a judge or court deciding on parties’ incidental petitions which arise in the course of the case. If the injunctive relief is ordered by a judge, that auto can be appealed before a superior court. When the injunctive relief is ordered by a court, an appeal before the same court can be filed.

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.?
It is not easy to calculate the costs of the procedure as they depend on the value of the object of the case. Based on Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, legal and other professional fees are liberalized and bar associations and other professional associations cannot impose either minimum or maximum prices for services.

Court fees are regulated by Law 10/2012, of 20 November, regulating fees in the field of the Justice Administration and of the National Institute for Toxicology and Forensic Sciences[18].

Bar associations can send criteria to judges and courts to value a case in application of the “loser pays” principle.

2) Cost of Injunctive relief/interim measure, is a deposit necessary?
The cost of an injunctive relief/interim measure depends on the damage that could be caused and on the value of the object of the case or procedure. A deposit is required if so ordered by the judge or the court.

3) Is there legal aid available for natural persons?
Law 1/1996, of 10 January, on legal aid[19] provides a[20] list of those entitled to the right of legal aid, and among those are Spanish citizens, EU citizens and foreign nationals when they show a lack of sufficient economic resources to litigate.

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?
Among the list of those entitled to the right to legal aid are the following legal persons when they can evidence a lack of sufficient resources to litigate:

Public interest associations

Foundations registered in the corresponding public registry

Although not all NGOs are public interest associations or foundations, Article 23.2 of Law 27/2006 (the Aarhus Law) provides that not-for-profit organizations meeting the criteria to exercise actio popularis are entitled to the right to legal aid. The criteria are the following:

Their statutes must include as the association’s goal the protection of the environment or of any of its elements.

The association must be legally constituted at least 2 years before the date on which the action is initiated; it must be active in achieving its goals.

There must be a geographical connection (established in their statutes) with the area affected by the act or omission.

Those are qualified NGOs. In recent years there has been a series of court decisions (autos) interpreting Article 23.2 as a direct legal recognition of legal aid to qualified NGOs[20]. These decisions have also determined that legal aid is recognized by that Article regardless of the economic resources of the qualified NGO.

A request for legal aid must be filed before the legal advice service of the bar association where the plaintiff has his/her/its domicile. There is a formal application to be submitted[21].

When legal aid is granted, it means that the grantee does not have to pay lawyers and procuradores or cover the cost of the case if the grantee does not win.

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

There are no other financial mechanisms available to provide financial assistance.

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

The “loser party pays” principle applies as follows:

At first or sole instance, the judicial body, when issuing its judgment or when resolving a procedural appeal, shall charge the cost to the party whose entire request is dismissed or rejected unless the case involved serious doubts on the facts and merits.

In appeal costs shall be charged to the appellant if the entire appeal is dismissed unless the judicial body considers and reasons that there were circumstances justifying the contrary.

When the petitions of the parties are partially accepted or rejected each party shall pay its own costs and shall share the common costs. Nevertheless, if the judicial body considers that one of the parties sustained the action or filed the case in bad faith or recklessness and reasons so, that party shall bear the costs.

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?

Only when laws allow it can the court grant an exemption. For example, natural persons and legal persons to whom legal aid has been granted, and the public ministry, are exempted from court fees or filing fees according to Article 4.2. of Law 10/2012.

1.7.3. 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?

Title IV of the Aarhus Law, entitled “Access to justice and administrative review on environmental matters”, regulates the national rules on environmental access to justice. Article 20 cross-refer to the Law on the Administrative Procedure for administrative review and to the Law on the Administrative Judicial Procedure. All these laws are available in the Spanish official journal (Boletín Oficial del Estado - BOE):

Aarhus Law
Law on the Administrative Procedure
Law on the Administrative Judicial Procedure
Country-specific EIA rules related to access to justice


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

EIA screening decisions are considered by the Spanish Supreme Court as actos de trámite cualificados (qualified incidental administrative acts) as they conclude the administrative procedure and therefore can be reviewed by courts (Art. 25 Law on the Administrative Judicial Review Procedure). The Law on Administrative Procedure provides that these acts can be subject to administrative review to a hierarchical superior or subject to a review procedure by the same authority that issued that administrative act. In the latter case, it is not compulsory and therefore, it can be directly subject to a judicial review.

The administrative review to a hierarchical superior must be filed within a month after the screening administrative act was issued. The same deadline applies to a review procedure by the same authority that issued the screening act.

Standing is recognized for parties to the administrative procedure and for environmental NGOs, as acto popularis is recognized under the Aarhus Law.

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

In Spain the EIA scoping decisions have a limited role. They are considered as incidental administrative acts, they do not conclude the administrative procedure but are part of it. As a result, EIA scoping decisions alone cannot be reviewed by courts. Therefore, they can only be challenged before courts together with a challenge to the final authorization or decision on the project.

If the final authorization or decision on the project was granted by an authority having a hierarchical superior it has to be subject to administrative review, and the deadline to file this is one month after it was published or notified. If the final authorization or decision on the project was granted by an authority having no hierarchical superior it can be directly challenged before a court of law, and the deadline is of two months after it was published or notified.

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

EIA decisions, called declaraciones de impacto ambiental (EI statements) are considered by the courts as part of a substantive procedure to authorize a project. Therefore, they are considered as an incidental administrative act which cannot be directly reviewed by the courts unless the EI statement establishes the possibility of continuing with the administrative procedure or that it may cause irreversible damage or prejudice to rights or legitimate interests. Therefore, it can only be challenged before the courts together with the challenge to the final authorization or decision on the project. An EIA screening decision not to subject a project to EIA can also be challenged before a judge or court.

If the final authorization or decision on the project was granted by an authority having a hierarchical superior it has to be subject to administrative review, and the deadline to file it is one month after it was published or notified. If the final authorization or decision on the project was granted by an authority having no hierarchical superior it can be directly challenged before a court of law, and the deadline is two months after it was published or notified.

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

The final authorization of a project subject to EIA can be challenged and it is at this moment that the EI statement can be challenged. Natural and legal persons can be considered interested or concerned parties in the administrative procedure if they meet the conditions under Article 4 of the Administrative Procedure Law:

Those initiating the procedure, as holders of legitimate individual or collective rights and interests. In the EIA procedure it is the developer.

Those who have not initiated the procedure but who might be affected by the administrative decision.

Those whose legitimate individual or collective interests might be affected by the administrative decision and showed their interest before the administrative decision was taken. Associations and organizations representing economic and social interests.

NGOs complying with the Aarhus Law acto popularis requirements can also challenge the final authorization. Acto popularis can be exercised in administrative review and judicial review procedures.

In judicial review procedures, standing is linked to the right or legitimate interest (see answer in section 1.4. 1).

Foreign NGOs have to show a right or legitimate interest, as the conditions for acto popularis include a geographical requirement which is difficult to fulfill by foreign NGOs.

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

First instance judges or courts can review the procedural and substantive legality of EIAs based on the petitions lodged by the plaintiff and the defendant in the lawsuit and the counter arguments to the lawsuit respectively. Judges and courts can only review what the plaintiff and the defendant ask for in their lawsuit and counter arguments (Art. 33 Law on Administrative Judicial Review). However, in administrative judicial reviews, if the judge or court considers that the issue to be judged was not duly understood by the parties because there appear to be other merits on which to base the case, it can ask the parties to file allegations.

In addition, Spanish judicial bodies are not allowed to adopt any decision which falls within the scope of discretion of the Public Administration, and which may entail a replacement of their activity (based on the principle of separation of judicial, executive and legislative powers).
The Spanish Supreme Court has declared that an environmental impact statement is issued under the exercise of an improper technical discretion which in reality is a regulatory faculty which has to be fully in line with the Law, and is therefore subject to judicial scrutiny[24]. Therefore, the scientific accuracy of an environmental impact statement can be subject to judicial review taking into consideration the evidence supported by expert opinions.

6) At what stage are decisions, acts or omissions challengeable?
Decisions, acts or omissions must be subject to administrative review if they do not put an end to the administrative procedure (see section 1.7.1.3)). Thus, when those decisions or acts are notified, they must be challenged through administrative review. When an administrative decision ends the administrative procedure, it must be directly challenged before a court of law.

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 a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures if the challenged EIA-related act or omission is performed by an authority having a hierarchical superior.

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?
According to the Aarhus Law NGOs meeting certain criteria[25] can exercise actio popularis. Thus, these entities are not required to participate in the public consultation phase of the EIA procedure, to make comments or to participate in hearings. In addition, in cases where no actio popularis is possible, the rule is that, in order to have legal standing in the administrative judicial procedure, the plaintiff must show an interest. The Constitutional Court’s doctrine on standing is more linked to the concept of interest than to the concept of participation in the administrative procedure. For this reason, once the plaintiff shows an interest, it is not necessary to prove participation in the administrative procedure.

It is important to note that if the authorization of the project and the EI Statement were issued by an authority having a hierarchical superior before filing the challenge before the court, it is necessary to file the administrative review first.

9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
Article 24 of the Spanish Constitution includes as a human right the right to a fair and equitable trial under the fundamental right to a “tutela judicial efectiva” (right to obtain the effective protection of the Judges and the Courts in the exercise of his or her legitimate rights and interests). This right includes the right to a process with all guarantees and right to a due process with impartial judges.

10) How is the notion of “timely” implemented by the national legislation?
The right to “tutela judicial efectiva” in Article 24 of the Spanish Constitution also implies a right to a process without undue delays and the right to obtain a judgment and its execution within a reasonable time. However, the judicial procedures in environmental matters are often too long, and when a judgment is issued the damage has been done.

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?
Under Spanish jurisdiction, there is injunctive relief available for EIA procedures when one challenges the decision on authorization. If the challenge is through administrative review the rules stated in answer to section 1.7.2.2) apply. The judge or court can order the construction of the project to be stopped, and in the final ruling can decide on the illegality of the EIA procedure[26]. An injunction or interim measure (medidas cautelares - provided in the Law on Administrative Judicial Review, Articles 129-136) can be requested at any stage of the judicial procedure and no procedural requirement is laid down. There are no special rules applicable to EIA procedures.

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
The Spanish transposition of Directive 2010/75/EU on industrial emissions (IED) is Royal Legislative Decree 1/2016, of 16 December, by means of which the consolidated text of the Law on Integrated Pollution Prevention and Control (RDL 1/2016) is approved. This legal instrument regulates the procedure related to the granting of the integrated permit foreseen in the IED, known in Spain as Integrated Environmental Authorizations (Autorizaciones Ambientales Integradas, AAI), as well as the aspects concerning the access to justice on this matter.

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?
Standing is granted to the same parties considered as concerned parties in the administrative procedure and to environmental NGOs, as actio popularis is recognized under the Aarhus Law. Foreign NGOs have to show a right or legitimate interest, as the conditions for actio popularis include a geographical requirement which is difficult to fulfill by foreign NGOs.

In the granting procedure for the AAI in Spain, according to Article 3.20 of RDL 1/2016, the public is “any natural or legal person, or associations, organizations or groups thereof, formed in accordance with applicable law”.

a) Article 3.19 of RDL 1/2016 also defines, in line with the Aarhus legislation, the interested persons (public concerned), with regard to the scope of the law and the authorization procedure, as: any person who is in any of the circumstances stipulated in Article 4 of Law 39/2015, of 1 October, on the common administrative procedure of the public administrations.

b) Any not-for-profit legal person:
   i. Whose statutory activity, duly evidenced, is to protect the environment in general or any of its elements in particular; provided that such statutory activity may be affected by a decision regarding the granting or review of the integrated environmental permit or its conditions.
   ii. Which was incorporated at least two years ago and has been actively undertaking the activities required to perform its statutory activity.
   iii. Which, pursuant to its statutes, undertakes its activity in a territory that is affected by the installation for which the integrated environmental permit is being requested.

In relation to the questions raised on the challenge to the decision at early or final stages, the IED decision or authorization (permit) can be subject to administrative review if the authorization was granted by an authority having a hierarchical superior. Otherwise, it has to be directly challenged before a court of law.

Article 25 of RDL 1/2016 has the following wording regarding the challenge to the resolution on integrated environmental authorizations:
The public concerned (as defined in the previous Article 3.19) may object to the main reports issued during the procedure regulated in this law (referred to in Articles 17, 18, 19 and 28) by means of the challenge to the administrative resolution that terminates the granting procedure for the authorization, or via the challenge to the binding main reports mentioned above when these obstruct the granting of such authorization, according to Article 112.1 of Law 39/2015. When the administrative challenge to the resolution terminating the granting procedure for the authorization affects the conditions established in the binding main reports, the competent authority of the Autonomous Community able to resolve the appeal will transfer it to the competent bodies that issued them, in order for them, where appropriate, to comment within the next 15 days. These comments, if presented in time, are binding in resolving the challenge.

If the contentious administrative challenge that may be submitted against the resolution terminating the administrative review contains claims relative to the binding main reports, the bodies that issued them will have the status of co-plaintiff, according to Law 29/1998, of 13 July, regulating the Contentious Administrative Jurisdiction.
As a general principle, Article 14 of RDL 1/2016 states that the Public Administrations will promote real and effective participation of public concerned and must ensure that this participation takes place at early stages of the procedures for granting, substantial change and review of the authorization, in compliance with Article 24 and Annex IV.

Article 24.2, relating to communication and publicity, declares the public right to access to the resolutions of the authorizations, and their ultimate adaptations and reviews, according to the Spanish Aarhus Law (Law 27/2006).

Annex IV, referring to public participation in decision-making, states the following:

1. The competent authority of the Autonomous Community shall inform the public regarding the following matters in the early stages of the procedure - and always before a decision is made or, at the latest, as soon as it is reasonably possible to provide such information through electronic media, if available:

- The application documents for an integrated environmental permit, for its substantial change, or if appropriate, the documents regarding the review, pursuant to Article 16.
- If appropriate, the fact that the decision on such an application is subject to an environmental impact assessment - national or cross-border - or to consultations among Member States, pursuant to Articles 27 and 28.
- The identity of the bodies competent to make a decision, of those that could provide relevant information, and of those to whom observations could be sent or questions to be asked, expressly indicating the deadline for doing so.
- The legal nature of the decision on the application or, if appropriate, of the draft decision.
- If appropriate, details regarding the review of the integrated environmental permit.
- The dates and the place or places where the relevant information shall be made available, as well as the media used for this purpose.
- The forms of public participation and public consultation, as defined in paragraph 5.

In any case, the granting, substantial change, or review of a permit regarding an installation when the application of Article 7.5 is proposed.

2. The competent bodies of the Autonomous Communities shall ensure that, within a reasonable period of time, the following information is made available to the public concerned:

- In accordance with national legislation, the main reports and decisions sent to the competent authority or authorities, at the time when the public concerned must be informed pursuant to paragraph 1.
- In accordance with the legislation regulating rights of access to information and public participation in environmental matters, all information other than that mentioned in paragraph 1 which may be relevant to decide on the application, pursuant to Article 8, and which may only be obtained once the period for providing information in public concerned regulated in paragraph 1 has expired.
- The public concerned shall have the right to express any observations and opinions they consider relevant to the competent authorities, before the application is decided upon.
- The outcomes of the consultations organized under the present Annex shall be duly taken into account by the competent authority when deciding upon the application.
- The competent authority of the Autonomous Community for granting integrated environmental permits shall determine the manner in which the public is informed and public concerned is consulted. In any case, reasonable periods of time shall be established for the different stages, providing sufficient time for informing the public and for public concerned to effectively prepare and participate in the environmental decision-making process under the provisions of the present Annex.

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

Same as in answer 1.8.1.1)

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

Same as in answer 1.8.1.2)

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

It is possible to challenge the final decision or permit for a project/installation. If the final decision or AAI was granted by an authority having a hierarchical superior it has to be subject to an administrative review, and the deadline to file it is of one month after it was published or notified. If the final decision or permit of the project was granted by an authority having no hierarchical superior it can be directly challenged before a court of law, and deadline is two months after it was published or notified.

Article 25 of RDL 1/2016 has the following wording regarding a challenge to the resolution on integrated environmental authorizations:

The public concerned (as defined in previous Article 3.19) may object to the main reports issued during the procedure regulated in this law (referred to in Articles 17, 18, 19 and 28) by means of the challenge to the administrative resolution that terminates the granting procedure of the authorization, or via the challenge to the mentioned binding main reports, when these obstruct the granting of such authorization, according to Article 112.1 of Law 39/2015. When the administrative challenge to the resolution terminating the granting procedure of the authorization relates to the conditions established in the binding main reports, the competent authority of the Autonomous Community to solve the appeal will transfer it to the competent bodies that issued them, in order for them, where appropriate, to comment within the next 15 days. These comments, if presented on time, are binding in resolving the challenge.

If the contentious administrative challenge that may be submitted against the resolution terminating the administrative procedure contains claims relative to the binding main reports, the bodies that issued them will have the consideration of co-plaintiff, according to Law 29/1998, of 13 July, regulating the contentious administrative jurisdiction.

6) Can the public challenge the final authorization?

The public that can challenge in administrative review a final authorization has to be a concerned public or party (parte interesada). These are persons (legal or natural) meeting the conditions under Article 4 of the Administrative Procedure Law:

1. a) Those initiating the procedure as holders of legitimate individual or collective rights and interests.
   b) Those who have not initiated the procedure but who might be affected by the administrative decision.
   c) Those whose legitimate individual or collective interests might be affected by the administrative decision and showed their interest before the administrative decision was taken.

2. Associations and organizations representing economic and social interests.

NGOs complying with the Aarhus Law actio popularis requirements can also challenge the final authorization. Actio popularis can be exercised in administrative review and judicial review procedures.

In judicial review procedures, standing is linked to the right or legitimate interest (see answer in section 1.4.1).

Article 3.19 of RDL 1/2016 also defines, in line with the Aarhus legislation, the interested persons (public concerned), with regard to the scope of the law and the AAI procedure, as:

a) Any person who is in any of the circumstances stipulated in Article 4 of Law 39/2015, of 1 October, on the common administrative procedure of the public administrations (mentioned in the previous paragraph).
b) Any non-profit legal person meeting the following requirements:
   
i. Whose statutory activity, duly evidenced, is to protect the environment in general or any of its elements in particular, provided that such statutory activity may be affected by a decision concerning the granting or review of the integrated environmental permit or its conditions.
   
ii. Which was incorporated at least two years ago and has been actively undertaking the activities required to perform its statutory activity.
   
iii. Which, pursuant to its statutes, undertakes its activity in a territory that is affected by the installation for which the integrated environmental permit is being requested.
   
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?
First instance judges or courts can review the procedural and substantive legality of the decisions on integrated environmental authorizations based on the petitions lodged by the plaintiff and the defendant in the lawsuit and the counter arguments to the lawsuit respectively. Judges and courts can only review what the plaintiff and the defendant ask for in their lawsuit and counter arguments (Art. 33, Law on Administrative Judicial Review). However, in administrative judicial reviews, if the judge or court considers that the issue to be judged was not duly understood by the parties because there appear to be other merits on which to base the case, it can ask the parties to file allegations.

In addition, Spanish judicial bodies are not allowed to adopt any decision which falls within the scope of discretion of the Public Administration, and which may entail a replacement of their activity (based on the principle of separation of the judicial, executive and legislative powers).

The Spanish Supreme Court has declared that an environmental impact statement is issued under the exercise of an improper technical discretion which in reality is a regulatory faculty which has to be fully in line with the Law, and is therefore subject to judicial scrutiny[27]. This can be extended to the decisions on integrated environmental authorizations (AAI). Therefore, the scientific accuracy of these permits can be subject to judicial review taking into consideration the evidence supported by expert opinions.

According to the wording of Article 25 of RDL 1/2016 mentioned above, decisions on integrated environmental authorizations, as well as the binding main reports to be issued during the procedure (related to issues on urban planification, water, municipality and EIA), can be challenged.

8) At what stage are these challengeable?
The decision/permit is challengeable at the final stage. If the final decision or authorization of the project was granted by an authority having a hierarchical superior it has to be subject to an administrative review, and the deadline to file it is one month after it was published or notified. If the final decision or permit of the project was granted by an authority having no hierarchical superior it can be directly challenged before a court of law, and the deadline is two months after it was published or notified.

Article 25 of RDL 1/2016 has the following wording regarding the challenge to the resolution on integrated environmental authorizations:
The public concerned (as defined in the previous Article 3.19) may object to the main reports issued during the procedure regulated in this law (referred to in Articles 17, 18, 19 and 28) by means of the challenge to the administrative resolution that terminates the granting procedure for the authorization, or via the challenge to the binding main reports mentioned above, when these obstruct the granting of such authorization, according to Article 112.1 of Law 39/2015.

When the administrative challenge to the resolution terminating the granting procedure for the authorization affects the conditions established in the binding main reports, the competent authority of the Autonomous Community able to resolve the appeal will transfer it to the competent bodies that issued them, in order for them, where appropriate, to comment within the next 15 days. These comments, if presented in time, are binding in resolving the challenge. If the contentious administrative challenge that may be submitted against the resolution terminating the administrative review contains claims relative to the binding main reports, the bodies that issued them will have the status of co-plaintiff, according to Law 28/1998, of 13 July, regulating the Contentious Administrative Jurisdiction.

9) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? See previous answer.
If the final authorization or decision on the project was granted by an authority having a hierarchical superior it has to be subject to an administrative review, and the deadline to file it is one month after it was published or notified. If the final authorization or decision on the project was granted by an authority having no hierarchical superior it can be directly challenged before a court of law, and the deadline is two months after it was published or notified.

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?
According to the Aarhus Law, NGOs meeting certain criteria can exercise actio Popularis. Thus, these entities are not required to participate in the public consultation phase of the administrative procedure, or to make comments or participate in hearings. In addition, in cases where no actio popularis is possible, the rule is that, in order to have legal standing in the administrative judicial procedure, the plaintiff must show an interest. The Constitutional Court’s doctrine on standing is more linked to the concept of interest than to the concept of participation in the administrative procedure. For this reason, once the plaintiff shows an interest, it is not necessary to prove participation in the administrative procedure.

11) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
Article 24 of the Spanish Constitution includes as a human right the right to a fair and equitable trial under the fundamental right to a “tutela judicial efectiva” (right to obtain the effective protection of the Judges and the Courts in the exercise of his or her legitimate rights and interests). This right involves the right to participate in the administrative judicial review procedures with all guarantees and right to a due process with impartial judges.

12) How is the notion of “timely” implemented by the national legislation?
The right to “tutela judicial efectiva” in Article 24 of the Spanish Constitution also implies a right to a process without undue delays and the right to obtain a judgment and its execution within a reasonable time. However, the judicial procedures in environmental matters are often too long and when a judgment is issued the damage has been done.

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?
Under Spanish jurisdiction, there is injunctive relief available in all administrative and judicial review procedures which is applicable to decisions on the AAI.

If the challenge is through administrative review the rules stated in answer to section 1.7.2.2) apply. The judge or court can order the construction of the project to be stopped and in the final ruling can decide on the illegality of the permit. An injunction or interim measure (medidas cautelares- provided in Law on Administrative Judicial Review Articles 129-136) can be requested at any stage of the judicial procedure and no procedural requirement is laid down.

Concerning the third question on special rules applicable to this sector, Article 30 of the RDL 1/2016, relating to control, inspection and sanction, establishes that the Autonomous Communities will be competent to adopt injunctive relief and control and inspection measures, and to impose penalties and guarantee compliance with the aims of this law, without prejudice to the State competence in this matter with respect to the water discharges managed by the State General Administration.

14) Is information on access to justice provided to the public in a structured and accessible manner?
1.8.3. Environmental liability

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?

They have to fall within the definition of a concerned or interested party. These are parties considered as such by Article 4 of the Law on the Administrative Procedure, NGOs which comply with the requirements to exercise actio popularis, title holders of the land in which prevention, avoidance or reparation of environmental damages have to be undertaken and those who might have such a status under Autonomous Community legislation.

In addition to the general definition of interested party under the Law on Administrative Procedure, and as concerns the procedure for integrated environmental permits, Article 3.19 of RD 1/2016 also defines, in line with the Aarhus legislation, the interested persons (public concerned), as:

a) Any person who is in any of the circumstances stipulated in Article 4 of Law 39/2015, of 1 October, on the common administrative procedure of the public administrations (mentioned in the previous paragraph).

b) Any non-profit legal person meeting the following requirements:

i). Whose statutory activity, duly evidenced, is to protect the environment in general or any of its elements in particular, provided that such statutory activity may be affected by a decision concerning the granting or review of the integrated environmental permit or its conditions .

ii). Which was incorporated at least two years ago and has been actively undertaking the activities required to perform its statutory activity.

iii). Which, pursuant to its statutes, undertakes its activity in a territory that is affected by the installation for which the integrated environmental permit is being requested.

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

The deadline is two months after the decision taken on environmental remediation was published or notified. It is important to note that if that decision was issued by an authority having a hierarchical superior it has to be subject to previous administrative review before going to a court of law for its review.

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

According to Article 41.2. of Ley 26/2007, de 23 de octubre, de Responsabilidad Ambiental[30] (Law 26/2007, of 23 October, on Environmental Liability) which transposes the Environmental Liability Directive into Spanish Law, when the request for action on environmental liability is impelled by a concerned person different from the operator, the request must be in writing and it must identify the damage(s) or threat of damage according to that Law. In addition, as far as possible, it has to include the following elements:

- The action or omission by the person presumed liable.
- The identity of the person presumed liable.
- The place where the damage or threat of damage was produced.
- The date when the action or omission took place.

Although substantiating the causal relationship might require scientific underpinning or data, this is not compulsory and only has to be provided as far as possible.

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. See answer above.

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)?

Article 45 of Law 26/2007 on Environmental Liability requires the competent authority to justify its decision in writing, either holding the operator environmentally liable or declaring that there is no such liability.

However, environmental liability requests which are unfounded or abusive may be rejected in a reasoned manner.

The decision must contain at least the following:
- Description of the threat of damage or the environmental damage to be eliminated.
- Assessment of the threat of damage or of the environmental damage.
- Where applicable, definition of the prevention or avoidance of new damage, and measures to be taken, accompanied where applicable by appropriate instructions on correct execution.
- Where applicable, definition of the reparation measures to be adopted, accompanied where applicable by appropriate instructions on correct execution.
- Identification of the person who has to adopt the measures.

Deadline for executing the measures.

When the competent authority has adopted and executed measures, the amount and date of payment for those measures.

Identification of the actions that the public administration must carry out if necessary.

The competent authority has to take a decision within six months after the request was filed. This can be extended for another three months if the case is scientifically and technically complex. This extension has to be notified to the parties concerned. If the competent authority does not issue any decision within that deadline the request is considered to be rejected.

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?

Article 41.2 of Law on Environmental Liability allows complainants to request action not only in cases of environmental damage but also in cases of imminent threat of such damage. As mentioned above, concerned parties or public are entitled to file such a request.

7) Which are the competent authorities designated by the MS?
The competent authorities are the regional or autonomous community departments in charge of environmental protection. However, when the damage is caused to water bodies or groundwater bodies which belong to an intercommunity river basin, the competent authority is the Ministry for Ecological Transition and the Demographic Challenge. This Ministry is also competent when the environmental liability procedure is triggered by works of a public interest nature under the competence of the State.

6) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?
If the decision on the environmental liability request is taken by an authority having a hierarchical superior then the administrative review procedure has to 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?
There are no specific rules for cross-border procedures in the Spanish legal order. Therefore, national procedural laws on access to justice apply. See answers under 1.8.1.3) and 6) and at 1.8.2.5) and 8).

2) Notion of public concerned?
The notion of public concerned for administrative review is provided by Article 4 of the Law on Administrative Procedure. See answers in section 1.8.1.4)

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 of the affected country showing a right or legitimate interest do have standing. National rules on timelines and court jurisdiction apply (see answers in section 1.2.). The national rules on legal aid and pro bono apply (see answers in section 1.6). The request for injunctive relief and interim measures are as provided in Articles 129 to 136 of the Law on Administrative Judicial Review (see answer in section 1.8.1.11))

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)?
Same as above.

5) At what stage is the information provided to the public concerned (including the above parties)?
According to Article 49 of Law 21/2013 on Environmental Assessment, when a State might be affected by a plan, programme or project, it has to be informed by the Spanish Ministry for Foreign Affairs. If the notified State decides to participate in the environmental assessment procedure, the Spanish authorities together with the authorities of the notified State have to agree on a calendar for transboundary consultations which includes participation by the concerned public and concerned public authorities of the notified State. Therefore, there is no specific timeframe provided, as this has to be agreed. The only reference to a timeframe related to the duration of preliminary consultations which cannot last more than three months.

6) What are the timeframes for public involvement including access to justice?
The timeframes for public involvement are those agreed between the Spanish authorities and the authorities of the potentially affected country. However, for the final decision taken, the access to justice timeframes are those provided by the Spanish Laws on the Administrative Procedure and on the Administrative Judicial Procedure. (See answer 1.8.1.5) and 8).

7) How is information on access to justice provided to the parties?
Nothing is provided in our legal framework on this. Therefore, it might be subject to agreement among the Spanish authorities and those of the potentially affected country.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?
According to Article 49 of Law 21/2013 on Environmental Assessment, the agreement between the Spanish authorities and those of the potentially affected country has to include an identification of the documents which have to be translated.

9) Any other relevant rules?
There are no other relevant rules.

[1] Every person has the right to enjoy an environment suitable for personal development, as well as the duty to preserve it.

[2] The public authorities shall safeguard rational use of natural resources with a view to protecting and improving the quality of life and preserving and restoring the environment, by relying on essential collective solidarity.

[3] When the law talks about Juzgado it means a single organ and when talks about Tribunal it is referring to a collegiate organ.

[4] This branch only administers justice within the scope of the military corps.


[8] The role was established at the end of the XIXth century as mediator and facilitator in disputes and differences between the King and the aristocracy of those times.


[10] Spanish Supreme Court Judgment 52/2007, of 12 March 2007: “a material and unique relationship between the subject and the object of the action (the challenged act or regulation) in such a manner that its annulment automatically produces a positive effect (benefit) or the end of a negative effect (prejudice) in the present or in the future but certain. That relationship must be understood as referred to a personal interest, qualified, specific, actual and real. Not potential or hypothetical. It is the potential title of the plaintiff to an advantage or legal usefulness, not necessary of monetary content, which shall be materialized in case he/she wins. Legitimate interest is any advantage or legal usefulness derived from the intended reparation” (author’s translation of the Spanish version: “una relación material unívoca entre el sujeto y el objeto de la pretensión (acto o disposición impugnados), de tal forma que su anulación produzca automáticamente un efecto positivo (beneficio) o la cesación de un efecto negativo (perjuicio) actual o futuro pero cierto, debiendo entenderse tal
relación referida a un interés en sentido propio, cualificado y específico, actual y real (no potencial o hipotético). Se trata de la titularidad potencial de una ventaja o de una utilidad jurídica, no necesariamente de contenido patrimonial, por parte de quien ejercita la pretensión, que se materializaría de prosperar ésta. O, lo que es lo mismo, el interés legítimo es cualquier ventaja o utilidad jurídica derivada de la reparación pretendida”.


[16] Article 22 of this Law provides that: “Acts and omissions of public authorities violating environmental protection rules listed in Article 18 (1) can be challenged by any legal non-for-profit person meeting the requirements provided in Article 23 through the administrative review procedure provided in Law on the Administrative Procedure as well as through the administrative judicial review procedure provided by Law 29/1998”. Article 18 (1) lists norms on air pollution, among others. Therefore, this actio popularis covers air litigation.

[17] This requires legal registration in the specific registry of non-for-profit organizations: the associations registries or the foundations registries.

[18] Law 10/2012 of 20 November, regulating certain fees in the field of the Justice Administration and the National Institute of Toxicology and Forensic Sciences.


[21] In this website it is the application form to request legal aid in the territory of Madrid Autonomous Community. Each Autonomous Community has its own application form but these are available online.

[22] Case-by-case consultation is a procedure to determine whether or not a particular plan, programme or project should be subject to an environmental assessment procedure, be it an environmental impact assessment or a strategic environmental assessment. This is called the screening phase in the environmental assessment.

[23] Supreme Court Ruling of 8 April 2011(STS 2092/2011)


[25] These criteria are:

- Their statutes include as the association’s goal the protection of the environment or of any of its elements.
- The association must be legally constituted at least 2 years before the date in which the actions is initiated; it must be active in achieving its goals.
- A geographical connection (established in their statutes) with the area affected by the act or omission.

[26] Ruling of the Supreme Court of 24.05.2011

[27] Supreme Court Judgement of 2 February 2016, Administrative Chamber, Section 5.

[28] These criteria are:

- Their statutes include as the association’s goal the protection of the environment or of any of its elements.
- The association must be legally constituted at least 2 years before the date in which the actions is initiated; it must be active in achieving its goals.
- A geographical connection (established in their statutes) with the area affected by the act or omission.

[29] See also case C-529/15.


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Access to justice failing 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 the 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 main law regulating access to justice in environmental matters is Law 27/2006 of 18 July on the rights to access to information, public participation and access to justice in environmental matters (the Aarhus Law). Title IV of this Law is devoted to access to justice and administrative procedures on environmental matters. The following laws also apply to judicial procedures to defend the environment:

- Law 1/2000, of 7 January, on civil judicial procedure.
- Royal Decree of 14 September of 1882 approving the Law on Criminal Judicial Procedure.

In the administrative jurisdiction before bringing a case to a court of law on many occasions it is necessary to instigate an administrative review. The law regulating the administrative review procedure is Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations.

For administrative review the condition is to be an interested or concerned party as provided in Article 4 of the Law on the Common Administrative Procedure and the Aarhus Law. The time-limit is one month after the administrative act or decision was notified or published or the omission took place. When the administrative procedure was initiated by a concerned party and the administration does not issue a decision within the deadline, “administrative silence” comes into play, and then there is no time-limit for filing an administrative review (Art. 122, Law on the Common Administrative Procedure).

For judicial review the time-limit is two months after the challenged administrative decision or act was notified or published. If the administration did not issue a decision, the deadline is six months after the date the act should have been issued.
After the ratification by Spain of the Aarhus Convention and the adoption of the Aarhus Law, the right on access to justice in environmental matters become very effective. The only remaining problem is the lack of a general actio popularis for natural persons. The existing actio popularis only applies to those NGOs complying with specific criteria. In light of the Spanish legal framework, the doctrine on legal standing for environmental protection from the CJEU is not very relevant any longer.

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

The scope of administrative review includes procedural and substantive questions and it can cover not only the issues alleged by the concerned parties but also those issues raised by the administrative reviewer of its own motion. The administrative review decision has to be consistent with the appellant’s requests (Art.119.3 Law on the Administrative Procedure).

First instance judges or courts can review the procedural and substantive legality of environmental decisions based on the petitions lodged by the plaintiff and the defendant in the lawsuit and the counter arguments to the lawsuit respectively. Judges and courts can only review what the plaintiff and the defendant ask for in their lawsuit and counter arguments (Art. 33, Law on Administrative Judicial Review. However, in administrative judicial reviews if the judge or court considers that that the issue to be judged was not duly understood by the parties because there appear to be other merits on which to base the case, it can ask the parties to file allegations.

In addition, Spanish judicial bodies are not allowed to adopt any decision which falls within the scope of discretion of the Public Administration, and which may entail a replacement of their activity (based on the principle of separation of judicial, executive and legislative powers).

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 a requirement to exhaust administrative review procedures when the first level administrative decision, act or omission does not bring to an end the administrative means of redress. Administrative decisions, acts or omissions bringing to an end the administrative remedies are:

- Decisions in procedures in which a specific law has substituted the hierarchical superior challenge for another procedure
- Decisions of administrative bodies not having a hierarchical superior (for instance, ministers in the national or governments of the Autonomous Communities)
- Agreements, pacts, conventions or contracts considered as finalizing the procedure
- Administrative decisions in procedures related to liability of the Administration
- Decisions in complementary procedures related to infringements
- Other administrative decisions when a law or a regulation establishes that they end the administrative procedure.

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.?

According to the Aarhus Law, NGOs meeting certain criteria can exercise actio popularis. Thus, these entities are not required to participate in the public consultation phase of the administrative procedure, nor to make comments or participate in hearings. In addition, in cases where no actio popularis is possible, the rule is that, in order to have legal standing in the administrative judicial procedure, the plaintiff must show an interest. The Constitutional Court’s doctrine on standing is more linked to the concept of interest than to the concept of participation in the administrative procedure. For this reason, once the plaintiff shows an interest, it is not necessary to prove participation in the administrative procedure.

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

There are no grounds/arguments precluded from the judicial review phase. It is even possible to bring new grounds/arguments that were not used during the administrative review phase.

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

Article 24 of the Spanish Constitution includes as a human right the right to a fair and equitable trial under the fundamental right to a “tutela judicial efectiva” (right to obtain the effective protection of the Judges and the Courts in the exercise of his or her legitimate rights and interests). This right involves the right to a process with all guarantees and right to a due process with impartial judges.

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

The right to “tutela judicial efectiva” in Article 24 of the Spanish Constitution also implies the right to a process without undue delays and to the right to obtain a judgment and its execution within a reasonable time. However, the judicial procedures in environmental matters are often too long and when a judgment is issued the damage has been done.

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?

Under Spanish jurisdiction, there is injunctive relief available for environmental procedures. If the challenge is through administrative review the competent body decide on that review can suspend ex officio or at the request by the appellant the challenged administrative decision. The competent body has to take into account and weight in a reasoned manner the damage the execution of the appealed administrative decision could cause to the public interest or a third-party interest against the damage that execution could cause to the claimant. After that, the suspension can take place when any of the following circumstances happen:

- execution might cause damage which cannot be repaired, or their reparation would be very difficult.
- the appealed decision is based on a violation of fundamental human rights which makes the act null.

In judicial reviews the judge or court can order to stop the implementation of the challenged environmental decision. An injunction or interim measure (medidas cautelares - provided for in the Law on Administrative Judicial Review Articles 129-136) can be requested at any stage of the judicial procedure and no procedural requirement to be eligible for it is provided.

There are no special rules applicable to each sector apart from the general national provisions.

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?

Based on Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, legal and other professional fees are liberalized and bar associations and other professional associations cannot impose either minimum or maximum prices for services. There is no rule on the costs.

In Spain the “loser pays” principle applies (see answer in section 1.7.3.6)). The consequence in that case is that the party will have to pay the amount imposed by the court after a procedure instigated by the judicial secretary to fix the costs of lawyers and experts as well as the court fees. This procedure is provided by Law 1/2000, of 7 January, on Civil Judicial Procedure (Arts. 241-246).

The word “prohibitive” is very subjective, as it depends on the economic situation of the loser. There are no safeguards against the cost being prohibitive for this reason, and the best alternative for NGOs that can exercise actio popularis is to request legal aid as it is a right provided by the Aarhus Law. There is no express statutory reference to a requirement that costs should not be prohibitive.
1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[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?

The main law regulating access to justice in environmental matters is Law 27/2006 of 18 July on the rights to access to information, public participation and access to justice in environmental matters (the Aarhus Law). Title IV of this Law is devoted to access to justice and administrative procedures on environmental matters. The following laws also apply to judicial procedures to defend the environment:

- Law 29/1998, of 13 July, on administrative judicial procedure
- Law 1/2000, of 7 January, on civil judicial procedure
- Royal Decree of 14 September of 1882 approving the Law on Criminal Judicial Procedure.

In the administrative jurisdiction, before bringing a case to a court of law on many occasions it is necessary to instigate an administrative review. The law regulating the administrative review procedure is Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations. To file an administrative review the condition is to be an interested or concerned party as provided in Article 4 of the Law on the Common Administrative Procedure and the Aarhus Law. The time-limit is one month after the administrative act or decision was notified or published. The time-limit only applies to those NGOs complying with specific criteria. In light of the Spanish legal framework, the doctrine on legal standing for environmental protection from the CJEU is not very relevant any longer.

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

The scope of administrative review includes procedural and substantive questions and it can cover not only the issues alleged by the concerned parties but also those issues raised by the administrative reviewer of its own motion. The administrative review decision has to be consistent with the appellant's requests (Art.119.3 Law on the Administrative Procedure).

First instance judges or courts can review the procedural and substantive legality of SEA decisions based on the petitions lodged by the plaintiff and the defendant in the lawsuit and the counter arguments to the lawsuit respectively. Judges and courts can only review what the plaintiff and the defendant ask for in their lawsuit and counter arguments (Art. 33, Law on Administrative Judicial Review. However, in administrative judicial reviews if the judge or court considers that the issue to be judged was not duly understood by the parties because in there appear to be other merits on which to base the case, it can ask the parties to file allegations.

In addition, Spanish judicial bodies are not allowed to adopt any decision which falls within the scope of discretion of the Public Administration, and which may entail a replacement of their activity (based on the principle of separation of judicial, executive and legislative powers).

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 a requirement to exhaust administrative review procedures when the first level administrative decision, act or omission does not bring to an end the administrative remedies of redress. Administrative decisions, acts or omissions bringing to an end the administrative remedies are:

- Decisions of administrative bodies not having a hierarchical superior
- Agreements, pacts, conventions or contracts considered as finalizing the procedure
- Administrative decisions in procedures related to liability of the Administration
- Decisions in complementary procedures related to infringements

Other administrative decisions when a law or a regulation establishes that they end the administrative procedure.

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.?

According to the Aarhus Law, NGOs meeting certain criteria[4] can exercise actio popularis. Thus, these entities are not required to participate in the public consultation phase of the SEA procedure, nor to make comments or participate in hearings. According to Law on Environmental Assessment there are two opportunities for the public to make comments in a SEA procedure. In the first, the concerned public can submit comments on the scoping document for the environmental report within a period of 45 days. The second opportunity to submit comments is open to the public in general and also the concerned public and takes place once the promoter has prepared the draft environmental report, then the substantive body opens this consultation for a period of 45 days. In addition, in cases where no actio popularis is possible, the rule is that, in order to have legal standing in the administrative judicial procedure, the plaintiff must show an interest. The Constitutional Court's doctrine on standing is more linked to the concept of interest than to the concept of participation in the administrative procedure. For this reason, once the plaintiff shows an interest, it is not necessary to prove participation in the administrative procedure.

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

There are no special rules applicable to SEA procedures apart from the general national provisions.

Under Spanish jurisdiction, there is injunctive relief available for environmental procedures including environmental plan procedures. If the challenge is through administrative review the competent body able to decide on that review can suspend the challenged plan or programme ex officio or at the request by the appellant. The competent body has to take into account and weight in a reasoned manner the damage the execution of the appealed plan could cause to the public interest or a third-party interest against the damage that execution could cause to the claimant. After that, the suspension can take place when any of the following circumstances happens:

- the execution might cause damage which cannot be repaired, or their reparation would be very difficult
- the appealed plan is based on a violation of fundamental human rights which turns the act null.

In judicial reviews the judge or court can order the implementation of the challenged plan to be stopped. An injunction or interim measure (medidas cautelares - provided in the Law on Administrative Judicial Review Articles 129-136) can be requested at any stage of the judicial procedure and no procedural requirement to be eligible for it is provided.
Based on Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, legal and other professional fees are liberalized and bar associations and other professional associations cannot impose either minimum or maximum prices for services. There is no rule on the costs. In Spain the “loser party pays” principle applies (see answer in section 1.7.3.6)). The consequence in that case is that the party will have to pay the amount imposed by the court after a procedure instigated by the judicial secretary to fix the costs of lawyers and experts as well as the court fees. This procedure is provided by Law 1/2000, of 7 January, on Civil Judicial Procedure (Arts. 241-246). The word “prohibitive” is very subjective, as it depends on the economic situation of the loser. There are no safeguards against the cost being prohibitive for this reason, and the best alternative for NGOs that can exercise actio popularis is to request legal aid as it is a right provided by the Aarhus Law. There is no express statutory reference to a requirement that costs should not be prohibitive.

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

Based on Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on services in the internal market, the right of access to justice is not very relevant any longer. Spain has no national framework to ensure access to justice in administrative proceedings. The only remaining problem is the lack of a general actio popularis for natural persons. Although NGOs complying with specific criteria. In light of the Spanish legal framework, the doctrine on legal standing for environmental protection from the CJEU is not very relevant any longer.

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

The scope of administrative review in the case of those plans includes procedural and substantive questions and it can cover not only the issues alleged by the concerned parties but also those issues raised by the administrative reviewer of its own motion. The administrative review decision has to be consistent with the appellant’s requests (Art.119.3 Law on the Administrative Procedure).

First instance judges or courts can review the procedural and substantive legality of decisions on plans based on the petitions lodged by the applicant and the defendant in the lawsuit and the counter arguments to the lawsuit respectively. Judges and courts can only review what the plaintiff and the defendant ask for in the lawsuit and counter arguments (Art. 33, Law on Administrative Judicial Review). However, in administrative judicial reviews if the judge or court considers that the issue to be judged was not duly understood by the parties because there appear to be other merits on which to base the case, it can ask the parties to file allegations.

In addition, Spanish judicial bodies are not allowed to adopt any decision which falls within the scope of discretion of the Public Administration, and which may entail a replacement of their activity (based on the principle of separation of judicial, executive and legislative powers).

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 a requirement to exhaust administrative review procedures when the first level administrative decision, act or omission does not bring to an end the administrative means of redress. Administrative decision, act or omission bringing to an end the administrative remedies are:

- Decisions taken in procedures in which a specific law has substituted the hierarchical superior challenge for another procedure
- Administrative decisions not having a hierarchical superior
- Agreements, pacts, conventions or contracts considered as finalizing the procedure
- Administrative decisions in procedures related to liability of the Administration
- Decisions in complementary procedures related to infringements
- Other administrative decisions when a law or a regulation establishes that they end the administrative procedure.

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.?

According to the Aarhus Law, NGOs meeting certain criteria[6] can exercise actio popularis. Thus, these entities are not required to participate in the public consultation phase of said plans or programmes, or to make comments or participate in hearings.

In addition, in cases where no actio popularis is possible, the rule is that, in order to have legal standing in the administrative judicial procedure, the plaintiff must show an interest. The Constitutional Court’s doctrine on standing is more linked to the concept of interest than to the concept of participation in the administrative procedure. For this reason, once the plaintiff shows an interest, it is not necessary to prove participation in the administrative procedure.
5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There are no special rules applicable to environmental plans apart from the general national provisions. Under Spanish jurisdiction, there is injunctive relief available for environmental procedures including said plans and programmes. If the challenge is through administrative review, the competent body able to decide on that review can suspend the challenged plan or programme ex officio or at the request by the appellant. The competent body has to take into account and weight in a reasoned manner the damage the execution of the appealed plan could cause to the public interest or to a third-party interest against the damage that execution could cause to the claimant. After that, the suspension can take place when any of the following circumstances happens:

- the execution might cause damages which cannot be repaired, or their reparation would be very difficult
- the appealed plan is based on a violation of fundamental human rights which turns the act null.

In judicial reviews the judge or court can order to stop the implementation of the challenged plan. An injunction or interim measure (medidas cautelares - provided for in the Law on Administrative Judicial Review Articles 129-136) can be requested at any stage of the judicial procedure and no procedural requirement to be eligible for it is provided.

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?

Based on Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, legal and other professional fees are liberalized and bar associations and other professional associations cannot impose either minimum or maximum prices for services.

There is no rule on the costs. In Spain the 'loser pays' principle applies (see answer in section 1.7.3.6)). The consequence in that case is that the party will have to pay the amount imposed by the court after a procedure instigated by the judicial secretary to fix the costs of lawyers and experts as well as the court fees. This procedure is provided by Law 1/2000, of 7 January, on Civil Judicial Procedure (arts. 241-246).

The word “prohibitive” is very subjective, as it depends on the economic situation of the loser. There are no safeguards against the cost being prohibitive for this reason, and the best alternative for NGOs that can exercise actio popularis is to request legal aid as it is a right provided by the Aarhus Law. There is no express statutory reference to a requirement that costs should not be prohibitive.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[7]

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

The main law regulating access to justice in environmental matters is Law 27/2006 of 18 July on the rights to access to information, public participation and access to justice in environmental matters (the Aarhus Law). Title IV of this Law is devoted to access to justice and administrative procedures on environmental matters. This title applies to plans such as those on waste, batteries, air quality, packaging and packaging waste, among other things. The following laws also apply to judicial procedures to defend the environment which also apply to those plans: Law 29/1998, of 13 July, on administrative judicial procedure Law 1/2000, of 7 January, on civil judicial procedure Royal Decree of 14 September of 1882 approving the Law on Criminal Judicial Procedure.

In the administrative jurisdiction before bringing a case to a court of law on many occasions it is necessary to instigate an administrative review. The law regulating the administrative review procedure is Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations. To file an administrative review the condition is to be an interested or concerned party as provided in Article 4 of the Law on the Common Administrative Procedure and the Aarhus Law. The time-limit is one month after the administrative act or decision was notified or published or the omission took place. When the administrative procedure was initiated by a concerned party and the administration does not issue a decision within the deadline, “administrative silence” comes into play, and then there is no time-limit to file an administrative review (Art. 122, Law on the Administrative Procedure).

For judicial review the time-limit is two months after the challenged administrative decision or act was notified or published. If the administration did not issue a decision, the deadline is six months after the date the act should have been issued.

After the ratification by Spain of the Aarhus Convention and the adoption of the Aarhus Law the right on access to justice in environmental matters become very effective. The only remaining problem is the lack of a general actio popularis for natural persons. The existing actio popularis only applies to those NGOs complying with specific criteria. In light of the Spanish legal framework, the doctrine on legal standing for environmental protection from the CJEU is not very relevant any longer.

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)?

The form in which the plan or programme is adopted makes a difference in terms of legal standing.

Administrative review (Article 112.1, Law on the Common Administrative Procedure) and judicial review (Article 1, Law on Administrative Judicial Review) can be filed by concerned parties in the terms of Article 4 of Law on the Common Administrative Procedure and by NGOs that can exercise actio popularis when the plan has been adopted by an administrative act. If the plan or programme has been adopted by a regulatory act -a Royal Decree when it is the State level or a Decree at the Autonomous Community level or an ordinance at the municipal level - it can only be challenged through judicial review (Article 112.3, Law on the Common Administrative Procedure and Article 1, Law on Administrative Judicial Procedure) by those having an interest.

If the plan or programme has been adopted by a legislative act – i.e. Law or Legislative Decree - it has to be challenged through an unconstitutionality review before the Spanish Constitutional Court. This challenge has to be based on a violation of constitutional provisions. Standing for this review is limited to (Article 32, Organic Law 2/1979, of 3 October, on the Constitutional Court[8]):

The Head of Government
The Ombudsman
50 Members of the Spanish Parliament
50 Senators.

If the plan or programme adopted by Law could affect the scope of an Autonomous Community, standing is extended to the collegiate bodies of the Autonomous Community (executive power) and to its Assemblies or Parliamentary bodies if there is an agreement to challenge it.

The same applies to plans or programmes adopted through Autonomous Community laws.

In addition, judges and courts can file by own motion or at the request of a party in a judicial review a “question of unconstitutionality” against a plan or programme approved by a legislative act when the judge or court considers that this Law applies to the case and it may be contrary to the Spanish Constitution (Article 37, Law on the Constitutional Court).
The scope of administrative review in the case of these plans or programmes includes procedural and substantive questions and it can cover not only the issues alleged by the concerned parties but also those issues raised by the administrative reviewer of its own motion. The administrative review decision has to be consistent with the appellant’s requests (Art.119.3 Law on the Administrative Procedure).

First instance judges or courts can review the procedural and substantive legality of decisions on plans based on the petitions lodged by the plaintiff and the defendant in the lawsuit and the counter arguments to the lawsuit respectively. Judges and courts can only review what the plaintiff and the defendant ask for in their lawsuit and counter arguments (Art. 33, Law on Administrative Judicial Review). However, in administrative judicial reviews if the judge or court considers that the issue to be judged was not duly understood by the parties because there appear to be other merits on which to base the case, it can ask the parties to file allegations.

In addition, Spanish judicial bodies are not allowed to adopt any decision which falls within the scope of discretion of the Public Administration, and which may entail a replacement of their activity (based on the principle of separation of judicial, executive and legislative powers).

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 a requirement to exhaust administrative review procedures when the first level administrative decision, act or omission related to those plans or programmes does not bring to an end the administrative means of redress. Administrative decisions, acts or omissions bringing to an end the administrative remedies are:

Decisions taken in procedures in which a specific law has substituted the hierarchical superior challenge for another procedure

Decisions of administrative bodies not having a hierarchical superior

Agreements, pacts, conventions or contracts considered as finalizing the procedure

Administrative decisions in procedures related to liability of the Administration

Decisions in complementary procedures related to infringements

Other administrative decisions when a law or a regulation establishes that they end the administrative procedure.

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.?

According to the Aarhus Law, NGOs meeting certain criteria[9] can exercise *actio popularis*. Thus, these entities are not required to participate in the public consultation phase of said plans or programmes, or to make comments nor to participate in hearings.

In addition, in cases where no *actio popularis* is possible, the rule is that to have legal standing in the administrative judicial procedure, the plaintiff must show an interest. The Constitutional Court’s doctrine on standing is more linked to the concept of interest than to the concept of participation in the administrative procedure. For this reason, once the plaintiff shows an interest, it is not necessary to prove participation in the administrative procedure.

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

There are no grounds/arguments precluded from the judicial review phase. It is even possible to bring new grounds/arguments that were not used during the administrative review phase.

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

Article 24 of the Spanish Constitution recognizes the right to a fair and equitable trial as a human right integrated within the fundamental right to a “tutela judicial efectiva” (right to obtain the effective protection of the Judges and the Courts in the exercise of his or her legitimate rights and interests). This right involves the right to a process with all guarantees and right to a due process with impartial judges.

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

The right to “tutela judicial efectiva” in Article 24 of the Spanish Constitution also implies a right to a process without undue delays and the right to obtain a judgment and its execution within a reasonable time. However, the judicial procedures in environmental matters as it is for said plans and programmes are often too long and when a judgment is issued the damage has been done.

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?

Under Spanish jurisdiction, there is injunctive relief available for environmental procedures such as those related to said plans and programmes. If the challenge is through administrative review the competent body able to decide on that review can suspend *ex officio* or after the request by the appellant the challenged administrative decision. The competent body has to take into account and weight in a reasoned manner the damage the execution of the appealed administrative decision could cause to the public interest or a third-party interest against the damage that execution could cause to the claimant.

After that, the suspension can take place when any of the following circumstances happen:

- the execution might cause damages which cannot be repaired, or their reparation would be very difficult.
- the appealed decision is based on a violation of fundamental human rights which makes the act null.

In judicial reviews the judge or court can order to stop the implementation of the challenged environmental decision. An injunction or interim measure (medidas cautelares - provided in the Law on Administrative Judicial Review Articles 129-136) can be requested at any stage of the judicial procedure and no procedural requirement to be eligible for it is provided.

There are no special rules applicable to each sector apart from the general national provisions.

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?

Based on Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, legal and other professional fees are liberalized and bar associations and other professional associations cannot impose either minimum or maximum prices for services. There is no rule on the costs.

In Spain the “loser party pays” principle applies (see answer in section 1.7.3.6). The consequence in that case is that the party will have to pay the amount imposed by the court after a procedure instigated by the judicial secretary to fix the costs of lawyers and experts as well as the court fees. This procedure is provided for by Law 1/2000, of 7 January, on Civil Judicial Procedure (arts. 241-246).

The Spanish legislation do not contain any mention of the requirement that costs should not be prohibitive. However, as this is contained in the Aarhus Convention and this Convention is part of the Spanish legal order, this requirement has to be respected.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[10]
1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedure for adopting or the content of the decision, act or omission of the national regulatory act (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The main law regulating access to justice in environmental matters, including legislative and regulatory acts to protect the environment which transpose EU environmental legislation, is Law 27/2006 of 18 July on the rights on access to information, public participation and access to justice in environmental matters (the Aarhus Law). Title IV of this Law is devoted to access to justice and administrative procedures on environmental matters. This title applies to some normative acts of a regulatory nature transposing EU environmental legislation, but does not apply to legislative acts. The following laws apply to judicial review procedures to challenge normative acts of a regulatory nature transposing EU environmental legislation:


Law 1/2000, of 7 January, on civil judicial procedure.

Royal Decree of 14 September of 1882 approving the Law on Criminal Judicial Procedure.

In the administrative jurisdiction before bringing a case to a court of law on many occasions it is necessary to instigate an administrative review. The law regulating the administrative review procedure is Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations.

Most of EU environmental legislation is transposed in Spain by:

**Acts of a legal or legislative nature**: Laws adopted by the Spanish Parliament, Legislative Decrees and Legislative Royal Decrees adopted by the Council of Ministers. At the Autonomous Community level, EU legislation may be transposed by Laws adopted by the regional assemblies or parliaments, or by Legislative Decrees adopted by the regional government.

**Acts of a regulatory nature**: Royal Decrees adopted by the Council of Ministers or Ministerial Orders adopted by the competent minister. At the Autonomous Community level, EU legislation may be also transposed by Decrees adopted by the President of the Autonomous Community, or by orders or resolutions of the competent regional minister. At the municipal level this is done by a municipal ordinance adopted by the municipal chamber comprised by the mayor and counsellors.

Laws cannot be directly challenged or appealed before a court of law by natural or legal persons. Laws can only be challenged through the unconstitutionality review before the Spanish Constitutional Court. This challenge has to be based on a violation of constitutional provisions. Standing for this review is limited to (Article 32, Organic Law 2/1979, of 3 October, on the Constitutional Court):

The Head of Government.

The Ombudsman.

50 Members of the Spanish Parliament.

50 Senators.

If State laws could affect the scope of competence of an Autonomous Community, standing is extended to the collegiate bodies of the Autonomous Community (executive power) and to their Assemblies or Parliamentary bodies if there is an agreement to challenge it. The same applies to Laws adopted by Autonomous Community Parliaments.

The deadline to challenge a Law or act of a legislative nature before the Constitutional Court is 3 months after its publication in the official journal. However, when the unconstitutionality review is filed by the President of the Government or the executive or by presidential bodies of the Autonomous Communities this deadline may be 9 months under certain conditions.

In addition, in the course of a procedure against an administrative act in which a Law that transposes EU environmental legislation is under question, judges and courts can file of their own motion or at the request of a party in that judicial review a “question of unconstitutionality” when the judge or court considers that that Law applies to the case and it may be contrary to the Spanish Constitution (Article 37, Law on the Constitutional Court).

Act of a regulatory nature transposing EU environmental legislation can only be challenged through judicial review (Articles 112.3, Law on the Common Administrative Procedure and Article 1, Law on Administrative Judicial Procedure) by the concerned public, i.e. those with an interest in the terms of the administrative judicial review. The deadline to file it is of two months after publication of the challenged regulatory act in the corresponding official journal. After the ratification by Spain of the Aarhus Convention and the adoption of the Aarhus Law, the right of access to justice in environmental matters become very effective. The only remaining problem is the lack of a general actio popularis for natural persons. The existing actio popularis only applies to those NGOs complying with specific criteria. In light of the Spanish legal framework, the doctrine on legal standing for environmental protection from the CJEU is not very relevant any longer.

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?

First instance judges or courts can review the procedural and substantive legality of acts of a regulatory nature based on the petitions lodged by the plaintiff and the defendant in the lawsuit and the counter arguments to the lawsuit respectively. Judges and courts can only review what the plaintiff and the defendant ask for in their lawsuit and counter arguments (Art. 33, Law on Administrative Judicial Review). However, in administrative judicial reviews if the judge or court considers that that the issue to be judged was not duly understood by the parties because there appear to be other merits on which to base the case, it can ask the parties to file allegations.

The judge or court can rule the regulatory act contrary to Law and it can annul in its totality or partially the challenged regulatory act and can order to modify it. In the case of challenges to legislative nature, if the Constitutional Court declares the act unconstitutional, it also has to declare that act null as well as those acts to which it has to be extended because there are connections, or which are consequential on it. The Constitutional Court can base the unconstitutionality in the infringement of any constitutional provision, even those not alleged in the procedure.

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

When challenging acts of a legislative and a regulatory nature, judicial review is the only means of redress. Therefore, there is no requirement to exhaust administrative review procedures.

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

In order to challenge acts of a legislative or regulatory nature transposing EU environmental legislation, there is no requirement to have participated in the public consultation before the adoption of those acts in order to file a judicial review against it.

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?

Under Spanish jurisdiction, there is injunctive relief available for environmental procedures against acts of a regulatory nature which transpose EU environmental legislation. It is in the writ of appeal or in the lawsuit against that regulatory act to be filed before a judge or court that the injunction or interim measure has to be requested.
In judicial reviews the judge or court can order the implementation of regulatory acts to be stopped. In such cases, the judicial Secretary has to order the publication of such a decision.

There are no special rules applicable when requesting injunctions or interim measures in the course of a judicial review against an act of a regulatory nature transposing EU environmental legislation. Thus, Articles 129-136 providing the procedure for interim measures of the Law on the Administrative Judicial Review apply.

The admission of an unconstitutionality review does not lead to suspension of the implementation of the challenged legal provisions. It can only be suspended by the Constitutional Court when the President of the Government submits a Law or an act of a legal nature from an Autonomous Community and expressly requests in the lawsuit such a suspension of the entry into force and implementation of the challenged legal act (Article 30 Organic Law of the Constitutional Court). However, the Constitutional Court has to ratify or cancel the suspension within a period of five months.

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 procedures before the Constitutional Court are free, including the unconstitutionality review (Article 95., Organic Law on the Constitutional Court).

However, the Court can impose the costs of a procedure on the party or parties that make ungrounded allegations or when it considers there was bad faith in the procedure or abuse of the law. In those cases the Constitutional Court can also impose a fine ranging from 600 to 3,000 euros.

For cases against acts of a regulatory nature transposing EU environmental legislation, there are no rules on the costs. Based on Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, legal and other professional fees are liberalized and bar associations and other professional associations cannot impose either minimum or maximum prices for services.

In Spain the 'loser party pays' principle applies (see answer in section 1.7.3.6)). The consequence in that case is that the losing party will have to pay the amount imposed by the court after a procedure instigated by the judicial secretary to fix the costs of lawyers and experts as well as the court fees. This procedure is provided by Law 1/2000, of 7 January, on Civil Judicial Procedure (Arts. 241-246).

Spanish legislation does not contain any mention to the requirement that costs should not be prohibitive. However, as this is contained in the Aarhus Convention and this Convention is part of the Spanish legal order, this requirement has to be respected.

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?[12]

It is important to note at the outset that, in Spain, the decision to file a preliminary ruling before the CJEU is a decision that exclusively belongs to the judge or court but that the parties in a procedure can request the judge or court to file it.

A legal challenge against an EU regulatory act can be brought within the course of a judicial review against an administrative act or regulatory act which is an act implementing the EU regulatory act. Then, the parties can request the judge or court to file it although, as mentioned earlier, it is for the judge to decide whether or not to do it. Normally, the parties can make such a request in their lawsuit or allegations in a part of the process called “otros”. When the judge or court has doubts on the validity of the EU regulatory act it has to file the preliminary ruling.

[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 3rd Commission Notice C/2017/2616 on access to justice in environmental matters
[2] These criteria are:
Their statutes include as the association’s goal the protection of the environment or of any of its elements.
The association must be legally constituted at least 2 years before the date in which the actions is initiated; it must be active in achieving its goals.
A geographical connection (established in their statutes) with the area affected by the act or omission.
[3] The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.
[4] These criteria are:
Their statutes include as the association’s goal the protection of the environment or of any of its elements.
The association must be legally constituted at least 2 years before the date in which the actions is initiated; it must be active in achieving its goals.
A geographical connection (established in their statutes) with the area affected by the act or omission.
[5] 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.
[6] These criteria are:
Their statutes include as the association’s goal the protection of the environment or of any of its elements.
The association must be legally constituted at least 2 years before the date in which the actions is initiated; it must be active in achieving its goals.
A geographical connection (established in their statutes) with the area affected by the act or omission.
[7] 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.
[9] These criteria are:
Their statutes include as the association’s goal the protection of the environment or of any of its elements.
The association must be legally constituted at least 2 years before the date in which the actions is initiated; it must be active in achieving its goals.
A geographical connection (established in their statutes) with the area affected by the act or omission.
[10] 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 Hoekschevaards Landschap,ECLI:EU:C:2017:774.
[12] For an example of such a preliminary reference see Case C-281/16, Vereniging Hoekschevaards Landschap,ECLI:EU:C:2017:774

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Other relevant rules on appeals, remedies and access to justice in environmental matters
Remedies against the silence of the administration

The Administration is obliged to decide on a written resolution and notify it in all administrative procedures (Article 21.1. Law on the Common Administrative Procedure). However, on many occasions the administration does not take a decision within the applicable deadlines. In these cases, so called “administrative silence” or inaction enters into play. There are to kind of administrative silence under Spanish Law:

Positive silence, which implies that the administration approves the request or application filed by a natural or legal person. In this case, the administrative silence is considered as an administrative act which concludes the administrative procedure. In addition, given the obligation of the administration to take a decision, if it takes it later it has to confirm the positive response.

Negative silence (which implies an implicit refusal of the application), whose effect is to allow the concerned public or party to file the correspondent administrative review. In light of the obligation of the administration to decide, if it takes it later it does not have to be attached to the negative silence.

Presumed acts (tacit decisions) produced by administrative silence can be challenged through administrative review and/or judicial review.

The administrative review is of two types:

Review by the hierarchical superior (recurso de alzada): this review has to be filed when the administrative silence is produced by a presumed act issued by a public servant having a hierarchical superior. This review is compulsory when the challenged presumed act does not close the administrative means of redress and must be filed before filing a judicial review.

Review by the same administrative authority that issued the presumed act: this review is voluntary as it can only be filed against a presumed administrative act bringing to an end the administrative means of redress. However, an act bringing to an end the administrative means of redress can be directly challenged through judicial review.

This is possible when the first level administrative decision closes or brings to an end the administrative means of redress. This happens in the following cases:

Decisions taken in procedures in which a specific law has substituted the hierarchical superior challenge for another procedure

Decisions of administrative bodies not having a hierarchical superior

Agreements, pacts, conventions or contracts considered as finalizing the procedure

Administrative decisions in procedures related to liability of the Administration

Decisions in complementary procedures related to infringements

Other administrative decisions when a law or a regulation establishes that they end the administrative procedure.

The decision or act was issued by a Minister or a Secretary of State

Once the administrative means of redress have been closed, the presumed act by administrative silence can be subject to judicial review.

With respect to the AAI procedure established in RDL 1/2016, concerning integrated pollution prevention and control, and in line with the condition that the IPPC permit has to be a written permit, Article 21.2 states that once the deadline of nine months given to issue the authorization has elapsed without an explicit resolution, it shall be considered to be rejected.

Penalties that the judiciary or any other independent and impartial body (information commissioner, ombudsman, prosecutor, etc.) can impose on the public administration for failing to provide effective access to justice.

Under Spanish law there is no possibility for the concerned public to request the judiciary or any other independent or impartial body to impose penalties on the public administration for failing to provide effective access to justice or for any other violation of legal provisions. When a judicial body rules that an administration has not complied with provisions on access to justice on environmental matters it can impose the costs of the judicial procedure.

Penalties for the de-facto contempt of the court, e.g. when the judgment of the court is not followed and respected.

Once a judge’s or a court’s ruling becomes firm (because it has to been appealed or it cannot be appealed), the judicial secretary notifies this to the administrative body whose act, or decision was challenged, for it to comply with the orders in the ruling. If the orders are not complied with within two months, the concerned public can request “compulsory execution”. In these cases, the judicial secretary has to call upon the non-compliant administration to file allegations, and if the lack of compliance with the ruling is proved, the judge or court may:

Impose penalties from 150 to 1.500 euros per day on the authorities, public servants or agents who do not respect the orders of the judge as well as reiterates those penalties until complete execution of the ruling, without prejudice to other financial responsibilities.

Compile the corresponding testimonials by the concerned public to claim criminal liability.

Need of specialized courts or trained judges

Given the complexity of environmental protection cases, one of the main challenges in Spain regarding access to justice in environmental matters is to have specialized courts or trained judges. This would guarantee that the cases are heard and ruled on based on appropriate knowledge and understanding and with the necessary resources.

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Access to justice in environmental matters - France

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
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
French environmental law was born in the early nineteen-seventies[1]. Since 2000, France has had an Environmental Code which brings together the numerous legislative and regulatory texts aimed at protecting the environment[2]. The main sources of legislation, in addition to the constituent power, are the Parliament, which adopts legislative acts and the Government, which adopts regulations and individual administrative acts. At the local level, prefects represent the State and have regulatory power. Local and regional governments also have, within the scope of their competences, regulatory power. Prior authorisations are issued, depending on the case, by the Minister of the Environment, by the prefects (e.g. pollution permits) or by the local governments (e.g. building permits).

France ratified the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters on 8 July 2002, and the Convention came into force on 6 October 2002[3]. The procedural rights provided for in the Aarhus Convention were already guaranteed by French law prior to the ratification of that Convention. Freedom of access to administrative documents has been guaranteed since the Law of 17 July 1978[4]. Public participation has existed in certain areas since the 19th century, but it was extended to all environmental procedures with the Law of 12 July 1983[5]. Access to justice is traditionally quite broad in France, both for individuals and legal entities, but the procedure for associative approval, reinforced by the Law of 2 February 1995[6], has made it possible to grant specific rights to approved environmental protection associations.

2) Constitution – main provisions on environment and access to justice in the national constitution

Since 2005, the French Constitution of 1958 has protected environmental rights. The “Charter for the Environment”[7] has a constitutional value[8]. It is a mandatory constitutional norm. The Charter provides, inter alia[9]:

- the right to a balanced and healthy environment (Art. 1);
- the duty to preserve the environment (Art. 2);
- the duty to prevent damages to the environment (Art. 3);
- the duty to compensate damages to the environment (Art. 4);
- the precautionary principle (Art. 5);
- the principle of sustainable development (Art. 6);
- the rights to have access to environmental information and to participate in environmental decision making (Art. 7)[10].

The Charter for the Environment does not provide the right of access to justice. However, based on Article 16 of the Declaration of Human and Civic Rights of 26 August 1789, the French Constitutional Court recognized the “the right of the persons concerned to seek an effective remedy before a court”[11]. This covers remedies in environmental matters.

Most of the Aarhus Convention provisions cannot be invoked before French courts. For example, Article 9, paragraph 3 and paragraph 5, of the Aarhus Convention has no direct effect and cannot be invoked[12].

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

General provisions on access to justice are disseminated in several codes, in particular the Code of Civil Procedure, the Code of Criminal Procedure and the Code of Administrative Justice. Regarding administrative litigation, the most important rules regarding access to the administrative justice result from case law[13]. Specific provisions on access to justice in environmental matters are provided by the Environmental Code, only for environmental NGOs[14]. First, every NGO whose purpose is environmental protection can appeal before administrative jurisdictions against administrative acts or omissions relating to environmental protection.

Second, every environmental NGO that has been approved under Article L. 141-1 of the Environmental Code[15] is presumed to have standing to challenge any administrative decision relating to environmental protection and which has a direct link with the purpose of the NGO[16]. Third, Article L. 142-2 of the Environmental Code provides that approved NGOs may exercise the rights granted to the civil party in respect of acts that are directly or indirectly prejudicial to the collective interests that they are intended to defend and which constitute an infringement of the legislative provisions relating to the protection the environment. As a consequence, under Article 2 of the Code of Criminal Procedure, approved NGOs may bring an action for compensation of damages caused by a criminal offence. The same right is also granted to “territorial communities”[17] under Article L. 142-4 of the Environmental Code.

Fourth, Article L. 142-3 of the Environmental Code provides that, where several natural persons have suffered individual losses which have been caused by the same person, claim compensation before any court on their behalf.

Fifth, Article L. 142-3-1 of the Environmental Code provides that a class action may be brought before a civil or an administrative court where several persons placed in a similar situation suffer prejudice resulting from environmental damage, caused by the same person, having for common cause a failure of the same nature to fulfill their legal or contractual obligations[18]. Moreover, the Environmental Code and the Rural and Maritime Fishing Code provide for other provisions on access to justice, especially for hunters and professional organisations:

First, Article L. 421-6 of the Environmental Code provides that the departmental hunters’ federations may exercise the rights granted to the civil party in respect of acts constituting an infringement of the provisions applicable to protected species.

Second, Article L. 944-4 of the Rural and Maritime Fishing Code provides that the professional organisations set up in application of Articles L. 912-1, L. 912-6 and L. 912-11 may exercise the rights granted to the civil party in respect of acts which constitute a breach of the provisions relating to water protection and fishing which are directly or indirectly prejudicial to the collective interests which they are intended to defend.

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

In France, access to justice is traditionally relatively broad. In particular, the ease of access to administrative justice results from the long-standing case law of the Conseil d’Etat, i.e. the administrative supreme court:

Conseil d’Etat, 29 mars 1901, Casanova, rec. p. 333: taxpayers have standing to appeal local government decisions affecting the finances of the local government.

Conseil d’Etat, 21 décembre 1906, Syndicat des propriétaires et contribuables du quartier de la Croix-de-Seguey-Tivoli, rec. p. 962: the Conseil d’Etat admitted an action of collective interest brought by an association. The latter has the right to take legal action to defend its social object, in this case the preservation of public transport services in a neighbourhood.

Conseil d’Etat, 28 décembre 1906, Syndicat des patrons-coiffeurs de Limoges, rec., p. 977: the Conseil d’Etat recognised the admissibility of trade unions to defend the interests for which they are responsible.
Conseil d'État, Ass., 17 février 1950, *Dame Lamotte*, rec. p. 110: the "recours pour excès de pouvoir", literally the “appeal for abuse of authority”, which allows an individual to apply for the annulment of an administrative act, is possible against any administrative act even without a text providing a legal base to such appeal. Its function is the respect of legality.  

Conseil d'État, 31 octobre 1969, *Syndicat de défense des eaux de la Durance*, rec. p. 462: even non-registered associations can appeal administrative acts adversely affecting the interests which they are defending.  


Conseil d'État, 19 novembre 2020, commune de Grande-Synthe, n° 427301: ruling on a case regarding the fulfilment of France’s commitments to reduce greenhouse gas emissions, Grande-Synthe, a city in the North of France, referred the matter to the Conseil d’État after it received a refusal from the Government to take additional measures in order to meet the objectives of the Paris Agreement. The French supreme administrative court found that the petition of the city, a coastal municipality particularly exposed to the effects of climate change, was admissible.  

In the field of the environment, the administrative judges simply applied this case law from ordinary law and adapted it for environmental protection associations. In particular, concerning approved associations, standing is to be assessed in the light of three cumulative conditions: the statutory purpose of the association must be directly related to the appealed decision, the appealed decision must have harmful effects on the environment, and the geographical scope of the association's approval must be greater than or equal to that of the contested decision.[20] Conversely, in principle, the fact that an administrative decision has a local scope precludes an association with a national remit from proving an interest giving it standing[21]. However, it may be otherwise when the decision, because of its implications, particularly in the area of public freedoms, raises questions which, by their nature and purpose, go beyond local circumstances alone[22].  

Concerning criminal and civil appeals, the Court of Cassation, i.e. the highest court in the French judiciary, decided that an association has standing where the unlawful act undermines the purpose of the association.[23]. However, the French Parliament has restricted access to justice in urban planning matters and the Conseil constitutionnel, i.e. the French constitutional court, approved those restrictions: Article L. 600-1-1 of the Urban Planning Code, which limits legal action to associations declared prior to the posting of the building permit application, has been approved by the Conseil constitutionnel[24] and the administrative judge[25]. Article L. 480-13 of the Urban Planning Code, which limits the possibility of obtaining the demolition of an illegal construction, has been approved by the Conseil constitutionnel[26]. Article 600-1-2 of the Urban Planning Code provides that: a person, other than the State, the territorial collectives or their groupings or an association, is admissible to bring an appeal against a decision relating to the occupation or use of the land only if the authorised project is likely to directly affect the conditions for occupation, use or enjoyment of the property[27].  

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?  

A distinction must be made between international conventions and European directives.  

Concerning international conventions, their provisions which do not produce any direct effect cannot be invoked by individuals before domestic courts[28]. To produce a direct effect, a treaty provision must provide rights to individuals and be self-executing. Therefore, very few international environmental agreement provisions produce a direct effect[29].  

Concerning European directives, French case law has been brought into line with the criteria laid down by the Court of Justice of the European Union[30]. Therefore, European directives can be widely invoked[31].  

1.2. Jurisdiction of the courts  

1) Number of levels in the court system  

The French court system is mainly divided into two branches[32]. These two branches are likely to intervene in environmental matters. On the one hand, the judicial branch is competent to judge disputes between two private individuals, and to punish infringements of criminal laws. It deals, inter alia, with civil and criminal cases and has 3 levels:  

First instance tribunals: the “tribunal judiciaire” is in charge of civil cases, while criminal cases are handled by the “Cour d’assises” in the case of “crimes”, i.e. very serious criminal offences, by the “tribunal correctionnel” for “délits”, i.e. serious criminal offences, and by the “tribunal de police” for “contraventions”, i.e. the least serious criminal offences.  

Court of appeal: the civil chamber of the “Cour d’appel” is in charge of civil cases and criminal cases are handled by the criminal chamber of the “Cour d’appel” for “délits” and “contraventions”, and by the “Cour d’assises d’appel” for very serious criminal offences (“crimes”);  

The “Court of cassation”, which is the highest court of the judiciary order, is in charge of cassation appeals. Its civil chambers deal with civil cases and its criminal chamber deals with all criminal cases.  

On the other hand, the administrative branch deals with all the disputes between a public body and a private entity or between two public bodies. It has 3 levels:  

First instance: the “tribunal administratif” is in charge of most administrative cases, excluding those dealt with by specialised courts, such as the National Court of Asylum, or those judged in the first and last resort by the Conseil d’État.  

Court of appeal: the “cour administrative d’appel” is the appeal judge for the administrative tribunals' decisions.  

Administrative supreme court: the “Conseil d’État” is the supreme administrative jurisdiction in France (litigation function), but also an advisor of the Government (advisory function). Regarding its litigation function, the Conseil d’État is in charge of cassation appeals. Additionally, in certain circumstances, the Conseil d’État is competent in the first and last resort, inter alia for appeals against regulatory acts of the President of the Republic, of the Prime Minister and of ministers, for appeals against independent administrative authorities’ decisions, or for appeals relating to European and regional elections.  

In addition, the “Conseil constitutionnel” is the French constitutional court, in charge of the constitutionality review of legislative acts. Lastly, the “tribunal des conflits” has the job of settling of jurisdiction between judicial and administrative courts.  

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)?  

In civil cases, unless provided otherwise, the “tribunal judiciaire” with territorial jurisdiction is that of the place where the defendant resides[33].  

In criminal cases, a distinction must be made between the jurisdiction of the “tribunal correctionnel” and that of the “tribunal de police”. The “tribunal correctionnel” of the place of the offence, the place of residence of the accused or the place of arrest or detention of the accused shall have jurisdiction[34]. The “tribunal de police” of the place where the offence was committed or recorded or the place of residence of the defendant shall have jurisdiction[35].  

Regarding administrative cases, except where specifically provided for, the “tribunal administratif” with territorial jurisdiction is the one located in the geographical area in which the authority which took the challenged decision is located[36].
In case of a conflict of jurisdiction between judicial and administrative courts, the “tribunal des conflits” may be called upon to determine jurisdiction. The division of competences between the two orders of jurisdiction is determined by legislative acts[37]. At the time of the French Revolution, the Law of 16-24 August 1790 and the Decree of 16 fructidor an III set out the areas in which the judicial order could not intervene. The “Conseil constitutionnel” held that the annulment or reform of decisions taken in the exercise of the prerogatives of public authority by the authorities exercising executive power shall ultimately fall within the competence of administrative jurisdictions[38]. As a consequence, the administrative order has jurisdiction, inter alia, over disputes concerning public liberties, administrative police, taxes, public contracts, public health, competition rules, environmental law, and urban and regional development.

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

There are no specialities regarding court rules in the environmental sector. However, Parliament is currently considering a bill which provides for the creation of regional centres specialized in environmental offences in each of the 36 courts of appeal and competent in matters of serious environmental damage or endangerment[39]. These new courts, made up of specialized judges, are intended to deal, for example, with pollution of water or soil by industrial activities, breaches of the regime of classified installations that degrade the environment, damage to protected species or areas, breaches of regulations on industrial waste, etc. The simplest environmental offences would continue to be dealt with by the local courts. For industrial accidents with multiple victims (such as Lubrizol) or for major technological risks, the two interregional centres based in Paris and Marseille remain competent. These criminal courts will also be able to deal with environmental civil disputes, in particular actions based on compensation for environmental damage provided for in Articles 1246 et seq. of the French Civil Code.

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

France being a State governed by the rule of law, the principle is that all administrative acts are subject to judicial review. However, there are a few exceptions to that principle:

Acts of Government: these are acts adopted by administrative bodies (the President of the Republic, Prime Minister, Minister of Foreign Affairs, etc.) but are not considered as administrative acts. They are therefore not subject to judicial review. They are generally of a very political nature. This is particularly the case with acts adopted in the context of relations between constitutional public authorities, for example the refusal to table a bill before Parliament, and acts adopted in the context of relations with international organisations and foreign States

Measures of internal order: these are measures taken in respect of public service employees or users but considered to be of limited scope. The judge considers that they do not give rise to a complaint and therefore does not control their content. Exceptional circumstances: for example, the functioning of the administration in times of war or natural disasters. The administration then benefits from an extension of its powers to take measures of extreme urgency. In this case, judicial review is not suspended but its scope is reduced.

There are two grounds for bringing an appeal before the administrative judge:

Defects in external legality: lack of jurisdiction, formal error, procedural defect
Defects in internal legality: breach of the law, illegality of the reasons, misuse of power.

Regarding defects in external legality, one of the main limits of judicial review is the theory of substantial requirements. According to Conseil d’Etat case law, a defect affecting the conduct of a prior administrative procedure is such as to render the decision taken unlawful only if that defect was capable of influencing the meaning of the decision taken or deprived the persons concerned of a guarantee[40]. Such theory is notably applied to environmental impact assessment and public participation procedures[41].

Regarding defects in internal legality, the degree of review of the grounds of the administrative act may vary according to the type of decision reviewed:

Normal control: in this case, the judge only sanctions any error by the administration. This is the case when the administration is in a situation of bound jurisdiction.

Restricted control: in this case, the judge only sanctions gross errors by the administration. This is the case when the administration has a discretionary power.

Checking the balance sheet: the judge balances the advantages and disadvantages of the administrative decision. It is theoretically a maximum control in the sense that it is the appropriateness of the administrative decision that is controlled; but in practice it is rare for the judge to pronounce an annulment on this basis. This is the case for major development projects declared to be of public utility by the administration (airports, motorways, high-speed train lines).

The administrative judge does not have the power of self-referral[42]. On the other hand, when a case is brought before it, it is obliged to raise ex officio certain arguments which could lead to the annulment of the administrative decision, e.g. incompetence of the perpetrator, even if the applicant has not raised them. Those arguments are then referred to as “pleas raised of their own motion”.

1.3. Organisation of justice at administrative and judicial level

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

At the national level, the Prime Minister is competent to issue regulations of national scope (Article 21 of the Constitution). Certain ministers are competent to issue environmental permits, notably the Minister of the Environment and the Minister of the Economy. At the local level, prefects represent the State and have regulatory power. Local and regional governments also have regulatory power, within the scope of their competences. Prior authorisations are issued, depending on the case, by the prefects (e.g. pollution permits) or by the local governments (e.g. building permits).

The Code of Relations between the Public and the Administration provides the rules applicable to administrative procedure, in terms of:

Motivation of administrative acts: Article L. 211-1 et seq.
Entry into force of administrative acts: Article L. 221-1 et seq.
Implicit decisions: silence is tantamount to acceptance of the application (Article L. 231-1) but there are many exceptions to this rule, particularly in the field of the environment and urban planning. Silence kept by the administration for two months is tantamount to a rejection decision: 1) When the request does not lead to the adoption of a decision having the character of an individual decision; 2) Where the application does not form part of a procedure provided for by a legislative or regulatory text or has the character of a complaint or an administrative appeal; 3) If the request is of a financial nature, except, in matters of social security, in the cases provided for by decree; 4) In cases, specified by decree of the Council of State, where implicit acceptance would not be compatible with compliance with France’s international and European commitments, the protection of national security, the protection of freedoms and principles of constitutional value and the safeguarding of public order; 5) In relations between the administration and its agents (Article L. 231-4).

Repeal and withdrawal of administrative acts: Article L. 240-1 et seq.

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

One can appeal an administrative environmental decision before administrative courts for the purpose of obtaining an annulment of the decision.

Most of environmental decisions are challenged before the administrative tribunal. However, exceptionally, some decisions are challenged directly before the Conseil d’Etat, which acts as first and last resort. This is the case for regulatory acts of the President of the Republic, of the Prime Minister and of ministers, which covers all national regulatory acts adopted in environmental matters, for the decisions of the Nuclear Safety Authority[43] and for the main “declarations of public utility”, which are acts that allow the realisation of major development projects. Such declarations regarding motorways, main airports, navigation channels, railways, power plants and water pipes must be directly challenged before the Conseil d’Etat[44], which acts as first and last resort[45].
Unless otherwise specified, the time limit for appeal is two months. The appeal must be sent or filed to the court or on the online e-application "Télerecours". This is followed by a phase of exchange of written pleadings between the parties, in accordance with the adversarial principle. The parties are the applicant, the author of the administrative decision and, where applicable, the beneficiary of the permit. When considering the case, the judge first determines the admissibility of the application and then examines the applicant's arguments concerning external legality and internal legality.

If necessary, the court shall annul the decision. The annulment shall in principle have retroactive effect, unless the court decides to vary the effects of its decision in time[46]. In this case, the court shall determine the date from which the decision is annulled. This technique, used in the interests of legal certainty, allows the administration to adopt a new decision before its earlier decision is deprived of legal effect.

In addition to annulling the administrative decision, the judge may issue an injunction against the administration. Administrative courts have the power to impose periodic penalty payments against the administration in order to break its refusal to enforce decisions handed down by an administrative court[47]. A penalty payment is an order to pay a sum of money for each day of delay. It may be pronounced against public persons or against private bodies responsible for the management of a public service. Administrative courts are also allowed to issue injunctions to public persons or private bodies responsible for the management of a public service when the litigants so request and when these injunctions are necessary to ensure the execution of the res judicata. Two hypotheses are distinguished: the injunction may consist in prescribing the execution, within the time limit set by the judge, either of "an enforcement measure in a specific sense", when the judgment places the administration in a situation of bound jurisdiction[48], or of any measure after a new instruction, when it grants it a discretionary power[49].

Furthermore, the judge may, in some specific cases, reform the administrative decision. These are disputes of "full jurisdiction" (pleine juridiction). In these cases, the judge decides the dispute on the basis of the law applicable on the date of its judicial decision, and not on the date of the challenged administrative decision. The judge also has the power to reform the administrative decision by ordering the administration to take a new one to replace the disputed one. He may substitute his assessment for that of the authority whose action is challenged and determine what the replacement decision should be.

Several environmental litigations fall under the full jurisdiction:

- the litigation of classified installations for environmental protection (i.e. industrial activities)[50];
- the litigation of water-related activities[51];
- the litigation of "environmental authorisations"[52]. This procedure is applicable to certain classified installations and certain water-related activities[53]. Article L. 181-18 of the Environmental Code specifies the powers available to the judge when an environmental authorization is challenged. On the one hand, the court may either stay the proceedings in order to allow the challenged environmental authorisation to be regularised when its defects are capable of being regularised by an amending decision, or limit the scope or effects of the annulment which it pronounces if the defects which it identifies affect only part of the decision or only one stage of its investigation procedure. On the other hand, the judge is allowed to order the suspension of the execution of parts of the environmental permit that are not vitiated.

Concerning the delay in obtaining a final ruling, in 2019, rulings were on average issued within 9 months before administrative tribunals, 11 months before administrative courts of appeal and 6 months before the Conseil d'Etat[54].

Regarding environmental matters, delays are likely to be above average, given the greater complexity of those cases.

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

For the time being[55], no special environmental courts with general environmental jurisdiction exist in France. However, there are six specialised coastal jurisdictions (the "juridictions du littoral spécialisées - JULIS"). Those are located in Le Havre, Brest, Marseille, Fort-de-France, Saint-Denis-de-la Réunion and Saint-Pierre-Miquelon[56]. Created in 2001 by a legislative act on the repression of polluting discharges from ships in territorial waters, inland waters and navigable waterways[57], the JULIS have jurisdiction in particular for offences relating to polluting discharges from ships.

Under certain circumstances, environmental disputes may also be dealt with by specialised courts which have concurrent jurisdiction, which is in fact tending to become exclusive jurisdiction. It falls within the jurisdiction of specialised inter-regional courts (JIRS): there are currently 8 specialised inter-regional courts in some regions (Bordeaux, Fort-de-France, Lille, Lyon, Marseille, Nancy, Paris, Rennes) when the acts being prosecuted are part of a context of organised crime[58]. For example, this is the case of trafficking in elvers, which is regularly dealt with by the Bordeaux JIRS. It also falls under the public health authorities (PSP)[59]. Two public health units have been set up in the "tribunal judiciaire" of Paris and Marseille. The jurisdiction of these PSPs has been extended to certain environmental damage. They may therefore be competent to deal with the offences provided for in the Environmental Code in cases relating to a health product or a product intended for human or animal nutrition or a product or substance to which humans are permanently exposed and which is regulated because of its effects or dangerousness, which may be highly complex in nature. The PSPs have thus taken on cases involving asbestosis, soil pollution or the dumping of hazardous waste.

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

Administrative appeals

There are two kinds of administrative appeals[60]:

Internal administrative appeal ("recours gracieux"): the application shall be addressed to the authority that took the contested decision or failed to act. Hierarchical appeal: the hierarchical appeal shall be addressed to the hierarchical superior of the author of the decision. For example, the Minister of the Interior for a decision taken by a prefect.

Most of the time, the exercise of an administrative appeal is not mandatory. However, regarding access to environmental information, an application for access to that information must be submitted to the Committee on Access to Administrative Documents (Commission d'accès aux documents administratifs) [61] before referring the matter to a judge. In addition, in the context of the environmental impact assessment procedure, a judicial appeal against the screening decision must be preceded by an administrative appeal[62].

Once the administrative appeal is rejected, it is possible to appeal the administrative decision before the administrative tribunal.

Appeals against courts' decisions

Most of the time, rulings of administrative tribunals can be appealed before administrative courts of appeal and, finally, it is possible to lodge a cassation complaint before the Conseil d'Etat.

However, regarding "power generation facilities using the mechanical energy of the wind", i.e. wind turbines, appeals must be introduced directly before administrative courts of appeal, which act as first and last resort[63]. However, a cassation complaint before the Conseil d'Etat remains possible.

Orders on interim measures

Several procedures can lead to orders on interim measures.
First, the “référé-liberté” procedure can be used when a fundamental liberty is at stake. In the event of a serious and manifestly unlawful violation of a fundamental freedom by a public authority and in case of urgency, the judge may order any necessary measures to safeguard that freedom[66]. In such cases, the administrative tribunal shall give its ruling within 48 hours. Its decision may be appealed directly before the Conseil d’État[67]. This procedure has been applied a few times regarding environmental matters, based on a violation of the right to the environment recognised in Article 1 of the constitutional Charter for the Environment[68], but this is still rare.

Second, the “référé-suspension” procedure can be used, after having filed an ordinary appeal, in order to obtain a suspension of the administrative decision, pending the judge’s decision on the merits. Two conditions must be met to obtain a suspension of the administrative decision: in case of urgency and if there is, at that stage of the investigation, a serious doubt as to the legality of the decision[69]. The suspension of the administrative decision shall end at the latest when the judge renders a decision on the merits. These decisions in summary proceedings may be appealed to the Conseil d’État within 15 days. Then the Conseil d’État decides within 48 hours[70].

Third, two special “référé-suspension” procedures coexist in the field of the environment:

- In the absence of an environmental impact assessment or strategic environmental assessment: where an administrative decision has been adopted without an environmental impact assessment or strategic environmental assessment when it should have been preceded by such an assessment, the court finds that there was no assessment and suspends the administrative decision[71].
- In the absence of public participation: where an administrative decision has been adopted without a public participation procedure when it should have been preceded by such a procedure, the court finds that there was no public participation and suspends the administrative decision[72].

Fourth, under Article L. 216-13 of the Environmental Code (resulting from the Law of 3 January 1992 on water), the liberty and detention judge may, at the request of the public prosecutor, acting ex officio or at the request of the administrative authority, the victim or an approved environmental protection association, order for a period of up to one year any appropriate measures, including the suspension or prohibition of operations carried out in breach of criminal law, to the natural and legal persons concerned. The decision is taken after hearing the person concerned, or summoning him/her to appear within 48 hours. Article L. 415-4 of the same code provides for an equivalent provision in respect of protected species.

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

Apart from those already mentioned, there are no other extraordinary means of appeal against an administrative or judicial decision.

There are two main kinds of preliminary rulings:

- **Priority question of constitutionality**
  - The priority question of constitutionality (QPC) is a new right recognized by the constitutional revision of 23 July 2008[73], which entered into force on 1 March 2010. It allows any litigant to challenge, before the judge in charge of his case, the constitutionality of a legislative provision applicable to his case on the grounds that it infringes the rights and freedoms guaranteed by the Constitution, which includes the Constitution itself (1958), the Declaration of Human and Civic Rights of 26 August 1789, the preamble to the Constitution of 1946 and the “Charter for the Environment”[74]. This procedure is regularly used in environmental matters.
  - The QPC may be raised in the course of any dispute before any court, whether at first instance, on appeal or in cassation.
  - The court to which the application is referred proceeds without delay to an initial examination and checks three criteria:
    - whether the disputed legislative provision is indeed applicable to the dispute it has to decide;
    - whether this provision has not already been declared in conformity with the Constitution by the Conseil constitutionnel;
    - whether the issue is of a “serious nature”, to be heard by the Conseil d’État or the Cour de cassation (if the issue “is not devoid of serious nature”, before the lower courts).
  - If the QPC is admissible, the court applied to passes it to the Conseil d’État or the Cour de cassation, depending on which kind of court examined the request. The Conseil d’État or the Cour de cassation then has three months to examine the QPC and decide whether or not to refer the matter to the Conseil constitutionnel[75].
  - If the matter is referred to the Conseil constitutionnel, the latter then has three months to decide. It may declare the provision to be in conformity with or contrary to the Constitution. In the latter case, the provision concerned is repealed. The Constitutional Council may also defer in time the effects of the declaration of unconstitutionality.
  - As of 1 March 2020, the Constitutional Council had issued 740 QPC decisions.

- **Preliminary ruling before the European Union Court of Justice**
  - Pursuant to Article 267 of the Treaty on the Functioning of the European Union, French courts may ask the Court of Justice of the European Union to give a ruling on the interpretation of EU Law or the validity of EU acts.

  - The request for a preliminary ruling may be raised by the applicant in his written submissions.
  - In the event of serious difficulties concerning the interpretation of an act of European Union law or the assessment of its validity, it is for the Conseil d’État to stay proceedings and refer a question to the Court of Justice of the European Union for a preliminary ruling. However, this is not an obligation, but merely an option in the case of the lower courts.

  - Regarding a reference for a preliminary ruling on interpretation, the Conseil d’État considers that it is not obliged to refer the matter to the Court of Justice of the European Union in the event of a clear act. In other words, that obligation is incumbent on the court applied to, and where the outcome of the dispute depends on the solution of that difficulty[76].

  - The application of this “clear act theory” was relatively restrictive until the 1990s, before the Conseil d’État more readily agreed to refer questions to the Court of Justice. However, this did not prevent the Court of Justice from condemning France for failure to comply with Article 267 of the Treaty, precisely because the Conseil d’État had not submitted a reference for a preliminary ruling[77].

  - With regard to the application for an assessment of validity, the Conseil d’État considers that it is required to refer only in cases where the validity of the act is questionable and “having regard to the serious nature of the challenge raised”[78].

  - In recent years, some 30 preliminary questions a year have been referred to the Court of Justice by the administrative courts.

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

- **Mediation**
  - In administrative matters, it is always possible for the parties to a dispute to have recourse to mediation[79]. Mediation is defined as “any structured process, however it may be called, whereby two or more parties attempt to reach an agreement with a view to resolving their differences, with the assistance of a third party, the mediator, chosen by them or appointed with their agreement by the court”[80]. It is in principle voluntary, but the judge also has the possibility to order the parties to carry out mediation. There are few examples of mediations in environmental matters[81].

  - In criminal matters, it is the public prosecutor who calls upon the criminal mediator to meet with the parties subject to their agreement. Here, mediation can only intervene to repair damage caused by a minor offence (insults, simple theft, night-time disturbance, etc.) but which has been the subject of a complaint.

  - However, the victim has to agree. In the event of disagreement or non-execution of the agreement, the public prosecutor may resume proceedings.
In civil matters, mediation is used for everyday disputes, such as neighbourhood or family conflicts. An attempt at mediation or the search for an amicable solution is obligatory for any legal claim for a dispute below €5,000[82]. The judge may impose it on the parties in cases where he deems it useful[83]. He must approve or confirm the agreement reached between the parties.

Criminal transaction
Pursuant to Article L. 173-12 of the Environmental Code, the administrative authority may, as long as the public action of the public prosecutor has not been set in motion, compromise with natural and legal persons on the prosecution of the offences provided for and punished by the Environmental Code, with the exception of offences punishable by more than two years' imprisonment. The transaction proposed by the administration and accepted by the offender must be approved by the public prosecutor.

The settlement proposal is determined in the light of the circumstances and seriousness of the offence, the personality of the perpetrator and his resources and charges. It specifies the settlement fine that the offender must pay, the amount of which may not exceed one third of the fine incurred, as well as, where appropriate, the obligations that will be imposed on him to put an end to the offence, avoid its repetition, repair the damage or bring the premises into conformity.

This procedure has the disadvantage of leaving the victims on the sidelines, particularly environmental protection associations, whose chances of obtaining compensation for their moral damage are reduced.

However, it is very diversely adopted in the jurisdictions. While it is little exploited, if at all, in the majority of jurisdictions, some prosecutors have fully appropriated it and are using it up to 40% of their environmental litigation[84].

Criminal composition – Alternatives to public prosecutions
Under Article 41-1 of the Code of Criminal Procedure, the public prosecutor may, inter alia, either remind the perpetrator of his obligations under the law[85], ask the perpetrator to regularise his situation under the law, or ask the perpetrator to compensate the damage resulting from the offence.

Under Article 41-1-2 I. of the Code of Criminal Procedure, as long as public proceedings have not been initiated, the public prosecutor may invite a legal person accused of one or more offences to conclude a deferred prosecution agreement. The CJIP (Judicial agreement in the public interest)[86] may be proposed by the public prosecutor to a legal person charged with, in particular, corruption, tax fraud, money laundering or any other related offence. This convention includes several obligations:

- The payment of a fine in the public interest to the Treasury;
- Submission for a maximum period of three years to a compliance programme under the supervision of the French Anti-Corruption Agency;
- The compensation of damages caused by the offence when the victim is identified.

These characteristics, i.e. a proactive approach on the part of representatives of legal persons and cooperation with the authorities, stem from a circular issued by the Ministry of Justice on 31 January 2018 to compensate for the law's silence regarding the criteria for concluding a CJIP. It emerges that the appropriateness of implementing this measure can be assessed according to the following criteria:

- The track record of the legal person;
- The voluntary nature of the disclosure of facts;
- The degree of cooperation with the judiciary that the legal person has demonstrated.

Under 41-2 of the Code of Criminal Procedure, the public prosecutor may, as long as the public prosecution has not been initiated, propose, directly or through an authorised person, a penal composition to a natural person who acknowledges having committed one or more offences punishable as a principal penalty by a fine or a term of imprisonment of up to five years, as well as, where appropriate, one or more related contraventions consisting of one or more of the following measures:

- To pay a fine of composition to the Treasury. The amount of this fine, which may not exceed the maximum amount of the fine incurred, shall be fixed according to the seriousness of the facts as well as the resources and charges of the person. The fine may be paid in instalments, according to a schedule set by the public prosecutor, within a period that may not exceed one year;
- To relinquish jurisdiction in favour of the State over the thing that was used or intended to commit the offence or which is the product of the offence.

Civil conciliation
In civil matters, the Code of Civil Procedure requires the parties, before referring to courts in disputes of less than €10,000, to have attempted conciliation before a judicial conciliator, or to justify other steps to reach an amicable resolution of their dispute, on pain of inadmissibility of their request[87].

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

Rights defender
The Defender of Rights is a constitutional authority (Article 71-1 of the Constitution)[88] whose mission is to ensure that rights and freedoms are respected by State administrations, local authorities and public institutions, as well as by all bodies carrying out a public service mission or by those that fall within its remit according to its Institutional Act[89].

The Defender of Rights is responsible for improving relations between citizens, the administration and public services, in particular through mediation. He may be applied to by any person who considers himself or herself aggrieved by the operation of a public service and may take up the matter ex officio. The referral is free of charge and can be done online. It is totally independent of the existing remedies available elsewhere.

The Defender of Rights is appointed by the President of the Republic in accordance with the procedure provided for in the last paragraph of Article 13 of the Constitution. The Defender of Rights is entrusted with five major missions listed in the Organic Law of 29 March 2011:

- To defend rights and freedoms in the context of relations with State administrations, local authorities, public establishments and bodies with a public service mission;
- to defend and promote the best interests and rights of the child as enshrined in law or in an international commitment regularly ratified or approved by France;
- to fight against direct or indirect discrimination prohibited by law or by an international commitment duly ratified or approved by France, and to promote equality;
- to ensure compliance with professional ethics by persons carrying out security activities on the territory of the Republic;
- to refer to the competent authorities any whistleblower, as defined by the Law n° 2016-1691 of 9 December 2016, and to monitor the rights and freedoms of this person.

The Defender of Rights may not follow up on a referral: in this case, he must indicate the reasons for his decision.

He may propose to the claimant a settlement with the defendant. In the case of discrimination punishable under the Criminal Code, the settlement may consist in the payment of a transactional fine.

With the exception of the judiciary, the Defender of Rights may refer to the authority empowered to initiate disciplinary proceedings any facts of which he has knowledge, and which appear to him to justify a sanction.

The Defender of Rights may request the Vice-President of the Conseil d’Etat or the First President of the Court of Audit to have any studies carried out.
When the Defender of Rights receives a complaint, not submitted to a judicial authority, which raises a question relating to the interpretation or scope of a legislative or regulatory provision, he may consult the Conseil d'État and make his opinion public. He may recommend any legislative or regulatory amendments he deems useful. He may be consulted by the Prime Minister on any bill falling within his field of competence. He may also be consulted by the Prime Minister, the President of the National Assembly or the President of the Senate on any matter falling within his area of competence.

The Defender of Rights, who is an independent constitutional authority, has the power to intervene with the administration. He may make any recommendation that appears to him to guarantee respect for the rights and freedoms of the injured party and to resolve the difficulties raised before him or to prevent their recurrence. He may also recommend that the situation of the person before him be resolved in equity. The authorities or persons concerned must inform the Defender of Rights, within a period of time to be determined by him, of the action taken on his recommendations. If no information is provided within this time limit or if he considers, on the basis of the information received, that a recommendation has not been followed up, the Defender of Rights may order the person concerned to take the necessary measures within a specified time limit. In the event of failure to comply with the injunction, the Defender of Rights prepares a special report, which is communicated to the respondent. The Defender of Rights shall make the report and, where appropriate, the respondent's response public.

In 2019, the environment and urban planning accounted for only 3.1% of the complaints addressed to the Defender of Rights.

**Public prosecutor**

The public prosecutor intervenes on the basis of information from the police and gendarmerie services, but also from State services or following a complaint from a private individual, when an offence is committed within the jurisdiction of the court of first instance in which he exercises his functions. He carries out or arranges for the carrying out of all acts necessary for the investigation and prosecution of the perpetrators of criminal offences. To this end, he will direct the activities of the judicial police. He will supervise the placement and extension of police custody, arrests, and so on.

The public prosecutor presents his arguments orally before the courts and tribunals but does not attend the deliberations. In addition to these powers, the public prosecutor implements locally the criminal policy defined by the Minister of Justice. He also directs and coordinates the application of local security contracts implemented by local authorities.

Any person who has been the victim of an offence can file a complaint with the police or gendarmerie, which will then forward it to the public prosecutor. The complaint can also be addressed directly to the public prosecutor.

Indeed, it is possible to file a complaint with the public prosecutor. Article 17 of the Code of Criminal Procedure obliges police officers to receive complaints and denunciations. A denunciation is made by a third party whose purpose is to inform the public authorities of the commission of an offence, even though he is not himself the victim of the offence. The complaint comes from the victim of the offence.

Complaints and denunciations may be written or oral. It is possible to fill in an online draft complaint form, before going to the police department to sign it. There is no charge for filing a complaint. The filing of a complaint gives rise to a report and a receipt is issued to the victim.

Once a complaint has been lodged with the police, the police must forward it to the public prosecutor. A complaint or denunciation may also be sent directly to the public prosecutor.[93] A complaint template is available online.

Given that French criminal procedure is based on an inquisitorial rather than an accusatory system, the prosecution of the offender rests essentially with the prosecutor. Thus, the prosecutor has the "opportunity to prosecute". In accordance with Article 40 of the Code of Criminal Procedure, the prosecutor "assesses the action to be taken" on complaints and denunciations. He may, if he considers it appropriate, institute proceedings once the offence has been established. Several possibilities are open to him:

- he can dismiss the case without further action, which implies that the offender will not be prosecuted, especially when the offender is not identified or is irresponsible (insanity);
- prior to his decision to initiate public action, he may implement alternative measures to prosecution: reminder of the law, penal composition, damage compensation measure or penal mediation between the perpetrator and the victim, referral of the perpetrator to a health, social or professional structure; in the case of a contravention or misdemeanour, he may refer the perpetrator to a court (juvenile court, local court, police court, criminal court);
- in the case of a crime or complex offence, he may initiate an investigation by referring the matter to the examining magistrate, who is then responsible for the investigation;
- or he may classify the procedure as "no further action".

In all cases, it informs the victims of its decision. In the event of a dismissal, reasons must be given for the decision.[94] The reason for dismissing a complaint may be that the prosecution is inadmissible (e.g. if the offence is time-barred), that not all the elements of the offence are present, or that it is too difficult to prove the offence. The prosecutor may also dismiss the case if he considers prosecution inappropriate.

Article 2 of the Code of Criminal Procedure defines a civil action as an action for compensation, and Articles 3 and 4 provide that the same action may be brought before the civil or criminal courts. The victim of an offence may claim compensation for the damage he has suffered either before the civil court, or before the criminal court. In the second case, he brings a civil action. In order to bring a civil action, pursuant to Article 2, paragraph 1, of the Code of Criminal Procedure, it is necessary to have suffered personally from the damage directly caused by the offence. It will therefore be necessary to ensure that the harm is certain, direct and personal. Where the public action (prosecution) has already been set in motion, the injured party may be able to be a civil party. He may do so during the investigation phase both before the investigating judge (Article 85 the Code of Criminal Procedure) and before the examining magistrate's chamber (Article 87, para. 1, of the Code of Criminal Procedure). He may also do so, within certain limits, even at the time of the judgment without being required to appear (Article 418, paragraph 1, of the Code of Criminal Procedure). In this case, and in order to allow for intervention at this stage of the trial, the public prosecutor has the duty in correctional matters to notify the victim of the date of the court hearing by way of immediate appearance or of the summons by minutes (Article 393-1 of the Code of Criminal Procedure).

When the public action has not yet been initiated, the injured party may nevertheless bring his civil action before a criminal court. It then acts by way of action. It has two means of doing this at its disposal. There is in principle no instruction for a misdemeanour (optional instruction). The victim then directly summons the defendant before the court of judgment by bailiff's writ ("citation directe"; Articles 392 and 531 of the Code of Criminal Procedure). At the end of the investigation, the investigating judge may decide to refer the case to the criminal court.

Pursuant to Article L. 142-2 of the Environmental Code, approved environmental NGOs may exercise the rights granted to the civil party in respect of acts that are directly or indirectly prejudicial to the collective interests that they are intended to defend and that constitute an infringement of the legislative provisions relating to the protection the environment. This gives them the opportunity to file a complaint "with a civil claim" before the investigating judge.

14. 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)?

The possibility to challenge an administrative decision refers to the concept of "capacity to act". At this stage, there is no distinction between the public, the public concerned and NGOs. It is at the stage of standing (intérêt à agir) that such a distinction is relevant.
The ability of individuals to take legal action ("capacité à agir") is governed by the rules of civil law. Incapacitated adults and minors are subject to special rules. The Conseil d'Etat considers that, barring exceptions, an emancipated minor and an incapacitated adult may not take legal action[95].

**Legal persons (NGOs)**

A legal person, such as an association (NGO), can only take legal action if it exists legally. To do so, the association must be registered with the public authorities in accordance with Articles 2 and 5 of the Law of 1 July 1901 on the contract of association. Nevertheless, the Conseil d'Etat has accepted legal action by an association defending a collective interest even in the absence of a declaration of the association to the public authorities[96].

Foreign NGOs that do not have an establishment in France also have the capacity to take legal action[97].

Regarding the representation of the association in court, the judge refers to the statutes of the association. For example, where the statutes specify that the representative of the association may act only with the authorisation of the board of directors of the association, this authorisation must be provided to the judge[98]. In case of silence of the statutes, the president of the association must be expressly authorised by the general assembly of the association[99].

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

There are no specific rules applicable in sectoral legislation.

**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.)**

**Standing for administrative review**

There are no specific requirements regarding standing for administrative review.

**Standing before the administrative judge**

As the saying goes, "no one pleads by prosecutor". Therefore, the administrative judge requires the applicant to show an "intérêt à agir", literally an "interest in acting" before the judge. Case law thus precludes actions whose sole purpose is the preservation of legality[100]. Access to the administrative judge is therefore not an actio popularis[101].

A certain number of rules or principles that the Conseil d'Etat had laid down in matters of contentious administrative procedure, as regards the admissibility of appeals[102] have acquired constitutional value. Indeed, the guarantee of rights set out in Article 17 of the Declaration of Human Rights of 1789 has been interpreted as implying respect for the right to an effective remedy, which may not be substantially impaired[103], respect for the rights of the defence[104], the right to a fair trial and respect for the right for an effective remedy, which cannot be substantially undermined[105].

That being said, the case law of the administrative branch on standing is rather liberal, whether for individuals or associations' appeals. Approved environmental NGOs benefit from a very favourable regime.

- **Individuals**

In order to establish an interest in bringing proceedings, the applicant must show that the contested decision adversely affects his interests, which is usually understood in a liberal way. For example, the owner of a second home can appeal against the building permit for a holiday village located more than 750 metres away because of the heavy traffic in front of his house[106]. However, according to the terms of Article L. 600-1-3 of the Urban Planning Code, except where petitionor invokes particular circumstances, the interest to act against a building, demolition or development permit is assessed on the date of posting of the petitioner's request in the town hall. Interests in action were also allowed to challenge the permit of an electrical conversion station because of the nuisance it causes[107]. When authorising the construction of wind turbines, the administrative judge gives priority to the criterion of distance over that of visibility[108]. However, an association having as its object the protection of the environment does not justify an interest giving it standing to act against the decision to retain a candidate following a call for tenders organised to select the operator responsible for meeting the objectives of developing electricity production from offshore wind energy[109].

First, the applicant's interest must be legitimate. The purpose of the appeal must therefore be to safeguard a lawful situation. Second, the applicant must have a definite interest, not a contingent interest. For example, an environmental association is ineligible to challenge a plan whose actions will have to be the subject of new decisions in the future[110]. Nor is an applicant entitled to challenge the decree creating a national park in French Guiana by relying solely on his status as a resident of the department and as a walker, even though he is domiciled 200 km from the boundaries of that park[111].

Third, the relationship between the applicant's situation and the challenged act must be sufficiently direct. For example, in the case of people living in the neighbourhood of an industrial facility, the judge takes into account the inconveniences and dangers that the facility presents for them, assessed in particular according to the situation of the persons concerned and the configuration of the premises. This is the case for applicants living on the other side of a river, approximately 375 metres away from the future facility, which presented risks to public safety and health that could affect a large area[112]. On the other hand, the owner of a house located 3.5 km from a hazardous waste landfill facility "cannot rely on his status as an immediate neighbour of the facility in dispute to establish his interest in contesting the permit of the facility"[113]. This can pose environmental challenges. In the case of a development project located in an area where there are no residents nearby, no individual will be able to challenge the project before the administrative judge. However, in this case, an environmental NGO may be admissible.

Finally, in the area of urban planning, the legislator has adopted a provision to limit the individual's standing. Thus, an individual is only admissible to act against a building permit if the authorised construction is "of such a nature as to directly affect the conditions of occupation, use or enjoyment" of his property[114].

Article L. 77-10-3 of the Code of Administrative Justice has instituted a class action in 2016[115]. It provides that where several persons in a similar situation suffer damage caused by a legal person governed by public law or a body governed by private law responsible for the operation of a public service, which has as its common cause a failure of the same nature to comply with its legal or contractual obligations, a group action may be brought in the light of the individual cases presented by the plaintiff. Such action may be brought either with a view to putting an end to the failure or to holding the person who caused the damage liable in order to obtain compensation for the damage suffered, or both.

- **Environmental NGOs**

Since 1906, the Conseil d'Etat has accepted the principle of collective interest action by an association[116]. Appeals by associations in defence of their statutory purpose are admitted in a flexible manner by the administrative judge. Because of the principle of specialty of legal persons, standing is assessed in the light of the corporate purpose defined by the association's statutes[117]. In order to assess standing, the judge compares the content of the contested administrative decision with the association's corporate purpose. Thus, an association is admissible only if the contested decision adversely affects the collective interest which they are intended to defend. The judge verifies the sufficiency of the associations' standing. For example, an association whose corporate purpose is focused solely on the protection of nature, and not on the urban environment, is not admissible to act against a building permit located on the edge of an urbanised area[118]. The drafting of the statutory purpose is therefore particularly important. It must be sufficiently broad, but not too wide either[119].
The judge is also attentive to the geographical scope of the association. An association whose territorial scope of action is not limited geographically shall be deemed to have a national purpose[120], and therefore has no interest in acting against a local act[121]. The same applies to all associations whose territorial jurisdiction is wider than that of the contested act[122].

Lastly, Article L. 600-1-1 of the Urban Planning Code provides that an association is only admissible to act against a building permit “if the filing of the statutes of the association at the prefecture has taken place at least one year before the posting of the petitioner's request at the town hall”. This prevents the formation of an association in response to a real estate project in order to challenge the building permit. In this case, only pre-existing associations, in particular approved associations, will be admissible. The Conseil constitutionnel held that these provisions do not substantially affect the right of associations to exercise remedies[123]. However, the question of the compliance of this article with Article 9 of the Aarhus Convention has so far not been examined.

Law no 2016-1547 of 18 November 2016 on the modernisation of justice in the twenty-first century created the action for recognition of rights defined in Article L. 77-12-1 of the Code of Administrative Justice. It allows a duly registered association or a duly constituted professional union to file a petition for recognition of individual rights resulting from the application of the law or regulations in favour of an unspecified group of persons having the same interest, provided that their statutory purpose includes the defence of that interest. It may seek the benefit of a sum of money legally due or the discharge of a sum of money illegally claimed. It may not seek recognition of damage.

- Approved Environmental NGOs

Obtaining an environmental protection approval[124] greatly facilitates the admissibility of the association's action. Article L. 142-1, paragraph 2, of the Environmental Code establishes a kind of presumption of standing for approved environmental associations: approved associations “have standing in bringing proceedings against any administrative decision which is directly related to their statutory purpose and activities and which has harmful effects on the environment in all or part of the territory for which they are approved, provided that the decision was taken after the date of their approval”[125]. Thus, standing of an approved association is assessed in the light of three cumulative conditions[126]: the statutory purpose of the association must be directly related to the challenged decision, the challenged decision has harmful effects on the environment, and the geographical scope of the association's approval is greater than or equal to that of the challenged decision.

In addition, a federation of associations such as France Nature Environnement, “even though it brings together local associations, at least one of which would have been admissible to personally challenge an administrative decision, justifies the interest conferred on it by Article L. 142-1 of the Environmental Code, once it has been approved at the national level”[127].

Standing before the criminal judge

The prosecution is not alone in its decision to prosecute. To a certain extent, alleged victims or plaintiffs can also initiate criminal proceedings. By becoming a civil party (“se constituer partie civile”), i.e. by bringing a civil action before the criminal courts, alleged victims or plaintiffs can initiate criminal proceedings, including cases where the public prosecutor has not prosecuted. However, in order to limit abuses, under Article 85 of the Code of Criminal Procedure, a complaint with a claim for damages is admissible only if the person has already lodged a complaint with the prosecutor or the police and can prove either that the public prosecutor has informed him that he will not himself institute proceedings, or that a period of three months has elapsed since the complaint.

A general standing condition is also provided under Article 2 of the Code of Criminal Procedure: “civil action aimed at the reparation of the damage suffered because of a felony, a misdemeanour or a petty offence is open to all those who have personally suffered damage directly caused by the offence”. Therefore, a civil claim is admissible for compensation for personal, actual, direct and consequential damage arising from the facts falling within the very definition of the offence.

- Individuals

The institution of civil proceedings before the criminal court shall be available only to persons who have been personally and directly injured by the offence[128]. The personal nature of the damage implies that the applicant has personally suffered personal injury to his physical integrity, property, honour or affection. The direct nature of the damage implies that it is linked to the infringement by a causal link. The damage must also be current, i.e. already realised, not potential.

- Environmental NGOs

The condition relating to the personal and direct nature of the damage also applies to associations. This condition is met when the offence has been committed to its detriment, for example in the case of the theft[129] or defamation[130].

However, the issue is more delicate when the association seeks compensation for the harm resulting from infringement of the collective interest it is intended to defend. In this case, the judge may raise two arguments against it, either the lack of personal and direct damage[131] or the fact that the damage invoked is not distinct from the social damage, for which it is up to the public prosecutor’s office alone to pursue compensation.

Therefore, special legislative provision is now conferring on certain associations the exercise of the rights granted to civil parties. These associations are thus recognised as potential victims of the criminal offence.

- Approved Environmental NGOs

When an association is approved under Article L. 141-1 of the Environmental Code, it is granted the possibility of exercising the rights granted to civil parties. This possibility is widely used by French associations.

Under Article L. 142-2 of the Environmental Code, the approved associations:

"may exercise the rights recognised as those of the civil party with regard to acts which directly or indirectly damage the collective interests that they defend and which constitute an infringement of the legislative provisions relating to the protection of nature and the environment, to the improvement of the living environment, the protection of water, air and soil, of sites and landscapes, town planning, sea fishing or those aimed at combating pollution and nuisance, nuclear safety and radiation protection, commercial practices and advertising which are misleading or likely to mislead when such practices and advertising include environmental information, as well as the texts adopted for their application".

The same right is also recognised, under the same conditions, for associations that have been duly registered for at least five years on the date of the events and which propose, by their statutes, to be safeguarded water, or to combat industrial pollution[132].

Therefore, those associations are presumed to have standing before criminal courts, even if, standing is limited to offences relating to environmental issues listed under Article L. 142-2 of the Environmental Code. Approved associations may also exercise the rights granted to the civil party in respect of offences under the Urban Planning Code[133].

Consequently, approved associations have three ways to undertake private prosecution. They may: either bring a civil action by direct summons, file a civil suit with the investigating judge, or intervene in proceedings already initiated by the public prosecutor or another victim.

In all cases, the representative of the association must justify a mandate given by the competent body of the association[134].

Standing before the civil judge

France Nature Environnement
Under Article 31 of the Code of Civil Procedure, civil action "is available to all those who have a legitimate interest in the success or dismissal of a claim, without prejudice to those cases where the law confers the right of action solely upon persons whom it authorises to raise or oppose a claim, or to defend a particular interest."

Therefore, two elements determine the admissibility of the action: an interest and a quality. While the interest to act lies in proving one's personal character, the attribute that provides the title of the action results from the proof of direct and personal interest.

However, exceptionally, certain persons do not have to demonstrate an interest to act when the legislator confers a right to act on them.

- Conventional civil action

Conventional civil action is relevant for individuals and NGOs regarding their material, bodily and moral injuries.

The justification of a personal interest is an essential condition for the admissibility of an environmental civil action. To satisfy this condition, persons must show that the civil action is likely to result in personal benefit, profit, patrimonial or extra-patrimonial gain. This is the case when the environmental damage implies a devaluation of the property or health consequences[135].

- Dedicated civil action

Dedicated civil action is relevant for certain environmental NGOs, notably approved NGOs, regarding the damage to the collective interest that they are intended to defend.

In principle, it is not possible to bring a civil action in the absence of a personal and direct interest. However, as an exception to this principle, Article 31 of the Code of Civil Procedure provides that certain persons, expressly empowered by law, may bring a civil action. In most cases, the objective is that civil action can serve a collective interest.

This is the case of associations which, under Article L. 142-2 of the Environmental Code, are recognised as having the possibility of exercising the rights accorded to civil parties, i.e. approved associations and associations that have been duly registered for at least five years on the date of the events and which propose, by their statutes, is to safeguard water, or to combat industrial pollution.

This allows these associations to claim compensation for damage resulting from the infringement of collective interests before the criminal courts despite the absence of personal damage resulting from the offence.

The Cour de cassation has specified that this action may be brought before the civil court, even in the absence of criminal proceedings[136] and that a civil action may be brought even in the absence of criminal fault, as long as there's an infringement of any legislative provisions relating to the protection of nature and the environment[137].

Article 809 of the Code of Civil Procedure provides that the court may, in summary proceedings, prescribe precautionary or restoration measures to prevent imminent damage.

- Dedicated civil action for compensation for ecological damage

Articles 1246 et seq. of the Civil Code[138] provide for a specific civil action dedicated to compensation for ecological damages. This is about repairing the "pure" ecological damage. The latter is different from the damage mentioned above. It is not only a question of repairing the consequences of environmental damage for humans, but also of repairing the damage to the environment per se. It is defined as “significant damage to the elements or functions of ecosystems or to the collective benefits derived by man from the environment”[139].

The right to take legal action for compensation for ecological damage, defined in Article 1248, is very broadly open, according to the will of the legislator, who chooses to mention some of the holders of the action. Thus, the action is open to "any person with standing and interest in the action, such as the State, the French Agency for Biodiversity, local authorities and their groupings whose territory is concerned, as well as public establishments and associations approved or created for at least five years on the date of the institution of proceedings which have as their object the protection of nature and the defence of the environment". The principle of reparation by priority in kind is laid down in Article 1249. In the event of the impossibility or inadequacy of remedial measures, "the court shall order the person responsible to pay damages, earmarked for the repair of the environment, to the plaintiff or, if the plaintiff is unable to take appropriate measures to that end, to the State". Damages must be the exception to reparation. When damages are awarded, they should be channelled to environmental remediation, in the hands of the applicant or the State, if the applicant cannot afford to take the remediation measures (which may be too large or complex for a single actor). The judge may impose a penalty payment. In addition, independently of the reparation of the ecological damage, the judge may prescribe reasonable measures to prevent or stop the damage.

Under Article 1248 of the Civil Code, individuals may claim compensation for this type of damage under the same conditions as in a conventional civil action. For their part, approved associations are expressly empowered by law to take this action. For the time being, there is no significant case law on this point, but Article 1248 should logically lead to exempt approved associations from demonstrating the existence of an interest.

In a decision dated 6 March 2020, the Marseille criminal court, jointly and severally sentenced four poachers to pay the Parc National des Calanques the sums of 350,060 euros in compensation for the ecological damage, this sum being allocated to repairing the environment, 20,000 euros in compensation for damage to its mission of environmental protection, 15,000 euros in compensation for damage to its brand image and reputation, and 8,000 euros for legal costs. The court also ordered the five restorers and scale fishermen, beneficiaries of the illegally caught fish, to each pay the Parc National des Calanques the sums of 3,000 euros in compensation for damage to its mission to protect the environment and damage to its brand image and reputation, and 1,000 euros for legal costs.

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

Article 2 of the French Constitution provides that "the language of the Republic is French". Consequently, the French language is essential in the exercise of public services, in particular that of the judiciary[140]. Nevertheless, some legal provisions provide for translation and/or interpretation.

Regarding criminal law, several provisions provide for interpretation or translation. The main ones are as follows:

Preliminary article to the Code of Criminal Procedure: 'If the suspected or accused person does not understand French, he has the right, in a language he understands and until the end of the proceedings, to the assistance of an interpreter, including for interviews with his lawyer directly related to any questioning or hearing, and, unless he expressly and knowingly waivers this right, to the translation of documents essential to the exercise of his defence and to the guarantee of a fair trial, which must, for this reason, be handed over or notified to him pursuant to this code" (§ III).

Article 10-2 of the Code of Criminal Procedure: victims who do not understand the French language can "benefit from an interpreter and a translation of the documents essential to the exercise of their rights".

Article 10-3 of the Code of Criminal Procedure: "If the civil party does not understand the French language, he is entitled, at his request, to the assistance of an interpreter and to a translation, into a language he understands, of information that is indispensable to the exercise of his rights and that is, in this respect, provided or notified to him pursuant to this code".

Article 391: the notice of hearing sent to the victim may be translated.

Regarding civil law, the primacy and exclusivity of the French language before the national courts is laid down by the Cour de cassation as regards procedural acts[141]. However, several exceptions result from case law[142].
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?

The freedom of evidence is a strong principle before administrative courts. The parties can therefore support their case with any type of evidence (administrative documents, written testimony, bailiffs' reports, etc.).

The judge therefore forms his opinion on the points at issue in the light of the information provided by the parties[146]. The origin of the evidence is rather irrelevant to the judge; the only thing that matters to him is the fact that the parties have been able to debate it, in accordance with the principle of adversarial proceedings[147].

In some cases, the evidence rests primarily with the administration. This is the case in law enforcement matters and when the arguments developed by the applicant are supported by negative evidence, such as the administration's failure to comply with its procedural obligations (consultation prior to its decision, in particular).

The judge may request evidence on his own initiative, carry out investigative measures such as asking the administration to produce documents[148], or ask the administration to provide explanations[149].

Finally, under Article R. 612-6 of the Code of Administrative Justice, "if, despite formal notice, the defendant has not produced any pleadings, it shall be deemed to have acquiesced in the facts set out in the applicant's pleadings".

2) Can one introduce new evidence?

The introduction of new evidence is possible as long as the judge has not ordered the closure of the investigation, i.e. at each exchange of briefs, bearing in mind that the proceedings are in writing. Under Article R. 613-1 of the Code of Administrative Justice, the judge's order is not reasoned and is not subject to appeal. Evidence and requests produced after the conclusion of the investigation are not communicated to the opposing party and are not examined by the judge.

In the absence of an order closing the investigation, the investigation shall be closed three clear days before the date of the hearing.

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

Expertise is part of the "means of investigation" given to the judge by the Code of Administrative Justice[150]; expertise, site visit, investigation, verification of records, technical opinions.

The expert is defined as a collaborator of the public service of justice, called upon to enlighten the court on controversial or delicate questions of fact. The decision to order an expert opinion, before stating the law, rests with the judge, ex officio or at the request of the parties (or one of them). It is most often ordered by the judge in charge of summary proceedings.

The expert's mission is limited to providing the court with factual information that will enable it to decide questions of law. This mission must be considered useful by the judge. Thus, the judge will consider unnecessary a request that can be satisfied by other means or that is superfluous, for example, a request for expertise that has the same purpose as an environmental impact assessment already produced in the proceedings[151].

In summary proceedings, which is the most frequent case of recourse to an expert in environmental matters, the usefulness of expertise is always assessed in the light of the powers of investigation available to the court hearing the case[152].

The expert's report is filed with the judge and notified to the parties, who have one month to provide their comments. The court may decide to hear the expert, particularly in order for him to respond to the observations filed by the parties.

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

In any event, the expert opinion is only one piece of evidence among others, left to the court's free discretion.

3.2) Rules for experts being called upon by the court

The expert may be appointed from among those listed on a roster drawn up in the jurisdiction of the courts of appeal for this purpose. He may also be freely appointed by the judge from outside the lists established in these tables. The judge may appoint "any other person of his choice".

In environmental matters, the use of the roster of experts is not the rule. This panel, established in the jurisdiction of each administrative court of appeal, must indeed respect the nomenclature of Article R. 221-9 of the Code of Administrative Justice. However, the headings concerning the environment are not always filled in for lack of experts who have taken the necessary steps. Technical questions being so specific to each field of the environment, the judges must often call upon experts who are not registered on the roll (recognised naturalists in particular).

The expert shall be appointed by an order of the court, which shall determine the subject matter and the time limit for his assignment. Experts undertake to "carry out their mission with conscience, objectivity, impartiality and diligence"[153]. A challenge procedure is open to the parties. The appointed expert may be entrusted with a mediation mission. With the agreement of the parties, he may even take the initiative.

Where a technical matter does not require complex investigations, the judge may also appoint a person to give a technical opinion. In this case, the judge may appoint a person from the list of experts or any other person of his or her choice[154].

3.3) Rules for experts called upon by the parties

Only the judge in summary proceedings and the court of substance may decide to resort to the expertise procedure as part of the means of investigation provided for by the Code of Administrative Justice.

However, the parties may always, freely and outside this procedure, call upon experts. Experts mandated by the parties participate in the constitution of evidence freely provided by the parties. The parties may provide any expert documents in support of their submissions that they consider important to clarify the facts and the jurisdiction.

They shall be communicated to the opposing party, who shall choose to oppose any other evidence or expert evidence.

A party who fails to respond to facts reported by an expert report shall be deemed to have acquiesced in those facts.

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

The expertise ordered by the judge shall entitle the expert to fees and reimbursement of expenses. These costs will generally be charged to the losing party, or shared between the parties, at the discretion of the court.

In practice, the judge makes greater use of the "technical opinion" procedure[155]. The procedure is simpler, more flexible and does not generate costs for the parties.

The recourse to the expert decided by a party is paid for by this party, who can ask for reimbursement of all or part of these costs generated by the procedure, in the event of victory and if the court considers that this proof was necessary for the resolution of the dispute.

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

The reference text is the Law of 31 December 1971[156]. This text distinguishes between three categories of lawyers who can intervene in litigation before the courts. The term "lawyer" thus covers several realities in France:

- "Avocats": they are lawyers holding the "Certificate of Qualification as an avocat" (Certificat d'aptitude à la profession d'avocat - CAPA) and registered at the bar. They are the main interface between the public and the courts.

Certain procedures make it compulsory to use an avocat to appear before a judge (actions before the administrative courts of appeal, the Conseil d'Etat, the Cour de cassation or the Conseil constitutionnel in particular). Avocats must specify their specialisation. But although the "environment" specialisation exists, few avocats actually show this specialisation.

A table of avocats is published by each bar association in its geographical area and in the jurisdictions[157]. This table specifies their official specialty. Secondary skills and specialities can be found on the lawyers' websites.

- In-house lawyers employed by administrations, companies or NGOs: they provide legal advice and legal representation for their organisation. Their action is legally limited to the advice of the organisation that employs them and of the member organisations (and for NGOs, to their individual members).

These lawyers advise their organisation and can call upon avocats to represent them at hearings or to provide them with additional legal assistance in litigation. For example, the legal service of the Ministry in charge of ecology drafts the briefs presented by the State before the administrative judge, without the assistance of an avocat.

- Salaried and non-salaried in-house lawyers from trade unions and NGOs that are approved by the Ministry of Justice[158]; some environmental NGOs are approved by the Ministry of Justice, allowing voluntary or salaried lawyers involved in the NGO to provide paid legal advice and to defend the environment before courts that do not require the use of a lawyer. Around ten environmental NGOs benefit from this approval in France.

These legal services can provide pro bono or paid assistance to environmental associations. The volunteers in these services are lawyers, avocats or academics.

1.1 Existence or not of pro bono assistance

The French traditions of the legal profession, as well as the directives of the French bars, require that a fee agreement be established between an "avocat" and his client. This tradition has been made mandatory by law since 2015.

Some lawyers may choose, within the framework of this fee agreement, a favourable fixed remuneration for the benefit of a natural or legal person who would not have access to legal aid but who defends the public interest.

Such a practice could fall within the scope of pro bono assistance. However, it is neither organised nor collectively displayed as such by the French bars. France has a system of legal aid allowing persons without sufficient resources, including nationals of Member States of the European Union and persons of foreign nationality habitually and regularly residing in France, to benefit from total or partial coverage by the State of legal fees and costs. This coverage includes the costs of expert opinions for which the applicant bears neither the final cost nor even the advance payment. To be eligible for legal aid, resources must not exceed a certain ceiling. This ceiling for a single person is € 1,044 per month for total legal aid, between € 1,044 and € 1,233 for 55% coverage and between € 1,234 and € 1,564 for 25% coverage.

The France Nature Environment federation is a public interest association that links 3,500 environmental associations in France and has a network of 80 lawyers (a quarter of whom are salaried lawyers working for environmental associations, a quarter are unsalaried lawyers, and half are volunteer lawyers, mainly academics). The lawyers in this network, particularly avocats, can provide pro bono assistance by offering their expertise free of charge for cases of public interest.

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.)?

No French court or bar association advertises the existence of this kind of assistance. However, it is known in the national network of associations whose main purpose is the protection of the environment.

The international NGO Client Earth has more recently published a database of lawyers and public interest lawyers.

The form of pro bono assistance provided by the lawyers of France Nature Environment's (FNE) legal network is delivered to the main benefit of legal entities, associations whose main purpose is the defence of the collective environmental interest (and not to individuals defending a private interest). An application form for legal assistance is to be filled in and given to the legal department, which will be able to direct the association to the nearest lawyer or attorney likely to respond in a pro bono context.

1.3 Who should be addressed by the applicant for pro bono assistance?

- Legal Network of France Nature Environnement:
  
  Address : Réseau Juridique de France Nature Environnement
  
  10, rue Barbier –72000 Le Mans
  
  Phone: 02 43 87 81 77
  
  Email: juridique@fne.asso.fr
  
  Website: https://fne.asso.fr
  
  Head office: 57, rue Cuvier, 75231 Paris Cedex 05
  
- Client Earth’s lawyers database

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

The tables of experts at the administrative courts are available on the websites of the administrative courts of appeal.

Example: Table of experts at the Administrative Court of Appeal of Paris

The lists of judicial experts are published by the Court of Cassation, which lists on its website the lists of experts within the jurisdiction of each court of appeal.

These tables and lists are only optional references, as the courts always have the option of appointing non-registered experts. This is most often the case in environmental matters, as this subject requires more detailed specialisation.

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

In France, environmental NGOs are called APNE (Associations de Protection de la Nature et de l'Environnement).

At the national level, the main APNEs are those that have received national approval for environmental protection. They are often also recognised as being of public utility.

France Nature Environnement (FNE), its regional federations and member associations
Ligue de protection des oiseaux (LPO)
Humanité et Biodiversité (H&B)
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)

Under Article L. 411-2 of the Code of Relations between the Public and the Administration, "any administrative decision may be the subject, within the time limit set for lodging a judicial appeal, of an informal or hierarchical appeal that interrupts the course of this time limit". Consequently, the time limit for filing an informal or hierarchical administrative appeal is the same as the time limit for filing a judicial appeal, i.e. in most cases two months [159].

Nevertheless, under the terms of Article R. 181-50 of the Environmental Code, the environmental authorisation decision may be referred to the administrative court by the petitioners within two months and by third parties within four months of the publication of the authorisation.

The exercise of an administrative appeal has the effect of extending the time limit for lodging a judicial appeal. For example, in the case of a decision taken on 1 February, the deadline for lodging a judicial appeal is two months, i.e. until 1 April. If an individual files an administrative appeal on 15 February, the time limit for filing a judicial appeal is interrupted. If the administration responds on 15 March, there will still be two months to file a judicial appeal, i.e. until 16 May [160].

If the administration does not respond to the administrative appeal, it will give rise to an implicit decision of rejection on 16 April, the time limit for appeal will then be extended until 17 June.

Note: Article R412-5 of the Administrative Justice Code provides that "the time limits for appealing against an administrative decision are only enforceable if they are mentioned, together with the means of appeal, in the notification of the decision".

2) Time limit to deliver decision by an administrative organ

The administration is not obliged to respond to an administrative appeal within a specified period of time. However, in the absence of a response within 2 months, the administrative appeal is implicitly rejected [161].

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

It is possible to challenge the first level administrative decision directly before court. In general, in environmental matters, the prior exercise of an administrative appeal is not mandatory. However, regarding access to environmental information, an appeal must be submitted to the Committee on Access to Administrative Documents [162] before referring the matter to a judge. In addition, in the context of the environmental impact assessment procedure, a judicial appeal against the screening decision must be preceded by an administrative appeal [163].

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

In principle, no time limit is set for the administrative courts to deliver their decisions. However, in the case of certain summary proceedings, i.e. the "référé liberté", the judge decides within 48 hours.

Regarding QPC, the Conseil d’Etat or the Cour de cassation must rule within three months.

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

Before administrative courts, the principle of adversarial proceedings requires that the parties be given time to exchange their arguments in their pleadings in support of their submissions. Pursuant to Article R. 611-8-1 of the Code of Administrative Justice, the President of the bench or the President of the Chamber in charge of the investigation may request one of the parties to restate, in a summary statement, the submissions and pleas in law previously presented in the current proceedings, informing it that, if it complies with such a request, the submissions and pleas in law not restated shall be deemed abandoned. In the case of an appeal, the party may be requested to repeat also the form of order and pleas in law submitted at first instance which it intends to uphold.

These exchanges are possible as long as the judge has not ordered the closure of the investigation. Under Article R. 613-1 of the Code of Administrative Justice, this order is not reasoned and is not subject to appeal. The judge may give formal notice to the defendant to produce a statement of case within a time limit which he shall determine. Pursuant to Article R. 612-4; if, despite formal notice, the defendant has not produced any statement of its case, it shall be deemed to have acquiesced in the facts set out in the applicant's pleadings. The judge nevertheless checks that this version of the facts (presented in the motion) is not contradicted by the documents in the file and compares the facts with the rules of law. Acquiescence to the facts of one party does not necessarily imply that the judge agrees with the other party. Pursuant to Article R611-11-1, when the case is ready for trial, the parties may be informed of the date or period at which it is intended to call him/her to the hearing. This information shall then specify the date from which the investigation may be closed.

Only the (optional) order to close the investigation may set a time limit for production before the judge. Under Article R. 613-2 of the Code of Administrative Justice, in the absence of an order to close the investigation, the investigation shall be closed three clear days before the date of the hearing. It is therefore the summons to the hearing that will set the time limit conditions to produce new writings. No communication shall be made of pleadings produced after the
conclusion of the investigation, unless the investigation is reopened. Where a party called upon to produce a statement of case has not complied for more than one month with the time limit assigned to it by a formal notice indicating the date or period within which it is intended to call the case to the hearing and reproducing the provisions of this paragraph, the hearing may be closed on the date of issue of the notice of hearing.

Before the judicial courts, no time limit is applied in principle. In cases handled by the judicial judge (in civil or criminal matters), the parties are summoned to a "readiness" hearing during which the parties negotiate a postponement to a later hearing so that the case can be ready for trial.

The time limits are therefore exclusively determined by the judge's hearing dates. The hearing service plays an important role in the prioritisation of cases, in a French context of lack of significant resources and therefore overloading of judicial officers.

1.7.2. Interim and precautionary measures, enforcement of judgments

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

In environmental law, administrative appeals are never suspensive. Appeals can sometimes be suspensive in other types of disputes. Judicial appeals against the administrative decision are not suspensive, except when the judge pronounces the suspension in summary proceedings.

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

There is no possibility of injunctive relief during an administrative appeal. However, this is possible in the context of a judicial appeal (see section 1.7.2 6)).

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?

During the administrative procedure, e.g. for a procedure of examination of a project subject to an environmental impact assessment, there is no possibility of suspending the progress of the procedure.

Nevertheless, under L. 123-14 of the Environmental Code, there is a possibility of suspending the conduct of a public inquiry when the project developer wishes to modify the project.

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

Administrative acts are in principle enforceable. This French "fundamental rule of public law"[164] implies that administrative decisions can in principle be enforced as soon as they come into force. An administrative act immediately modifies the legal order and immediately imposes the obligation it formulates. Thus, the effects of the administrative act are not conditional on prior referral to the court. The act is enforceable even before the judge has ruled on its legality.

The effects of an administrative act can only be suspended by means of an application for interim relief (see section 1.7.2 6)).

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

In principle, a judicial appeal whose aim is the annulment of an administrative act has no suspensive effect. However, in parallel to this main appeal, the petitioner can ask the judge to rule urgently on the suspension of the act, through the special procedure of "référé suspension".

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?

A distinction must be made between two types of injunctions:

On the one hand, the goal of a preliminary injunction is preventive: it is an interim injunction preventing either the violation of a fundamental right or the negative effects of an unlawful legal act[165].

On the other hand, the goal of an enforcement injunction is to ensure that res judicata is respected by the administration: in this context, the judge may order enforcement measures.

First, regarding preliminary injunctions, the main possibility to obtain the suspension of an administrative act is the "référé suspension" procedure[166], in parallel with the main action which seeks the cancellation of the act. Two conditions must be met to obtain the suspension of the administrative decision: in case of urgency and if there is, at the stage of the investigation, a serious doubt as to the legality of the decision[167]. There is no financial deposit. The suspension of the administrative decision shall end at the latest when the judge makes a decision on the merits. These decisions in summary proceedings may be appealed to the Conseil d'Etat within 15 days. Then the Conseil d'Etat decides within 48 hours.

Moreover, two special "référé-suspension" procedures exist in the field of the environment:

In the absence of an environmental impact assessment or strategic environmental assessment: where an administrative decision has been adopted without an environmental impact assessment or strategic environmental assessment when it should have been preceded by such an assessment, the court finds that there was no environmental impact assessment and suspends the administrative decision[168].

In the absence of public participation: where an administrative decision has been adopted without a public participation procedure when it should have been preceded by such a procedure, the court finds that there was no public participation and suspends the administrative decision[169].

Second, regarding enforcement injunctions, the administrative judge has the possibility to issue an injunction ex officio. Article L. 911-1 of the Code of Administrative Justice provides that "where its decision necessarily implies that a legal person governed by public law or a body governed by private law responsible for the management of a public service takes an enforcement measure for a specific purpose, the court, having been seized of conclusions to this effect, shall prescribe, by the same decision, this measure accompanied, where appropriate, by a time limit for enforcement". The court may also prescribe such a measure of its own motion. In addition, Article L. 911-2 of this code provides that "where its decision necessarily implies that a legal person governed by public law or a body governed by private law responsible for the management of a public service must take a new decision after a new investigation, the court, having received submissions to this effect, shall prescribe, by the same court decision, that this new decision must be taken within a specified period. The court may also prescribe ex officio the intervention of this new decision". Finally, under Article L. 911-3 of the Code of Administrative Justice, the judge may attach a penalty payment to the injunction he pronounces.

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.

Proceedings before the courts are free of charge. A compulsory contribution of € 35 to finance legal aid was in force in civil and administrative matters before the year 2000. It was reintroduced in 2011 and abolished in 2014. There is therefore no longer any fee for lodging appeals.

In civil matters, the appeal to the court is made by a bailiff and therefore generates a cost of several hundred euros.

The website service-public.fr provides general but incomplete information on the cost of a lawsuit, depending on the court and the documents required.

The conditions for obtaining legal aid are specified.

The costs to be incurred depend on the nature of the case, the court seized, the procedure initiated and the legal strategy implemented.

For persons with limited resources, costs can be covered by legal aid. A budget of 500 million euros is available each year for 900,000 natural persons.

The use of an avocado is only rarely compulsory[170]. However, it is strongly advised for an applicant who does not have legal expertise. The tariff for lawyers is not regulated, it is on average € 300/hour. It must be the subject of a prior fee agreement.

Bailiff or expert fees, necessary for the constitution of evidence, may be added to the cost of the proceedings.

If the appeal fails, the losing party may be ordered to reimburse the opposing party for the costs it has incurred (lawyer's fees, bailiff's or expert's fees, etc.).
In criminal matters, the condemned party must pay a fixed procedural fee ranging from € 30 to € 530 depending on the court.

2) Cost of injunctive relief/interim measure, is a deposit necessary?
Some proceedings before the judicial judge require sums of money to be deposited with the public accountant.
The procedure of direct summons of the offender before a criminal court imposes on the civil party the deposit of a sum of money[171].
The same applies to a civil party who has decided to submit a complaint to an investigating magistrate through the civil party procedure. This procedure opens a "judicial information" and requires the deposit of a sum of money[172]. The civil party wishing to initiate this type of procedure may thus be forced to deposit several thousand euros, which it will only recover in whole or in part at the end of the trial. The amount of the deposit is fixed by the judge according to the income of the complainant (budget for an NGO), without exceeding € 15,000. This sum is required as a guarantee for the payment of a possible fine pronounced in the event that the complaint proves to be abusive. If the appeal is not considered to be abusive, the full amount is refunded. The amount pronounced is generally around several thousand euros (€ 1,500 to 5,000).

3) Is there legal aid available for natural persons?
Legal aid exists in France to enable low-income individuals to take legal action in the context of litigation or pre-litigation proceedings.
A scale calculated on the basis of household income determines the share of the costs of the proceedings that will be borne by the State in this context.
A budget of 500 million euros benefits 900,000 individuals each year.
The website service-public.fr specifies the conditions for obtaining this aid, and makes available to individuals the administrative forms for accessing this aid.

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?
Legal aid (total or partial) is theoretically open to legal persons, and therefore in particular to associations.
In order to benefit from it, the legal person must not have a legal protection insurance contract or any other system of protection covering the remuneration of legal auxiliaries and the costs relating to the dispute for which the aid is requested.
Like any non-profit legal person, the associations have to fill an administrative form which is available online.
In practice, legal aid is very exceptionally granted to associations, which have to justify "exceptional circumstances" justifying their request. This type of aid currently represents 0.1% of the total aid granted.
Pro bono assistance does not exist in an institutionalised form.
The activities of France Nature Environnement's legal network for the 3,500 environmental protection associations that are members of the national federation represents a non-institutionalised form of pro bono assistance.

5) Are there other financial mechanisms available to provide financial assistance?
Within the framework of patronage, a few rare companies explicitly support legal or even litigation actions of environmental associations defending public interest. For example, the Patagonia Foundation is explicitly committed to this approach.
As patronage is a legal mechanism that commits public funds by deducting corporate tax, associations can find here an indirect form of financial mechanism to provide financial support for litigation.

6) Does the "loser party pays" principle apply? How is it applied by courts, are there exceptions?
"Losing party pays" is not a general principle. This principle is nevertheless enshrined in law[173]. In any case, it prohibits the conviction of a party who is not a loser. In practice, it is for the administrative judge and the judicial judge to determine in equity the amount that the losing party will be ordered to pay to the other party. The judge may consider that there is no reason for such an order.
The practice of administrative courts in environmental and urban planning matters is very diverse. Some courts never condemn a losing environmental association, considering that the legal action to challenge the legality of an administrative act falls within its statutory mission and that the costs of defending administrative acts are a normal expense of the State. Others condemn approved environmental associations to pay sums of several thousand euros.
The civil courts systematically order the losing party to pay the costs. Reimbursement of lawyers' fees again depends on the decision of the judge in equity.
The criminal courts rarely order an association to pay a sum to a defendant who has been acquitted. On the contrary, the convicted defendant will be ordered fairly systematically and according to his income to reimburse the costs incurred by the civil party.

7) Can the court provide an exemption from procedural costs, duties, filling fees, taxation of costs, etc.? Any other national characteristics linked to this topic?
Trial costs are called "dépens" in civil matters. These are the costs incurred by the trial, not including lawyers' fees. They are defined in Article 695 of Code of Civil Procedure. It includes, in particular, bailiff's fees for the service of summonses and decisions, the costs of any expert opinions or investigations, but also the compensation received by the lawyer of the winning party if he was receiving legal aid. It is in civil lawsuits that these costs can be the most significant.
The costs of a criminal trial are made up of the "fixed costs of proceedings", ranging from € 31 to € 527 depending on the jurisdiction. In the event of payment by the losing party of the fixed costs of proceedings within the month following the conviction, he automatically benefits from a reduction of 20% of the sums to be paid[174].

Administrative litigation does not systematically generate litigation costs. Only the expertise procedure can generate such costs. They will be borne in equity by the losing party or shared between the parties.

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?
There is no specific information portal for access to information on access to environmental justice. Since environmental law does not have specialised courts, information is provided by the courts and the Ministry of Justice without distinction of environmental matters[175].
The international NGO Client Earth published in 2019 a European legal guide to facilitate access to justice in Europe, under a program funded by the European Commission. Practical fact sheets for France "Protecting the environment before the courts" are also available from the same NGO since May 2019.

2) During different environmental procedures how is this information provided? From whom should the applicant request information?
Time limits and means of appeal should be mentioned in the administrative decision. If this is not the case, the time limit for appeal is not enforceable against the appellant[176].
In matters of administrative and judicial justice, the judge generally mentions time limits and means of appeal in his decisions. Court clerks also provide advice to the parties.
Some victims' associations have offices in the courts, but they rarely specialise in environmental litigation.
Lastly, the bar associations may organise free legal advice sessions on access to the law, although environmental issues are rarely raised there due to a lack of specialists.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?
There are no specific means or rules for the dissemination of information in these matters, just as there is no specificity of environmental litigation within general administrative and judicial litigation.

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

 Mentioning the channels and time limits for appeal in the administrative decision is an indirect obligation. Article R. 421-5 of the Code of Administrative Justice provides that "the time limits for appealing against an administrative decision can only be invoked if they have been mentioned, as well as the means of appeal, in the notification of the decision". This rule is a guarantee offered to users to be informed of the conditions under which they can challenge the administration’s decisions.

This rule has been clarified by the case law of the Conseil d’Etat. In an important ruling[177] of 2016, the Conseil d’Etat ruled that in the absence of any mention of deadlines and means of appeal in the notification act, individual administrative decisions may in principle be appealed within a “reasonable time limit” of one year. It nevertheless specified that this reasonable period of one year could not be invoked against an appellant who cited “special circumstances” or a longer time-limit for lodging an appeal defined by a text. The Conseil d’Etat then transposed this time limit to implicit rejection decisions[178]. Furthermore, the Conseil d’Etat reviewed its case law, ruling that the publication of the administrative acts of the prefecture in the compendium of administrative acts, even though the decree in dispute had not been posted at the town hall, caused the two-month period for lodging an appeal to the court, as provided for in Article R. 421-1 of the Code of Administrative Justice, to run out with regard to the petitioner. Thus, from now on, the time-limit runs from the date of the first publicity measure[179].

With regard to judicial decisions, in order to produce legal effects, procedural acts (i.e. judgments and court decisions) must be brought to the attention of the interested parties by means of notification. These notifications specify the time limits and means of appeal.

More specifically, the Code of Civil Procedure requires the act of notification of a judgment to indicate "in a very apparent manner" the time limit for opposition, appeal, or appeal in cassation, as well as "the manner in which the appeal may be exercised" (e.g. the obligation to have recourse to an avocat) [180]. Under Article 678 of the Code of Civil Procedure, "where representation (by an avocat) is mandatory, the judgment must also be notified in advance to the representatives in the form of lawyer-to-lawyer notifications, failing which the notification to the party is null and void". Failure to comply with these notification rules constitutes a formal defect and has the effect that the time limits for appeal do not run.

The Code of Administrative Justice contains similar provisions regarding the content of notifications of judgments of administrative courts[181]. Non-compliance with these notification rules has the same effects[182].

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

 Article 2 of the French Constitution provides that “the language of the Republic is French”. Consequently, the French language is essential in the exercise of public services, in particular that of the judiciary[183]. Nevertheless, some legal provisions provide for translation and/or interpretation.

Regarding criminal law, several provisions provide for interpretation or translation. The main ones are as follows:

Preliminary article to the Code of Criminal Procedure: ‘if the suspected or accused person does not understand French, he has the right, in a language he understands and until the end of the proceedings, to the assistance of an interpreter, including for interviews with his lawyer directly related to any questioning or hearing, and, unless he expressly and knowingly waives this right, to the translation of documents essential to the exercise of his defence and to the guarantee of a fair trial, which must, for this reason, be handed over or notified to him pursuant to this code” (§III).

Article 10-2 of the Code of Criminal Procedure: victims who do not understand the French language can “benefit from an interpreter and a translation of the information indispensable to the exercise of their rights”.

Article 10-3 of the Code of Criminal Procedure: “if the civil party does not understand the French language, he is entitled, at his request, to the assistance of an interpreter and to a translation, into a language he understands, of information that is indispensable to the exercise of his rights and that is, in this respect, provided or notified to him pursuant to this code”.

Article 391: the notice of hearing sent to the victim may be translated.

Regarding civil law, the primacy and exclusivity of the French language before the national courts is laid down by the Cour de cassation as regards procedural acts and evidence[184]. However, several exceptions result from case law[185].

Regarding administrative law, appeals addressed to administrative courts must be written in French[186]. Failure to comply with that obligation leads to inadmissibility of the appeal, but that can be rectified. The court shall invite the appellant to produce a sworn translation of his application before dismissing it[187]. In addition, the presence of an interpreter is provided for only in aliens law[188].

1.8. Special procedural rules


Country-specific EIA rules related to access to justice

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

The screening decision can be challenged before the judge by the project owner. However, under Article R. 122-3 VI of the Environmental Code, this judicial appeal against the screening decision must obrigatorily be preceded by an administrative appeal (RAPO: “recours administratif préalable obligatoire”). It cannot be challenged by the public or by an NGO before the judge. As a first step, administrative tribunals accepted that NGOs could challenge before the judge the screening decision that exempts a project from environmental impact assessment[189]. However, with regard to plans and programmes, the Conseil d’Etat decided that such an exemption decision is not directly challengeable[190]. The screening decision can only be challenged on the occasion of a judicial appeal against the permit. It seems obvious that this opinion of the Council of State with regard to plans and programs is transferable to projects[191].

Anyway, the decision to exempt a project from EIA can be contested while challenging the final permit.

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

Scoping is determined by the Environmental Code. It does not give rise to an administrative decision determining the scope of the elements to be included in the impact study. However, the impact study does give rise to an opinion of the “environmental authority”. This is not an administrative decision that can be challenged in court.

However, in the event of an appeal against the permit, it will be possible to criticise the quality of the content of the impact study.

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

The public can challenge the permit issued to the project.

The time limit for challenging the permit is usually 2 months. However, in certain areas, specific time limits are provided for. In the case of industrial installations and installations influencing water resources, the time limit for the public to appeal is four months[192].

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

The final authorisation can be challenged before the administrative courts. The conditions of access vary depending on whether it is an individual, an NGO, an approved NGO or a foreign NGO.

Individuals
In order to establish an interest in bringing proceedings, the applicant must show that the contested decision adversely affects his interests. First, the applicant's interest must be legitimate. The purpose of the appeal must therefore be to safeguard a lawful situation.

Second, the applicant must have a definite interest, not a contingent interest. For example, an environmental association is ineligible to challenge a plan whose actions will have to be the subject of new decisions in the future[193]. In addition, an applicant is not entitled to challenge the decree creating a national park in French Guiana by relying solely on his status as a resident of the department and as a walker, even though he is domiciled 200 km from the boundaries of that park[194].

Third, the relationship between the applicant's situation and the challenged act must be sufficiently direct. For example, in the case of people living in the neighbourhood of an industrial facility, the judge takes into account the inconveniences and dangers that the facility presents for them, assessed in particular according to the situation of the persons concerned and the configuration of the premises. This is the case for applicants living on the other side of a river, approximately 375 metres away from the future facility, which presented risks to public safety and health that could affect a large area[195]. On the other hand, the owner of a house located 3.5 km from a hazardous waste landfill facility "cannot rely on his status as an immediate neighbour of the facility in dispute to establish his interest in contesting the permit of the facility"[196]. In the case of a development project located in an area where there are no residents nearby, no individual will be able to challenge the project before the administrative judge. Nevertheless, in this case, an environmental NGO may be admissible.

Finally, in the area of urban planning, the legislator has adopted a provision to limit the individual's standing. Thus, an individual is only admissible to act against a building permit if the authorised construction is "of such a nature as to directly affect the conditions of occupation, use or enjoyment" of his property [197]. In addition, under Article L. 600-1-3 of the Urban Planning Code, except for the petitioner to justify particular circumstances, the interest to act against a building, demolition or development permit is assessed on the date of posting of the petitioner's request in the town hall. Individuals were also allowed to challenge the permit of an electrical conversion station because of the nuisance it causes[198]. When authorising the construction of wind turbines, the administrative judge gives priority to the criterion of distance over that of visibility[199].

Environmental NGOs
Since 1906, the Conseil d'Etat has accepted the principle of collective interest action by an association[200]. Appeals by associations in defence of their statutory purpose are admitted in a flexible manner by the administrative judge. Because of the principle of specialty of legal persons, standing is assessed in the light of the corporate purpose defined by the association's statutes[201]. In order to assess standing, the judge compares the content of the contested administrative decision with the association's corporate purpose. Thus, an association is admissible only if the contested decision adversely affects the collective interest which they are intended to defend. The judge verifies the sufficiency of the associations' standing. For example, an association whose corporate purpose is focused solely on the protection of nature, and not on the urban environment, is not admissible in acting against a building permit located on the edge of an urbanised area[202]. The drafting of the statutory purpose is therefore particularly important. It must be sufficiently broad, but not too wide either[203].

The judge is also attentive to the geographical scope of the association. An association whose territorial scope of action is not limited geographically shall be deemed to have a national purpose[204], and therefore has no interest in acting against a local act[205]. The same applies to all associations whose territorial jurisdiction is wider than that of the contested act[206].

In addition, Article L. 600-1-1 of the Urban Planning Code provides that an association is only admissible to act against a building permit "if the filing of the statutes of the association at the prefecture has taken place at least one year before the posting of the petitioner's request at the town hall". This prevents the formation of an association in reaction to a real estate project in order to challenge the building permit. In this case, only pre-existing associations, in particular approved associations, will be admissible[207].

Lastly, an association having as its object the protection of the environment does not justify an interest giving it standing to act against the decision to retain a candidate following a call for tenders organised to select the operator responsible for meeting the objectives of developing electricity production from offshore wind energy[208].

Approved Environmental NGOs
Obtaining an environmental protection approval[209] greatly facilitates the admissibility of the association's action. Article L. 142-1, paragraph 2, of the Environmental Code establishes a kind of presumption of standing for approved environmental associations: approved associations "have standing in bringing proceedings against any administrative decision which is directly related to their statutory purpose and activities and which has harmful effects on the environment in all or part of the territory for which they are approved, provided that the decision was taken after the date of their approval"[210]. Thus, standing of an approved association is assessed in the light of three cumulative conditions[211]: the statutory purpose of the association must be directly related to the challenged decision, the challenged decision has harmful effects on the environment, and the geographical scope of the association's approval is greater than or equal to that of the challenged decision.

In addition, a federation of associations such as France Nature Environnement, "even though it brings together local associations, at least one of which would have been admissible to personally challenge an administrative decision, justifies the interest conferred on it by Article L. 142-1 of the Environmental Code, once it has been approved at the national level"[212].

Foreign NGO
Foreign NGOs that do not have an establishment in France also have the capacity to take legal action[213]. They can take legal action under the same conditions as French NGOs. However, only "regularly declared" associations can benefit from approval (Article L. 141-1 of the Environment Code). Implicitly, this provision presupposes that the foreign association is declared in France, but this has not yet been interpreted in case law[214]. Consequently, only foreign NGOs with an establishment in France could benefit from approval, not those with no establishment in France.

5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?
The judge examines both the procedural aspects and the substantive legality of the permit issued on the basis of an environmental impact assessment. However, a defect affecting the environmental impact assessment is considered as a procedural defect. A defect affecting the conduct of a prior administrative procedure is such as to render the decision taken unlawful only if that defect was capable of influencing the meaning of the decision taken or deprived the persons concerned of a guarantee[215].

The judge, however, carries out a fairly thorough examination of the environmental impact assessment. Generally speaking, the judge checks the proportionality of the content of the environmental impact assessment in relation to the importance of the project[216]. It also checks the seriousness of the assessment, the absence of errors, gaps or contradictions[217]. In particular, case law requires timely and accurate information. It frequently sanctions impact studies presenting old or even obsolete data[218]. In addition, methodological requirements apply to the study of the natural species present on the site. Thus, in the case of a fragile natural environment, the author of the study must carry out in situ measurements and cannot be satisfied with a simple
broadly the suspension of the administrative decision shall end at the latest on noise and heavy goods vehicle traffic.

The impact assessment must include an analysis of the methods used to assess the effects of the project on the environment.

Recourse to an expert is possible but remains rare in practice. On the other hand, associations often have the option to submit to the judge nature data collected in the field, which have been forgotten in the assessment. The judge regularly relies on this type of data to conclude that the environmental impact assessment is not sufficient. The adverse party is of course free to challenge the veracity of the data provided by associations and to submit other data.

The administrative judge does not have the power of self-referral. On the other hand, when a case is brought before him, he is obliged to raise ex officio certain arguments which could lead to the annulment of the administrative decision, e.g. incompetence of the perpetrator, even if the applicant has not raised them. Those arguments are then referred to as “pleas raised of their own motion”.

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

The permit issued on the basis of an environmental impact assessment may be challenged after it has been issued.

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

With respect to challenging permits, there are no requirement for exhaustion of administrative review procedures prior to recourse to judicial review procedures.

Under Article R. 122-3 VI of the Environmental Code, a judicial appeal brought by the petitioner against the screening decision must be preceded by an administrative appeal.

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?

It is not necessary to participate in the public consultation phase of the administrative procedure in order to have standing.

In practice, however, the development of a legal argument during the public consultation phase obliges the author of the decision to respond to it and may therefore constitute essential elements for discussions during the litigation phase. The judge will take a positive view if an applicant has previously developed his claims in the participation phase. This shows that he has applied to the judge as a last resort and that he has made good use of the prior democratic procedures available to him.

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

There are no specific provisions on equality of arms. Equality of arms is essentially ensured by the application of the principle of adversarial proceedings before the courts.

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

There are no specific provisions on the speed of procedures.

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?

Several procedures can lead to orders on interim measures (see also section 1.7.2 6)). In particular, the “référé-suspension” procedure can be used, after having filed an appeal, in order to obtain a suspension of the administrative decision, pending the judge’s decision on the merits. Two conditions must be met to obtain a suspension of the administrative decision: in case of urgency and if there is, at the stage of the investigation, a serious doubt as to the legality of the decision. The suspension of the administrative decision shall end at the latest when the judge makes a decision on the merits. These decisions in summary proceedings may be appealed to the Conseil d’Etat within 15 days. Then the Conseil d’Etat decides within 48 hours.

There is a special kind of “référé-suspension” procedure for environmental impact assessments. In fact, where an administrative decision has been adopted without an environmental impact assessment when it should have been preceded by such an assessment, the court will find that there was no environmental impact assessment and suspend the administrative decision.

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

Litigation relating to industrial installations is a “full jurisdiction” litigation. The main effect of this is to increase the powers available to the judge. He can not only annul the administrative decision but also substitute his decision for that of the administration. In terms of access to justice as such, this does not imply any real difference.

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?

There are no specific provisions regarding specifically IPPC permit processes (see section 1.8.1).

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

There are no specific provisions regarding specifically IPPC permit processes (see section 1.8.1).

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

There are no specific provisions regarding specifically IPPC permit processes (see section 1.8.1).

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

The public can challenge the permit once it has been issued. Administrative appeal is not mandatory. In the case of industrial installations, the time limit for the public to appeal is four months.

6) Can the public challenge the final authorisation?

The final authorisation (permit) can be challenged by the public as described above (see sections 1.4 1) and 3)).

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?

Judicial review of industrial installations permits covers both procedural and substantive legality.

Regarding procedural defects, the judge examines the content of the environmental impact assessment as described above. Furthermore, the inadequacy of the hazard study may result in the cancellation of the permit. Defects affecting the participation procedures are also checked by the judge.

Regarding substantive defects, the judge checks the compatibility of the permit with local town planning. Moreover, the authorisation of the installation may be issued only if the dangers or inconveniences to people, the environment or nature can be prevented by measures specified in the permit. The operator must also demonstrate its technical and financial capacity.
The administrative judge does not have the power of self-referral. On the other hand, when a case is brought before him, he is obliged to raise ex officio certain arguments which could lead to the annulment of the administrative decision, e.g. incompetence of the perpetrator, even if the applicant has not raised them. Those arguments are then referred to as “pleas raised of their own motion”. Regarding the use of expert opinion, there is no difference between a stand-alone IED permitting process and a combined/integrated IED/EIA process in terms of access to justice (see section 1.5 3).

8) At what stage are these challengeable?
The permit can be challenged once it has been issued. It is also possible to ask the prefect to issue an additional order to the operator, for example, in order to reinforce the requirements applicable to the installation. If the prefect refuses, this decision can be challenged before the administrative judge.

The liability of the State may also be raised before the administrative judge. There are two grounds for establishing fault. On the one hand, the illegality of an administrative act constitutes a fault of such a nature as to involve the liability of the State, for example the illegal issuance of a permit to operate an industrial installation. On the other hand, failure by the State to control industrial installations may be considered as a fault likely to involve its liability.

Furthermore, acts or omissions by the operator may also result in civil and criminal legal action (see sections 1.3 7) and 1.4 3).

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

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?
There are no specific provisions regarding specifically IED permit processes (see section 1.8.1).

11) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
There are no specific provisions regarding specifically IED permit processes (see section 1.8.1).

12) How is the notion of "timely" implemented by the national legislation?
There are no specific provisions regarding specifically IED permit processes (see section 1.8.1).

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?
Several procedures can lead to orders on interim measures (see also section 1.7.2 6)). The "référé-suspension" procedure can be used, after having filed an appeal, in order to obtain a suspension of the administrative decision, pending the judge's decision on the merits. Two conditions must be met to obtain a suspension of the administrative decision: in case of urgency and if there is, at the stage of the investigation, a serious doubt as to the legality of the decision. The suspension of the administrative decision shall end at the latest when the judge makes a decision on the merits. These decisions in summary proceedings may be appealed to the Conseil d'Etat within 15 days. Then the Conseil d'Etat decides within 48 hours.

In addition, there are two special "référé-suspension" procedures:
In the absence of an environmental impact assessment: where an administrative decision has been adopted without an environmental impact assessment when it should have been preceded by such an assessment, the court finds that there was no environmental impact assessment and suspends the administrative decision.

In the absence of public participation: where an administrative decision has been adopted without a public participation procedure when it should have been preceded by such a procedure, the court finds that there was no public participation and suspends the administrative decision.

14) Is information on access to justice provided to the public in a structured and accessible manner?
There are no specific provisions regarding specifically IED permit processes (see section 1.7.4 1) to 4).

1.8.3. Environmental liability

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?

Articles L. 162-1 et seq. of the Environmental Code, which transpose Directive 2004/35/EC, provide for the possibility for the prefect to require the operator to repair ecological damage.

Two types of persons have the ability of asking the prefect to intervene. These are, on the one hand, environmental associations approved under Article L. 142-1 of the Environmental Code and, on the other hand, persons directly affected or at risk of being affected by damage or an imminent threat of damage.

Regardless of the prefect's decision, the Prefect must inform the applicant, giving the reasons for his decision.

For the time being, and despite the fact that this reform was adopted in 2008, cases of application of these provisions are extremely rare. As a result, case law has not yet pronounced itself on the modalities of implementation of these provisions.

However, theoretically, an association or individual could ask the judge to overturn the prefect's refusal to intervene and ask the judge to order the prefect to act. This presupposes that the administrative judge considers that the prefect's refusal is indeed an act that can be challenged before a court.

Furthermore, under Article L. 162-2 of the Environmental Code, a person who has suffered environmental damage cannot claim compensation based on Articles L. 162-1 et seq. of the Environmental Code, even if the State fails to act. Therefore, NGOs must bring an action before the civil judge.

2) In what deadline does one need to introduce appeals?
No text determines a time limit. In this case, the time limit for appeal is two months.

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?
Under Article R. 162-3 of the Environmental Code, persons requesting the prefect to intervene must have serious evidence establishing the existence of damage. Their request must be accompanied by the relevant information and data.

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”, apart from the fact that the elements submitted must be “serious”.

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 prefect must inform the applicant, giving the reasons for his decision.

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?
There are no specific provisions for this situation. The provisions described above explicitly covers the case of imminent threat.

7) Which are the competent authorities designated by the MS?
The competent authority is the prefect, i.e. the representative of the State at the local level.
8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?
There is no requirement of exhaustion of administrative review procedure.

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?
There are no specific provisions regarding access to justice in a transboundary context.

2) Notion of public concerned?
There is no definition of the notion of public concerned.

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)?
There are no specific provisions concerning foreign NGOs. They can take legal action under the same conditions as French NGOs.

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)?
There are no specific provisions concerning foreign individuals. They can take legal action under the same conditions as French individuals.

5) At what stage is the information provided to the public concerned (including the above parties)?
Information about the project is mainly given to the public at the public inquiry stage. This participation procedure takes place after the completion of the environmental impact assessment and before the permit decision is taken. The time limits for this procedure are extended to take into account the time required for consultation with foreign authorities[251].

6) What are the timeframes for public involvement including access to justice?
There are no specific provisions regarding access to justice of the public concerned of another country.

7) How is information on access to justice provided to the parties?
There are no specific provisions regarding information on access to justice provided to the public concerned of another country.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?
There are no specific provisions regarding translation, interpretation provided to foreign participants to public participation procedures.

The rules described above applies regarding access to justice of foreign individuals or NGOs.

9) Any other relevant rules?
There are no other relevant rules.

[1] See *inter alia*: loi n° 76-629 du 10 juillet 1976 relative à la protection de la nature; loi n°76-663 du 19 juillet 1976 relative aux installations classées pour la protection de l'environnement.
[4] Loi n° 78-753 du 17 juillet 1978 portant diverses mesures d'amélioration des relations entre l'administration et le public.
[12] Conseil d'Etat, 5 avril 2006, Mme Dupont et al, n° 275742, rec. p. 1042. The Conseil d'Etat ruled that Article 9, paragraph 3 of the Aarhus Convention “is binding only between state Parties to the Convention and cannot be usefully invoked by the applicants”. Indeed, under the Conseil d'Etat case law, if the object of the treaty is only to regulate relations between state parties to the treaty, no direct effect is recognized. In contrast, if individuals are the recipients of the norm, the direct effect of this stipulation is possible.
[15] Article L. 141-1 paragraph 1 of the Environmental Code provides that "when they have been in operation for at least three years, associations that have been duly registered and carry out their statutory activities in the field of nature protection and wildlife management, the improvement of the living environment, the protection of water, air, soil, sites and landscapes, town planning, or whose purpose is to combat pollution and nuisances and, in general, work mainly for the protection of the environment, may be the subject of a reasoned approval by the administrative authority".
[17] The territorial communities (collectivités territoriales) are legal entities under public law that are distinct from the State and, as such, enjoy legal and patrimonial autonomy. They are freely elected by elected officials.
[18] The provisions of Article L. 142-3-1 are only applicable to actions relating to an event giving rise to liability or to a breach of duty after the entry into force of Act No. 2016-1547.
The bill (projet de loi n° 2731) has been adopted by the Senate (March 3, 2020) and is now before the National Assembly: see Article 8 of the "projet de loi relative au Parquet européen à la justice pénale spécialisée".

Conseil d'Etat, Ass. 11 mai 2004, Association AC !, n° 255886. In principle, the annulment of an administrative act implies that the act is deemed never to have taken place. However, if it appears that the retroactive effect of the annulment is likely to have manifestly excessive consequences because of the effects that this act has produced and the situations that may have arisen when it was in force, as well as the general interest that may attach to a temporary maintenance of its effects, it is for the administrative court - after having collected the observations of the parties on this point and examined all the pleas in law - to decide whether to annul the act, to take into consideration, first, the consequences of the retroactivity of the annulment for the various public or private interests involved and, second, the disadvantages which, in the light of the principle of legality and the right of individuals to an effective remedy, a limitation in time of the effects of the annulment would entail. It is for the Court to assess, by comparing those factors, whether they can justify derogating exceptionally from the principle of the retroactive effect of contentious annulments and, if so, to provide in its annulment decision that, subject to the contentious actions brought at the date of the decision against the measures adopted on the basis of the measure in question, all or some of the effects of that measure prior to its annulment must be regarded as definitive or even, where appropriate, that the annulment will not take effect until a later date to be determined by the Court.

Conseil d'Etat, 14 octobre 2011, Société OCREAL, n° 323257, rec. p. 734.


Article 2012-286 QPC.

However, this jurisdiction is now residual and is destined to disappear by virtue of Decree no 2017-424 of 28 March 2017, according to which only "disputes relating to declarations of public utility for projects that were the subject of an initial declaration of public utility prior to the publication of Decree no 2010-164 of 22 February 2010 relating to the jurisdiction and functioning of administrative courts and whose scope of application extends beyond the jurisdiction of a single administrative court fall within the jurisdiction of the Conseil d'Etat in the first and last instance" (Article 1 of the Decree of 28 March 2017).


Article R. 121-2 of the Expropriation Code.

Conseil constitutionnel, 17 juin 2011, Association Vivraviry, n° 2011-138 QPC: Article L. 600-1-1 of the Urban Planning Code is not contrary to the equality principle, to the freedom of association and to the right to seek an effective remedy.

Conseil constitutionnel, 10 novembre 2017, Association Entre Seine et Brottonne et a., n° 2017-672 QPC: Article L. 480-13 of the Urban Planning Code is not contrary to the right to seek an effective remedy, to the right of victims to obtain compensation for damages and to Articles 1 and 4 of the Charter for the Environment.

The bill (Article 8 bis A).

Conseil constitutionnel, 210; Article L. 514-6 of the Environmental Code.

However, this jurisdiction is now residual and is destined to disappear by virtue of Decree no 2017-424 of 28 March 2017, according to which only "disputes relating to declarations of public utility for projects that were the subject of an initial declaration of public utility prior to the publication of Decree no 2010-164 of 22 February 2010 relating to the jurisdiction and functioning of administrative courts and whose scope of application extends beyond the jurisdiction of a single administrative court fall within the jurisdiction of the Conseil d'Etat in the first and last instance" (Article 1 of the Decree of 28 March 2017).

Conseil constitutionnel, 23 janvier 1987, Loi transférant à la juridiction judiciaire le contentieux des décisions du Conseil de la concurrence, n° 86-224 DC.


See Conseil d'Etat, 15 avril 1934, Association AC !, n° 298348.


Article R. 312-1 of the Code of Administrative Justice.


Article L. 911-4 of the Code of Administrative Justice (see Conseil d'Etat, 10 juillet 2020, n° 428409: the Conseil d'Etat has ordered the Government to take measures to reduce air pollution, subject to a penalty payment of €10 million for every six months of delay).
[60] See Article L. 411-1 et seq. of the Code of the Relations of the Public and the Administration.
[64] Those areas are defined as the “municipalities belonging to an area of continuous urbanisation with more than 50,000 inhabitants where there is a marked imbalance between housing supply and demand, leading to serious difficulties of access to housing throughout the existing residential stock, characterized in particular by the high level of rents, the high level of acquisition prices of old dwellings or the high number of applications for housing in relation to the number of annual moves into the social rental stock” (Article 232 of the General Tax Code).
[67] The latter ruled that it is for the administrative court for summary proceedings, seised on the basis of Article L. 521-2 of the Code of Administrative Justice, to enjoin the administration to put an end to a serious and manifestly unlawful infringement of the right to property, which has the character of a fundamental freedom, even if that infringement is in the nature of an assault (CE, 25 janvier 2013, Commune de Chirongui, n° 365262).
[70] The interim relief judge of the Conseil d’Etat considers that there is no urgency to suspend the decree and the interministerial decree establishing minimum safety distances of 5, 10 and 20 metres for the protection of local residents with regard to the spreading of pesticides: CE, 14 février 2020, n° 437814.
[71] Articles L. 122-2 and L. 122-11 of the Environmental Code. This applies to projects as well as to plans and programs.
[72] Article L. 123-16 of the Environmental Code. This applies to projects as well as to plans and programs, whether public participation is carried out through a public inquiry or electronically.
[75] See the practical guide.
[82] Article 750-1 of the Code of Civil Procedure. It refers not only to an attempt at mediation but also to an attempt at conciliation or an attempt at a participatory procedure.
[85] A reminder of the law consists, in a solemn interview with the prosecutor, in serving the rule of law and the penalty incurred on the perpetrator of acts that may be subject to criminal punishment but are not serious or can be regularized. It should promote awareness among the perpetrator of the consequences of his or her act, for society, the victim and for himself or herself.
[86] The “projet de loi relative au Parquet européen et à la justice pénale spécialisée” (art. 8) creates a new Article 41-1-3 allowing such an agreement to be concluded with a legal person charged with one or more of the offenses provided for in the Environmental Code as well as related offences, with the exception of crimes and offences against persons in Book II of the Criminal Code. While the CJIP in environmental matters reproduces the mechanism designed to fight corruption, it does have certain specific features: in addition to the fine, the agreement may allow the legal entity in question to regularize its situation within the framework of a compliance program lasting a maximum of three years, under the supervision of the competent services of the Ministry of the Environment, which may also monitor the effective reparation of the ecological damage resulting from the offences committed; the costs caused by the recourse, by the competent services of the ministry in charge of the environment, to experts or to qualified persons or authorities to assist them in the realization of technical expertise necessary for their mission of control will be supported by the legal entity in question, within the limit of a ceiling fixed by the convention which could not be restored in the event of interruption of its execution; the validation order, the amount of the public interest fine and the agreement will be published on the websites of the Ministry of Justice, of the Ministry in charge of the environment and of the municipality on whose territory the offence was committed, or, failing this, of the public establishment for inter-municipal cooperation to which the municipality belongs.
[88] The legislation called “Loi organique n° 2011-333 relative au Défenseur des droits”, was adopted on the March 29, 2011, to implements the art. 71-1 of the Constitutional and specifies in details his responsibilities and his competences.
[89] Public hospitals, family allowance funds (CAF), primary health insurance funds (CPAM), the social security scheme for the self-employed (RSI), Pôle emploi, energy suppliers (EDF, GDF), public transport managers (SNCF), ministries, consulates, prefectures, communes, general and regional councils.
However, the principle of direct prejudice is well explained: the association whose president is murdered has suffered personal and direct prejudice.

Those provisions do not make the admissibility of legal actions by environmental protection associations conditional on the issue of an authorisation by the administrative authority, but merely recognise a presumption of an interest in bringing proceedings to challenge certain administrative decisions for the national framework and only concern purely local issues (CE, 20 juin 2016, n° 389590).

Nevertheless, the administrative judge seems to be relaxing his position. The Conseil d'Etat thus ruled, with regard to an association that had not delimited its geographical jurisdiction, that "in spite of the absence of delimitation, in its statutes, of the geographical jurisdiction of its field of action, this association must be regarded as having a local field of intervention in view of the indications provided on this point, in particular by its name, the location of its registered office and the existence, in several other departments, of local associations with a similar object and a similar name" (Conseil d'Etat, 25 juin 2012, Collectif Antinucléaire 13 et a. n° 346395).

 Those provisions do not make the admissibility of legal actions by environmental protection associations conditional on the issue of an authorisation by the administrative authority, but merely recognise a presumption of an interest in bringing proceedings to challenge certain administrative decisions for the benefit of the environmental protection associations which hold them; that provision does not preclude non-accredited associations from bringing proceedings before the same courts if, like any applicant, they can show a sufficiently direct interest giving them standing to act (Conseil d’Etat, 25 juillet 2013, Association de défense du patrimoine naturel à Plourin, n° 357445).

The provisions of Article L. 142-3-1 of the Environmental Code apply only where the event giving rise to liability or the failure to fulfil obligations occurred after the entry into force of Law No 2016-1547 of 18 November 2016 on modernising the justice system for the 21st century.

Such as the hunt without holding a valid hunting permit: Cour de cassation, Crim., 16 novembre 2006, n° 05-19.062; Cour de cassation, Civ. 3e, 26 septembre 2007, n° 04-20.636.
Civ., 23 juin 2016, pourvoi n° 15-12.410. The contribution of this decision is to make the need for translation weigh on the proceedings when a legal person governed by public law or a private law body entrusted with the management of a public service has, in the exercise of one of its powers, seriously and manifestly unlawfully infringed. The judge hearing the application for interim measures shall give a ruling within 48 hours (Article L. 521-2 of the Code of Administrative Justice).

For further details, see Cour de cassation, Le juge et la mondialisation dans la jurisprudence de la Cour de cassation, Étude annuelle 2017.

In Paris: https://www.avocatparis.org/annuaire

158 Article 54 of loi n° 71-1130 du 31 décembre 1971 portant réforme de certaines professions judiciaires et juridiques.
proposed and to their foreseeable impact on the environment or human health. Concerning environmental permits: Article R. 181-50 of the Environmental Code.

[190] Conseil d'Etat, Avis, 6 avril 2016, n° 395916: «si la décision imposant la réalisation d'une évaluation environnementale est, en vertu du IV de l'article R. 122-18 du code de l'environnement prévost, un acte faisant grief susceptible d'être déferé au juge de l'excès de pouvoir après exercice d'un recours administratif préalable, tel n'est pas le cas de l'acte par lequel l'autorité de l'Etat compétente en matière d'environnement decide de dispenser d'évaluation environnementale un plan, schéma, programme ou autre document de planification mentionné à l'article L. 122-4 du code de l'environnement. Un tel acte a le caractère d'une mesure préparatoire à l'élaboration de ce plan, schéma, programme ou document, insusceptible d'être déferée au juge de l'excès de pouvoir, eu égard tant à son objet qu'aux règles particulières prévues au IV de l'article R. 122-18 du code de l'environnement pour contester la décision imposant la réalisation d'une évaluation environnementale. La décision de dispense d'évaluation environnementale pourra, en revanche, être contestée à l'occasion de l'exercice d'un recours contre la décision approuvant le plan, schéma, programme ou document.»

[191] Several administrative courts of appeal applied it to projects: CAA Bordeaux, 22 juin 2017, n°16BX01833; CAA Versailles, 28 février 2020, n° 18VE02428.


[196] Cour administrative d’appel de Marseille, 8 novembre 2010, Communauté de communes des Baronnies, n° 09MA00033.


[205] Nevertheless, the administrative judge seems to be relaxing his position. The Conseil d’Etat thus ruled, with regard to an association that had not delimited its geographical jurisdiction, that "in spite of the absence of delimitation, in its statutes, of the geographical jurisdiction of its field of action, this association must be regarded as having a local field of intervention in view of the indications provided on this point, in particular by its name, the location of its registered office and the existence, in several other departments, of local associations with a similar object and a similar name"(Conseil d’Etat, 25 juin 2012, Collectif Antinucléaire 13 et a. n° 346395).


[207] Those provisions have been approved by the Conseil constitutionnel (Conseil constitutionnel, 17 juin 2011, Association Vivraviry, n° 2011-138 QPC).


[209] Article L. 141-1 et seq. of the Environmental Code. The Conseil d’Etat ruled that it follows from those provisions of the Environmental Code that it is incumbent on the administrative authority, when receiving an application for approval, to determine whether it can be issued in a departmental, regional or national framework; if these provisions prevent it from requiring the association to carry out its activity in the whole of the territorial framework for which the approval is likely to be issued, it may lawfully reject the application when the association's activities are not carried out in a significant part of that territorial framework and only concern purely local issues (CE, 20 juin 2016, n° 389590).

[210] This provision 'does not make the admissibility of legal proceedings brought by environmental protection associations conditional upon accreditation by the administrative authority, but merely recognises a presumption of an interest in bringing proceedings to challenge certain administrative decisions in favour of environmental protection associations which are holders of such accreditation; that this provision does not prevent non-accredited associations from being able to bring proceedings before the same courts if, like any applicant, they can prove a sufficiently direct interest giving them standing to bring proceedings' (Council of State, 25 July 2013 Association de défense du patrimoine naturel à Plourin, No 355745).


[214] This solution could be challenged on the basis of the decision of the Conseil constitutionnel of 7 November 2014 (Association Mouvement raëlien international, n° 2014-424 QPC).


[216] Conseil d'Etat, 9 juillet 1982, Ministre de l’industrie c. Comité départemental de défense des lignes à très haute tension, rec., p. 277. Under Article R122-5 of the Environmental Code, the content of the environmental impact assessment is proportionate to the environmental sensitivity of the area likely to be affected by the project, to the size and nature of the works, installations, structures or other interventions in the natural environment or landscape proposed and to their foreseeable impact on the environment or human health.


[219] Conseil d’Etat, 9 décembre 1988, Entreprise de dragage et de travaux publics, n° 76493; Cour administrative d’appel de Nantes, 7 avril 2010, SNC Parc côtier Quem, n° 09NT00829.


[224] Cour administrative d’appel de Paris, 1er octobre 2003, Semmaris, n° 02PA03005.


[229] See for example Cour administrative d’appel de Bordeaux, 5ème chambre, 6 mai 2014, SAS Sablières et travaux du Lot (STL), n° 13BX02649.
The level of effectiveness of access to national courts is rather satisfactory with regard to the requirements of the case law of the CJEU. The applicable rules are therefore the same as those described above (see section 1.4). The level of effectiveness of access to national courts is rather satisfactory with regard to the requirements of the case law of the CJEU. However, some difficulties remain in practice: As mentioned above, one of the main limits of judicial review regarding procedural defects is the theory of substantial requirements. According to Conseil d’Etat case law, a defect affecting the conduct of a prior administrative procedure is liable to render the decision taken unlawful only if that defect was capable of influencing the meaning of the decision taken or deprived the persons concerned of a guarantee. This theory is notably applied to environmental impact assessment and public participation procedures. Such case law may be considered to be contrary to the CJEU decision Commission vs Germany of 15 October 2015 (paragraphs 55-57). However, the judge makes an in concreto assessment as to whether the defect may have had the effect of prejudicing the information to the population concerned by the operation or whether it was such as to influence the results of the investigation and, consequently, the decision of the administrative authority. With regard to public inquiries, the Conseil d’Etat ruled that the absence of mention, in the order opening the public inquiry and in the notice of inquiry, of the presence of an impact study in the file was not likely, in the absence of other circumstances, to hinder effective public participation in the inquiry and thus to deprive the public of a guarantee or to influence the results of the inquiry. The Conseil d’Etat also ruled that by signing a ministerial order that was challenged the day after the public consultation closed, without respecting the minimum four-day period set by Article L. 123-19-1 of Environmental Code and without a summary of the observations and proposals gathered during the consultation having been drawn up, the author of the order could not be regarded as having taken into consideration all the comments expressed by the public. Consequently, the contested order was issued after an irregular procedure. This procedural irregularity, which deprived the persons who participated in the consultation of the guarantee that their opinion would be duly taken into account with regard to a decision having a direct and significant impact on the environment, renders the decision unlawful.
Injunctive relief procedures are often ineffective in practice. It is very rare to obtain the suspension of an administrative act in the environmental field. A systematic review of case law would be necessary to understand why the “référé suspension” procedures are not working as it should, whereas it exists specific provisions in environmental matters.

It is rare for the administrative judge to agree to refer a question to the Court of Justice of the European Union for a preliminary ruling on environmental matters. CJEU case law is very often produced in support of NGO appeals. While the case law of the CJEU prevails before the judge, it often struggles to be properly implemented in regulatory administrative acts until it has been “translated” into a national court decision.

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 applicable rules are the same as those described above. They cover both procedural and substantive legality.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
All applicable environmental rules have been described above. There is however a specificity regarding appeals challenging decisions to oppose a prior declaration in the field of water. When the petitioner wishes to contest the opposition to a prior declaration, he must optionally refer the matter to the prefect, before any referral to the administrative judge.

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.?
Legally, it is never necessary to participate in the public consultation phase of the administrative procedure in order to have standing. In practice, however, the development of a legal argument during the public consultation phase obliges the author of the decision to respond to it and may therefore constitute essential elements for discussions during the litigation phase. The judge will take a positive view if an applicant has previously developed his claims in the participation phase. This shows that he has applied to the judge as a last resort and that he has made good use of the prior democratic procedures available to him.

5) Are there some grounds/arguments precluded from the judicial review phase?
The applicable rules are the same as those described above (section 1.2.4).

6) Fair, equitable – what meaning is given to equality of arms in the national jurisdiction?
There are no specific provisions on equality of arms. Equality of arms is essentially ensured by the principle of the application of adversarial proceedings before the courts.

7) How is the notion of “timely” implemented by the national legislation?
There are no specific provisions on the speed of procedures.

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?
All applicable environmental procedures have been described above (section 1.7.2.6). There are no more specificities.

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 applicable rules are the same as those described above (section 1.7.3). There is no statutory reference to a requirement that costs should not be prohibitive.

In addition, if one loses a case, there is a fairly low risk of being fined. In fact, under Article R. 741-12 of the Code of Administrative Justice, “the judge may impose a fine of up to 10,000 euros on the author of an application which he considers to be abusive”. However, the application of this provision is quite rare in environmental matters.

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[9]

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?
Rules on standing for both individuals and NGOs are the same as those described above (section 1.4.3)). The screening decision regarding plans and programmes can be challenged by the petitioner. However, under Article R. 122-18 of the Environmental Code, such judicial appeal against the screening decision must obligatorily be preceded by an administrative appeal (“RAPO” i.e. “recours administratif préalable obligatoire”). It cannot be challenged by the public or by an NGO. The Conseil d'Etat decided that a decision to exempt a plan from SEA is not directly challengeable.

Anyway, the decision to exempt a project from SEA can be contested when challenging the final plan.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?
The scope of the administrative review and the judicial review is the same as for EIA. This covers both procedural and substantive legality.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
There is no requirement for exhaustion of administrative review procedures prior to recourse to judicial review procedures. The only exception is under Article R. 122-18 of the Environmental Code, which requires the petitioner to seek an administrative remedy before challenging the decision to submit its plan or program to SEA.

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.?
It is not necessary to participate in the public consultation phase of the administrative procedure in order to have standing. In practice, however, the development of a legal argument during the public consultation phase obliges the author of the decision to respond to it and may therefore constitute essential elements for discussions during the litigation phase. The judge will take a positive view if an applicant has previously developed his claims in the participation phase. This shows that he has applied to the judge as a last resort and that he has made good use of the prior democratic procedures available to him.

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?
As mentioned previously, several procedures can lead to orders on interim measures (section 1.7.2.6).
In particular, the “référé-suspension” procedure can be used, after having filed an appeal, in order to obtain a suspension of the administrative decision, pending the judge’s decision on the merits. Two conditions must be met to obtain a suspension of the administrative decision: in case of urgency and if there is, at the stage of the investigation, a serious doubt as to the legality of the decision[11]. The suspension of the administrative decision shall end at the latest when the judge renders a decision on the merits. These decisions in summary proceedings may be appealed to the Conseil d’État within 15 days. Then the Conseil d’État decides within 48 hours.

Under Article L. 122-11 of the Environmental Code, there is a special kind of “référé-suspension” procedure for strategic environmental assessments. In fact, where an administrative decision has been adopted without a strategic environmental assessment when it should have been preceded by such an assessment, the court will find that there was no environmental impact assessment and suspend the administrative decision without requiring the condition of emergency[12].

Article L. 414-4 IX of the Environmental Code brings Natura 2000 impact assessments within the scope of Article L. 122-11 and allows the suspension of an administrative decision relating to a project that may significantly affect the conservation objectives of a Natura 2000 site without an assessment of these impacts. The same provisions apply in the event of a decision taken without a public inquiry when such an inquiry was required, or in the event of an unfavourable opinion from the investigating commissioner[13].

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 they include express statutory reference to a requirement that costs should not be prohibitive?

Those rules are the same as described above (see section 1.7.3). There is no statutory reference to a requirement that costs should not be prohibitive. In addition, if one loses a case, there is a fairly low risk of being fined. In fact, under Article R. 741-12 of the Code of Administrative Justice, “the judge may impose a fine of up to 10,000 euros on the author of an application which he considers to be abusive”. However, the application of this provision is quite rare in environmental matters.

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[14]

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?

Rules on standing for both individuals and NGOs are the same as those described above (see section 1.4 1) and 3)).

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

The scope of the administrative review and the judicial review is the same as described above (sections 1.2 4) and 1.8.1 5)). This invocation of pleas includes pleas of external legality (incompetence or defect in form and procedure) and pleas of internal legality (violation of the law or misuse of power or procedure).

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

There is no requirement for exhaustion of administrative review procedures.

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

It is not necessary to participate in the public consultation phase in order to have standing.

In practice, however, the development of a legal argument during the public consultation phase obliges the author of the decision to respond to it and may therefore constitute essential elements for discussions during the litigation phase. The judge will take a positive view if an applicant has previously developed his claims in the participation phase. This shows that he has applied to the judge as a last resort and that he has made good use of the prior democratic procedures available to him.

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 “référé-suspension” procedure can be used, after having filed an appeal, in order to obtain a suspension of the administrative decision, pending the judge’s decision on the merits (see also section 1.7.2. 6)). Two conditions must be met to obtain a suspension of the administrative decision: in case of urgency and if there is, at the stage of the investigation, a serious doubt as to the legality of the decision[15]. The suspension of the administrative decision shall end at the latest when the judge renders a decision on the merits. These decisions in summary proceedings may be appealed to the Conseil d’État within 15 days. Then the Conseil d’État decides within 48 hours.

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 they include express statutory reference to a requirement that costs should not be prohibitive?

Those rules are the same as described above (section 1.7.3). There is no statutory reference to a requirement that costs should not be prohibitive. In addition, if one loses a case, there is a fairly low risk of being fined. In fact, under Article R. 741-12 of the Code of Administrative Justice, “the judge may impose a fine of up to 10,000 euros on the author of an application which he considers to be abusive”. However, the application of this provision is quite rare in environmental matters.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[16]

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?

Rules on standing for both individuals and NGOs are the same as those described above (sections 1.4 1) and 3)).

Remarks concerning the effectiveness in the light of the CJEU case law are the same as those described above (section 2.1 1)).

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)?

The plans are usually adopted by means of a regulatory administrative act. In this case, rules are the same as described above (section 1.4 3)) and legal standing is assessed in a flexible way.

In this section, we therefore focus on regulatory administrative acts.

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

The scope of the administrative review and the judicial review is the same as described above (sections 1.2 4)). This covers both procedural and substantive defects.
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 requirement for exhaustion of administrative 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.? It is not necessary to participate in the public consultation phase in order to have standing. In practice, however, the development of a legal argument during the public consultation phase obliges the author of the decision to respond to it and may therefore constitute essential elements for discussions during the litigation phase. The judge will take a positive view if an applicant has previously developed his claims in the participation phase. This shows that he has applied to the judge as a last resort and that he has made good use of the prior democratic procedures available to him.

6) Are there some grounds/arguments precluded from the judicial review phase? There are no specific grounds precluded from judicial review, compared to other areas (see section 1.2.4).

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction? There are no specific provisions on equality of arms. Equality of arms is essentially ensured by the application of the principle of adversarial proceedings before the courts.

8) How is the notion of “timely” implemented by the national legislation? There are no specific provisions on the speed of procedures.

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? In particular, the “référé-suspension” procedure can be used, after having filed an appeal, in order to obtain a suspension of the administrative decision, pending the judge’s decision on the merits (see also section 1.7.2. 6)). Two conditions must be met to obtain a suspension of the administrative decision: in case of urgency and if there is, at the stage of the investigation, a serious doubt as to the legality of the decision[17]. The suspension of the administrative decision shall end at the latest when the judge renders a decision on the merits. These decisions in summary proceedings may be appealed to the Conseil d’Etat within 15 days. Then the Conseil d’Etat decides within 48 hours. In the event that the plan was submitted to SEA, there is a special kind of “référé-suspension” procedure. In fact, where an administrative decision has been adopted without a strategic environmental assessment when it should have been preceded by such an assessment, the court will find that there was no environmental impact assessment and suspend the administrative decision[18].

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? Those rules are the same as described above (section 1.7.3). There is no statutory reference to a requirement that costs should not be prohibitive. In addition, if one loses a case, there is a fairly low risk of being fined. In fact, under Article R. 741-12 of the Code of Administrative Justice, “the judge may impose a fine of up to 10,000 euros on the author of an application which he considers to be abusive”. However, the application of this provision is quite rare in environmental matters.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[19]

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

In this section, it is important to distinguish parliamentary legislative acts from government decrees. Regarding parliamentary legislative acts transposing European Union law: it is not possible to directly challenge the legal validity of a legislative act before a judge. However, this is possible in a trial. If the outcome of the dispute depends on it, it is then possible either to challenge the validity of a legislative act in relation to European Union law (“exception d’inconventionnalité”) or to submit a priority question of constitutionality (QPC). The conditions of admissibility are those of the main appeal (section 1.4.3)). Concerning the QPCs, there are specific conditions for obtaining the transmission of this question to the Conseil constitutionnel (section 1.3.5). Regarding government decrees, they are challenged directly before the Conseil d’Etat. Access to the judge is widely accepted. All those who have an interest in maintaining or annulling the contested decision may intervene[20]. Associative approval under the Environmental Code will make admissibility easier but is not an indispensable prerequisite. This type of appeal is not subject to the obligation to have recourse to an “avocat”. Regarding actions for failure to act, i.e. in the absence of a government decree, the rules on admissibility of access to the courts require the existence of a prior administrative decision. If there is no administrative decision, it is up to the applicant to submit a prior request to the Government. The reply or the absence of a reply will constitute the prior decision that can be challenged before the Conseil d’Etat. This decision may be challenged under the same conditions as a decree.

The legality of a decree may also be raised by way of exception before the judges of first instance in the context of litigation against individual or regulatory decisions taken by local administrative authorities on their basis. The classic rules of admissibility set out above apply.

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? Regarding parliamentary legislative acts transposing European Union law, the control exercised through the exception of unconventionality (“exception d’inconventionnalité”) does not relate to the procedure of adoption of the law by the Parliament. It relates only to the substance. The judge examines the compatibility of the law with European Union law (Article 267 of the Treaty on the Functioning of the European Union).

The grounds raised directly or by way of exception against a government decree cover both procedural and substantive legality (see also section 1.2.4)). Grounds of “public order” may be raised ex officio by the judge. The administrative lawsuit conforms to the idea that the litigation debate must be “without traps and without surprise” for the parties. The grounds of public order, i.e. pleas raised of their own motion, are obligatorily communicated to the parties if they are raised by the judge.

The judge’s role can be relatively varied and can become very technical in environmental matters. For example, the Conseil d’Etat was led to rule on the implementation of the Habitats Directive by examining the legality and conformity of the Decree establishing the list of protected animal species. Here it checks the proportionality of the rules for the protection of species enacted, which cannot legally consist of a general and absolute prohibition on modifying a natural habitat and must on the contrary be adapted to the needs that the protection of these species imposes in certain places[21].

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? There is no requirement for exhaustion of administrative review procedures.
4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.? 

It is not necessary to participate in the public consultation phase in order to have standing.

In practice, however, the development of a legal argument during the public consultation phase obliges the author of the decision to respond to it and may therefore constitute essential elements for discussions during the litigation phase. The judge will take a positive view if an applicant has previously developed his claims in the participation phase. This shows that he has applied to the judge as a last resort and that he has made good use of the prior democratic procedures available to him.

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?

Regarding parliamentary legislative acts transposing European Union law, there is no procedure for obtaining a suspension of the application of a parliamentary legislative act. In the context of an exception of unconventionality, the legislative provision contrary to European Union law is not annulled. Its application is simply set aside in the course of the proceedings. Finally, the judge does not have a power of injunction vis-à-vis the legislature. He cannot order the legislature to amend a legislative act. In the context of a priority constitutionality question, the constitutional judge may annul a legislative provision or postpones the effects in time of a declaration of unconstitutionality in order to give the legislator the option to remedy the unconstitutionality found[22].

Regarding government decrees, the "référé suspension" procedure described above can be used to obtain a suspension of this act. Other types of injunction may result from the action for annulment brought against the decree. In the context of an appeal against a government decree, the judge has the possibility to modulate in time the effects of his annulment decision[23]. The effects of the jurisdictional decision may lead either to the immediate annulment of the disputed decree, or to the modulation in time of the effects of the recognition of its illegality, or to an injunction to supplement the regulatory provisions recognised as illegal. However, the modulation decision does not apply to contentious actions initiated on the date of the reading of the decision which deeply respects vested rights as much as the exercise of the right of remedy[24] and the Conseil d'Etat may not modulate in time the effects of a contentious annulment if the Court of Justice of the European Union has refused to vary the effects of its reply to a preliminary question from the Conseil d'Etat[25].

French environmental NGOs are increasingly using the method called "en tant que ne pas" to challenge the provisions of a ministerial order or a decree in order to ask the judge to enjoin the government to restore the legality of the challenged regulatory provisions.

For example, in a case of litigation against the conditions of placing on the market and use of pesticides, the NGOs requested and obtained, on the basis of Articles L. 911-1 et seq., of the Code of Administrative Justice, that the judge issue an injunction to supplement the provisions of the disputed order within a period of 6 months[26].

The most emblematic example is the "list of estuarine municipalities" needed for the application of the law on the protection of the coastline[27]. The national federation France Nature Environnement challenged before the Conseil d'Etat the Prime Minister's implicit refusal to implement a provision of the coastal legislative act protecting certain sectors located in estuarine municipalities. As these provisions were conditional on the publication by decree of the list of communes located in the estuary zones, they were inoperative as long as the decree was not issued. Noting the illegality of the lack of intervention of this decree more than ten years after the intervention of the coastal legislative act, the Conseil d'Etat enjoined the State to publish the decree specifying the list of estuarine municipalities within 6 months on penalty of € 15 per day of delay.

More recently, the Conseil d'Etat enjoined the Minister of Ecology to complete the regulatory provisions for combating light pollution within nine months and subject to a fine of € 500 for each day of delay[28].

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?

Those rules are the same as described above (section 1.7.3). There is no statutory reference to a requirement that costs should not be prohibitive.

In addition, if one loses a case, there is a fairly low risk of being fined. In fact, under Article R. 741-12 of the Code of Administrative Justice, "the judge may impose a fine of up to 10,000 euros on the author of an application which he considers to be abusive". However, the application of this provision is quite rare in environmental matters.

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[29]?

Pursuant to Article 267 of the Treaty on the Functioning of the European Union, French courts may request the Court of Justice of the European Union to give a ruling on the validity of EU acts.

The request for a preliminary ruling may be raised by the applicant in his written submissions.

In the event of serious difficulties concerning the assessment of the validity of an act of European Union law, it is for the Conseil d'Etat to stay proceedings and refer a question to the Court of Justice of the European Union for a preliminary ruling. However, this is not an obligation, but merely an option in the case of the lower courts.

With regard to the application for an assessment of validity, the Conseil d'Etat considers that it is required to refer only in cases where the validity of the act is questionable and "having regard to the serious nature of the challenge raised"[30].

To our knowledge, in the field of the environment, the Conseil d'Etat has on only three occasions referred a preliminary ruling for an assessment of validity[31].
Société Marineland, société Safari Africain 281812 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 European Convention of Human Rights.

Moreover, if the reasonable time limit for judgment is exceeded, the State may be held liable before the Conseil d'Etat on the basis of Article 6, paragraph 1, of the Code of Criminal Procedure provides for an interesting deferral mechanism. If the guilt of the defendant is recognised by the judge, the latter has the option to refer the act to the court. This may result in a fine of € 10,000 for each infraction observed. In order to prevent the non-enforcement of criminal convictions including the order for environmental restoration as a supplementary criminal sanction, the legal notice to see copyright rules for the Member State responsible for this page.

Other relevant rules on appeals, remedies and access to justice in environmental matters
- Appeals against the passivity of the administration are available through the mechanism of contesting an explicit or implicit refusal to adopt an act. Since the administrative judge may be seized of any decision that gives rise to a complaint, a citizen may create such a decision by requesting an open or explicit refusal to adopt an act. The powers granted to the administrative judge may lead him to enjoin the administrative authority to take the legal act necessary to comply with the law.
- In order to ensure the implementation of his judgments, the judicial judge may also use the mechanism of injunction on pain of a penalty payment. For example, in an interim order issued on 15 December 2015 (case no 15/60067), the judge of the Paris Tribunal de Grande Instance accepted the requests of a heritage protection association by suspending the permit to demolish part of the site of the "Jardin des Serres d'Auteuil". This permit benefited the French Tennis Federation for a project to enlarge the Rolland Garros tennis courts. The judge ordered the immediate suspension of the work for three months, the time needed to judge the case on its merits, with a fine of € 10,000 for each injunction observed.
- In order to prevent the non-enforcement of criminal convictions including the order for environmental restoration as a supplementary criminal sanction, the Code of Criminal Procedure provides for an interesting deferral mechanism. If the guilt of the defendant is recognised by the judge, the latter has the possibility of adjourning the sentence to a later hearing with the obligation to restore the environment within a specified period, possibly on pain of a daily penalty. For example, the Court of Cassation has ordered the restoration of 5,000 m² of landfill in a wetland area within nine months, subject to a daily penalty of 30 euros after this period has elapsed.
- There are no specific penalties to be imposed on the public administration for failing to provide access to justice. The Conseil constitutionnel can annul laws that restrict access to justice on the basis of Article 16 of the Constitution. It follows from this provision that it must not be substantially prejudicial to the right of the persons concerned to exercise an effective remedy before a court. However, in the field of the environment, there are only two relevant cases concerning legislative acts limiting access to justice. Those acts have been twice validated by the Conseil constitutionnel.

Moreover, if the reasonable time limit for judgment is exceeded, the State may be held liable before the Conseil d'Etat on the basis of Article 6, paragraph 1, of the European Convention of Human Rights.
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**Access to justice in environmental matters - Croatia**

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. **Legislative authority – sources of environmental law**

The Constitution of the Republic of Croatia stipulates that authority in Croatia is organised according to the principle of the separation of powers, so that legislative authority is exercised by the Croatian Parliament, executive authority by the Government of the Republic of Croatia and judicial authority by the courts of Croatia. As holders of judicial authority, the courts administer justice according to the Constitution, laws and regulations, and international treaties which Croatia has signed and ratified as well as other valid sources of law[1].

Along with legislative, executive and judicial government, the Constitution established the Constitutional court of the Republic of Croatia (Ustavnik sud) as a kind of ‘fourth branch of government’ or ‘inter-government’. The real position of the Constitutional court is seen in the authorities given to it by the Constitution, i.e. in the legal effects of constitutional-judicial decisions that have a direct impact in areas of legislative, executive, and judicial government[2].

The (Croatian) Parliament (Hrvatski zbor) holds legislative power in Croatia, so all laws (zakoni) are enacted by it. The Government (Vlada), as the head of the executive power, is the main initiator of the legislation adopted by the Croatian Parliament as the legislator. According to the Constitution of the Republic of Croatia, every member of parliament, parliamentary parties, working bodies of the Croatian Parliament, and the Government have the right to propose legislation. Also, the Government issues specific legislative acts which comprise regulations (uredbe), decisions (odлуке), conclusions (zaključke) and administrative orders (riješenja).

In addition to the above, each Ministry issues ordinances (pravilnik) for their area of responsibility and according to different laws. Main elements of the fact sheet:

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

In Croatia, state administration bodies are ministries (ministarstva) and state administration organisations (državne upravne organizacije). Ministries and state administration organisations are central state administration bodies. State administration organisations are established to conduct state administrative affairs which require exceptional autonomy, or using special conditions and methods of work, or to implement legally binding acts of the European Union. The activities of the state administration defined by a special act may be transferred to bodies of local and regional self-government units or other legal entities vested with public authority based on law. The activities of the state administration include the immediate implementation of acts, issuing regulations for their implementation, carrying out administrative oversight and other administrative and professional activities[3].

Currently, there are 16 ministries in Croatia and 12 state administration organisations. The Ministry of Economy and Sustainable Development is the main state administrative body responsible for environmental laws implementation. The scope of the Ministry covers, among other things, activities related to protection and preservation of the environment and nature in accordance with the policy of sustainable development of the Republic of Croatia, activities related to water management, and administrative and other activities in the field of energy. Until July 2020 there was a Ministry of Environment Protection and Energy. In addition to the above institutions at the national level, each regional level government - county (županija) - has its own responsibility related to the environment in general, including responsibilities for water and nature management. There are 20 counties and the City of Zagreb and each of them has either separate departments for the environment (including nature and water) or these sectors form parts of other departments, e.g. spatial planning or similar. Based on the same principle, cities and even some municipalities, i.e. local level government, have their own departments for the environment and those departments are also responsible for water and nature management. Each county, city and municipality has a certain level of autonomy to decide how to organise specific departments dealing with the environment, and as a result the names of the departments and their responsibilities vary. However, lower levels of administration are responsible to all levels above them in the hierarchy of administrative power. For example, a specific project envisaged in local spatial plan must be in line with the spatial plans of the city, county, etc. The rule is also that the local authority is by default responsible for issuing permits for projects and construction in their locality and the same goes for the county and its area. However, if the project is of national interest then the central body (Ministry) issues the permits. Also, the administration of all levels must follow specific rules for different kinds of project set out in special legislation such as, for example, EIA legislation.

The competence of either level of these administrative bodies is proscribed in the sectoral laws. More generally, certain competences are guaranteed to the regional and local level government in the Constitution. Local level government is entrusted with affairs pertaining to the planning and management of space, spatial and urban planning, communal services, environmental protection and the promotion of a clean environment, to mention the most relevant ones in the context of this analysis. Regional level government is entrusted with affairs pertaining to spatial and urban planning (of regional relevance), and traffic and traffic infrastructure, among other competencies. These general constitutional competencies are further detailed in the sectoral laws, dividing them between regional/local and state administration, keeping in mind the principle of proximity. The principle of proximity is to take into account that the provision of administrative services is best provided by those bodies closest to the citizens, taking into account the efficiency of its provision. To illustrate, we will use an
example of how elements of EIA procedure fall within the competence of different levels of government based on the provision of EIA legislation. The types of projects required to undergo scoping procedure are given in Annex II and Annex III of the EIA Regulation. Projects listed in Annex II, e.g. tourist zones outside settlements of 15 ha or larger, fall within the competence of the Ministry of Economy and Sustainable Development. Projects listed in Annex III, e.g. tourism theme parks of 5 ha or larger, fall within the competence of the regional authority for the environment protection. The logic here is that bigger and more complex projects are assessed at a higher level of government based on the premise that these levels of government have better capacities to process these requests.

The right to access to justice in environmental cases is provided for in the Environmental Protection Act as the most important piece of legislation and general act on environmental protection in Croatia. The general approach is that the EPA includes a recognition of legal interest of persons belonging to the public concerned. The impairment of the right is a prerequisite for access to justice against decisions passed in procedures governed by the Environmental Protection Act. Also, the EPA determines that a civil society organisation which promotes environmental protection has a sufficient (probable) legal interest in the procedures regulated by the EPA which provide for the participation of the public concerned if specific requirements (described later) are met.

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

In Croatia environmental protection is in the category of the highest values of a constitutional order. Article 3 of the Constitution defines “conservation of nature and the environment” as the highest value of the constitutional order of the Republic of Croatia and as the basis for the interpretation of the Constitution. According to Article 50 of the Constitution “entrepreneurial freedom and property rights may exceptionally be restricted by law in order to protect the interest and security of the Republic of Croatia, its natural environment and human health”. Also, state responsibility to protect the environment is strictly regulated, as Article 70 of the Constitution states: “the state provides the conditions for a healthy environment”. In principle, individuals could directly rely on this rule in specific cases. The same article also stipulates: “everyone shall, within the scope of their powers and activities, devote special attention to the protection of human health, nature and the environment”. Also, the right of access to information held by public authorities is guaranteed by Art 30, para 4 of Constitution which is important for environmental cases.

The Constitution also, in Art 19 para 2, stipulates that “judicial control of the legality of individual acts of administrative authorities and bodies with public authority is guaranteed”. Also, in Art 29 para 1, the Constitution stipulates that “everyone is entitled in full equality to a fair and public hearing by an independent and impartial court, in the determination of his rights and obligations and of any criminal charge against him”.

There are no specific provision related only to legal standing in environmental matters, but there are provisions related to equality of all Croatians and non-Croatians before courts (and other state or other bodies with public authorities), that court hearings and judgments are public, and under what conditions the public can be excluded.

The Croatian Constitutional Court is responsible for protecting the Constitution.

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

The Environmental Protection Act (OG 80/13, 153/13, 78/15, 12/18, 118/18) is a fundamental law not only for Croatia’s environmental policy but also for Croatia’s sustainable development policy; it defines basic concepts related to sustainable development and defines state institutions, their powers and their obligations in drafting relevant policy documents related to natural resources. This Act also contains provisions on fines for anyone who violates rules, obligations or powers provided for in the Act and also, as mentioned above, it contains rules on access to justice in environmental matters.

There is also a large set of other different laws, ordinances and regulations which regulate other environmental subareas (air, climate, sea, etc.), different environmental procedures (EIA, SEA, environmental permit, etc.) and different threats to environment (waste, chemicals, etc.) but do not contain specific rules on access to justice in environmental matters.

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

Zelena akcija/Friends of the Earth Croatia brought a case before the Administrative Court in Rijeka against the Ministry of Environmental Protection and Energy’s decision on the EIA approval for the floating LNG terminal on the Island of Krk. The main arguments in the case (submitted in June 2018) were that the project was not in spatial plans (County or Municipality), there was no alternative location or procedure, very old data were used in the EIA study, separate EIAs were prepared for the floating part and the coastal part of the same project, etc.

The Administrative Court’s verdict was issued after the second hearing which was held in February 2019, and the lawsuits of Zelena akcija and Zelena Istra, Omiljaj Municipality and Primorsko Goranska County were all rejected. It is also important to mention that during the court proceedings the Croatian Parliament adopted the Law on LNG setting this project as one of the high priorities for Croatia. In the Administrative Court, ZA/FoE Croatia stated that this could be seen as significant pressure on the Court, which the judge rejected. Also, the verdict was announced just 15 minutes after the second hearing and the judge rejected all proposed evidence such as hearing of expert witnesses, which is not common in other Administrative cases.

All the plaintiffs appealed to the High Administrative Court, but the outcome was not successful and the verdict was issued in very rapid proceedings, which is a big news in such cases, and which we believe also shows how there was pressure from the Parliament and especially the Minister of Environment and Energy which publically advocated for the project.

The extraordinary remedy from the Administrative Dispute Act is the only basis on which the Supreme Court (Vrhovni sud Republike Hrvatske), after the High Administrative Court, may also participate in an administrative dispute. This remedy may be filed only by the Attorney General, ex officio or at the initiative of a party. Therefore, in the vast majority of cases, the High Administrative Court is the final instance of an administrative dispute.

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?

The Croatian Constitution stipulates that all international treaties (including environmental agreements) which have been concluded and confirmed in accordance with the Constitution, are published and are in force, are the part of the internal legal order of Croatia and are legally above Croatian law.

However, in Croatian practice in environmental cases, the courts only rely on national legislation, without detailed assessment, presuming it to be in line with EU legislation as well as international environmental agreements.
The specialised courts are commercial courts (7), administrative courts (4), the High Commercial Court of the Republic of Croatia (1), the High Administrative Court of the Republic of Croatia (1) and the High Misdemeanour Court of the Republic of Croatia (1) which are the 2nd instance courts. This means that specialised courts are established as two tier courts, High courts acting as second instance (appellate) courts. First instance misdemeanour (61) courts have been integrated into municipal courts since 1st January 2020. Municipal and misdemeanour courts are established for the territory of one or more municipalities, one or more towns or parts of an urban area, and the county, commercial and administrative courts are established for the territory of one or more counties. The High Commercial Court of the Republic of Croatia, the High Administrative Court of the Republic of Croatia, the High Misdemeanour Court of the Republic of Croatia and the Supreme Court of the Republic of Croatia are established for the territory of the Republic of Croatia. The establishment of the High Criminal Court was prescribed, but it was postponed until the decision of the Constitutional Court on the constitutionality of specific legal amendments. The Supreme Court of the Republic of Croatia is the highest court in Croatia.

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)?

The question of jurisdiction depends on the legal order in the state, since it can be decided based on the location of the plaintiff.

In relation to environmental cases, the most important thing to note is that jurisdiction of the administrative courts (there are 4 in Croatia – situated in 4 larger cities – Zagreb, Split, Osijek and Rijeka) is decided based on the territory of the location on which specific environmental administrative decision will have impact. If a case is brought against a county (regional unit) of the administrative body, the case should be brought in the court in whose territory the regional unit is located. If the case could be reviewed by multiple courts, the court which is higher to both of those courts will decide on jurisdiction (and that rule applies to other courts too). In administrative cases it is the High Administrative Court.

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

There is no special environmental court or even judges which are experts in environmental cases. Most of the environmental cases come before the Administrative Courts and there is no rule to determine which judge will get an environmental case. In Croatian practice various judges have ruled on environmental cases, so basically when case is submitted any judge ruling at that court could get that environmental case.

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.

The Administrative Court freely evaluates the evidence and establishes the facts. It takes into account the facts concluded in the proceedings in which the disputed decision was made and the parties may suggest which facts should be established and through which evidence, but the Court is not bound by any of that and it can also establish facts on its own. In three of the four administrative courts (Zagreb, Split, Rijeka) the specialisation of judges was established by internal acts[4].

In an administrative dispute, the first instance court is bound by the scope of the review requested by the party filing a lawsuit, but not by its reasons. In practice, lawsuits are drafted to challenge an administrative decision ‘in its entirety’. However, the appellate court, the High Administrative Court, reviews the decision of the 1st instance courts bound by reasons invoked in the appeal.

Both levels of administrative courts have the mandate to review administrative decisions (and administrative contracts) to establish whether they meet the minimum requirements for basic legality. However, they can only do this once the party has initiated the proceedings, regardless of whether either of the parties has invoked this as an argument. The court has the official mandate to establish the existence of the minimum legal requirements of an act once this act has been brought before a court to be decided.

1.3. Organisation of justice at administrative and judicial level

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

Croatia follows a standard division of power between legislative, judicial and executive branches. Legislative power at the state level lies with the Parliament called Hrvatski Sabor. The Government holds executive power and the judiciary is an independent branch in its own right.

Certain constitutionally guaranteed tasks lie with the decentralised levels of government. 20 counties plus the city of Zagreb, which due to its size has a status of a county.

The principle of division of powers is that the Ministry of the state authority at the central level is responsible for overall legislation and execution. The municipality, town, and county can make independent decisions regarding tasks within the scope of their self-government in accordance with the Constitution of the Republic of Croatia and Law on Local and Regional Self-Government (Article 20). Lower administrative bodies are responsible to administrative bodies which are above them in the hierarchy of power. Counties are tasked with performing general public administration services at the regional level, while the units of local self-government within the scope of their self-government, perform the tasks of local importance which directly address the needs of the citizens, and which are not assigned to state bodies by the Constitution or other laws.

The Ministry of Economy and Sustainable Development covers activities related to the protection and preservation of the environment and nature, activities related to water management and administrative and other activities in the field of energy. This Ministry issues environmental permits, decisions on EIA, AA, SEA, etc. The Ministry of Spatial Planning and Construction issues location and construction permits, which are also important in environmental cases. In addition to the above institutions established at the national level, each regional level government - county (županija) - has its own responsibility related to the environment in general, so some permits, decisions on EIA, AA and SEA are also issued on this level.

Based on the same principle, cities and even some municipalities, i.e. local level government, have their own departments for the environment and those departments are also responsible for water and nature management.

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

An administrative environmental decision can be appealed before the Administrative Court when a decision was passed by the Ministry. When a decision is passed by a lower level authority, before appealing to the administrative court an appeal to the Ministry has to be filed first. There is no strict deadline for issuing a decision, only the Environmental Protection Act determines that every environmental case is an urgent case. In practice, the timeline for a final ruling varies, so sometimes the case is ruled on within a year or even less in cases related to access to environmental information, and sometimes it takes more than a year just to get the first hearing, so a ruling can easily wait for more than 2 years.

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

There are no special environmental courts, as stated above.

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

Appeals against environmental administrative decisions

If an environmental administrative decision was issued by a lower level of environmental authority, for example at the city, municipality or county (regional) level, one can appeal to the Ministry of Economy and Sustainable Development.

An appeal in administrative proceedings is also allowed if there is silence from the administration. Appeals decided by the Ministry can be challenged before the administrative court. An appeal to the Ministry must be filed before going to the Court, so the Ministry issues a decision which one can then be brought to the administrative court.
When an administrative decision has been delivered by the Ministry, there is no higher body for appeal but it is possible to start an administrative dispute before the Administrative Court.

**Appeals against court orders and decisions**

The Administrative Court is the first instance court and its decision can be appealed before the High Administrative Court. After that it can go to the Supreme Court. Apart from ensuring the uniform application of laws and equality of all citizens, the Supreme Court of the Republic of Croatia also discusses current issues related to court practice, declares regular or extraordinary legal remedies if required by the law or separate by-laws, decides jurisdictional disputes among lower courts on the territory of the Republic of Croatia, and analyses various needs for professional development of judges, advisers to the court and judicial apprentices. In addition, the Supreme Court of the Republic of Croatia performs other tasks as prescribed by law. The Supreme Court of the Republic of Croatia comprises the Criminal Department and the Civil Department employing 42 judges, including the President of the Supreme Court. The Supreme Court of the Republic of Croatia regularly publishes the Selection of Decisions of the Supreme Court of the Republic of Croatia as a periodical of court practice available to experts as well as the general public. The Supreme Court of the Republic of Croatia also publishes court practice on its [website](https://www.sudovacroatija.hr). The access to the web site is free of charge.

It should be noted that there are also cases in which an appeal against the first-instance verdict of the administrative court is not allowed - first cassation, silence of administration, court settlement.[5]


There are no specific extraordinary ways of appeal which have specific rules for the environmental area.

However, there are some extraordinary legal remedies:

- in administrative procedure - renewal of the procedure, annulment and revocation of the decision, declaring a decision null and void[6]:
- in administrative dispute - renewal of the dispute, request for extraordinary review.[7]

The extraordinary remedy of a request for extraordinary review is the only basis on which the Supreme Court, after the High Administrative Court, may also participate in an administrative dispute. This remedy may be filed only by the Attorney General, ex officio or at the initiative of a party. Therefore, in the vast majority of cases, the High Administrative Court is the final instance of an administrative dispute.

Preliminary references may be submitted to the CJEU by any court, including, for example, by the High Administrative Court in environmental cases. Anyone can request a preliminary reference in their lawsuit submitted to the court.

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

There are no specific rules or provision in specific legislation about out of court solutions in the environmental area, such as mediation or similar, but it does not mean that parties could not try to solve conflict in that manner.

Also, there is the [Croatian Conciliation Association](https://www.hrvatska-udruga-izmiritelja.hr), with the purpose and mission to promote mediation, education and dispute resolution through mediation, and to make mediation a generally accepted way of resolving disputes. In the last several years this Association brought together different judicial institutions but also lawyers at different educational events for the purpose of developing dispute resolution through mediation.

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

The [Criminal Law of Croatia](https://hak.hr/en/medianaliz/ljs/stranas/) defines crimes against the environment such as contamination/pollution of the environment, endangering the environment with a plant/facility, destroying protected natural values, destroying natural habitats, changing water regime in Croatia, etc. In Croatia, crimes against the environment are as a rule crimes prosecuted ex officio, which means that the procedure is initiated by a public prosecutor either ex officio, or after criminal charges, if he/she estimates there is reasonable suspicion that a crime has been committed. A crime can be reported by anyone who has serious and specific knowledge of a crime and the perpetrator; crimes are as a rule reported to an authorised public prosecutor. A crime can be reported to the police as well (which is most frequent, for practical reasons), to a court or to an unauthorised public prosecutor, who must immediately forward it to authorised public prosecutor.

Also, anyone can submit a minor offence report to the authorised body. It is possible to report a minor offence for authorised inspection, for instance against the Environmental Protection Act or some other regulation from the area of environmental protection. The inspection will then, if it finds it is reasonable, take further steps to initiate the minor offence procedure. As of 1st January 2019 the [State Inspectorate](https://www.dzavinski-ispitaji.hr) also includes Environment Inspection, Nature Protection Inspection, Forestry Inspection, Water Management Inspection, Agriculture, etc. Before 2019 inspections operated as part of the specific ministry responsible for the specific area.

Anyone, including an NGO, can submit a complaint to the [Ombudswoman](https://puca.povjerenik.hr/) and environmental cases have been included in its yearly report since 2013. The Ombudswoman can issue recommendations, opinions, proposals and warnings to the bodies referred to in the complaint. These bodies are obliged to inform the Ombudswoman on the measures undertaken.

The [Information Commissioner](https://www.vhpi.hr) is a second-instance body to deal with appeals of users on the decisions of bodies of public authorities. An appeal may be submitted by the user to the Information Commissioner within 15 days from the date of delivery of the decision, through the first-instance body that issued the decision. Also, the appeal can be filed with the Commissioner if the public authority failed to decide on the request for information application within the legal deadline (so-called silence of administration). In this case, the appeal can also be filed directly to the Commissioner.

### 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)?

An environmental administrative decision can be challenged by a natural person, legal entity, group of individuals (for example neighbours, owners of the same property, etc. and NGO which fulfil specific requirements.

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

Rules on standing are the same for all environmental cases.

#### 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.)

Basic rules for administrative procedures are given in the General Administrative Procedure Act of 2009 (hereinafter: GAPA). GAPA has basic provisions (Articles 1-39) which are applicable to all administrative procedures. Sectoral specificities of administrative procedures can be detailed in sectoral laws but they may not derogate from the basic provisions of GAPA. GAPA has a general provision on standing which is given in Article 4 and which determines who can be a party to the administrative procedure. A general rule stipulates that a party to the administrative procedure is “a natural person or legal entity based on whose motion the procedure was initiated, against whom the procedure is conducted or who is entitled to participate in the procedure in order to protect her rights or legal interests”.

So, according to the general provision, in addition to the direct parties to the proceedings a party to the proceedings can also be the one capable of proving the impairment of right. Under the general provisions only parties to the proceedings can appeal by the means of the administrative review or have recourse to judicial review.
According to the Environmental Protection Act (EPA) (OG 80/13, 153/13, 78/15, 12/18) Art 167 par 1 and Art 168 par 1, individuals have the right to file an appeal (to a 2nd instance body if the decision was issued by lower administration or ask for judicial review if the decision was issued by the Ministry if they can prove impairment of their right due to the location and/or nature and impact of the project and if they participated in the procedure as a member of the public concerned.

According to the EPA Art 167 par 2 and Art 168 par 2, an NGO has a sufficient legal interest in the procedures regulated by the Environmental Protection Act which provide for the participation of the public concerned, if it fulfills the following requirements:

- if it is registered in accordance with special regulations governing associations and if environmental protection, including protection of human health and protection or rational use of natural resources, is set out as a goal in its statute,
- if it has been registered for at least two years prior to the initiation of the public authority’s procedure (in relation to which it is expressing its legal interest),
- and if it can prove that in that period it actively participated in activities related to environmental protection in the territory of the city or municipality where it has a registered seat in accordance with its Statute. Such an NGO has the right to file an appeal with the Ministry or file a lawsuit before the competent court, for the purpose of challenging the procedural and/or substantive legality of decisions, actions or omissions.

The right of an NGO to access justice in environmental matters is not dependent on participation in administrative procedures which lead to decision which is challenged before the court.

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

According to the Act on Administrative Disputes the rule is that administrative disputes are conducted in Croatian and in the Latin script. However, parties and participants in administrative disputes have the right to use their own language with a certified translator before the court. Translation costs must be covered by the party to whom they refer unless special law provides differently. Translation costs may be included in the total costs that the party may claim in the dispute. There is no exclusion of costs envisaged for environmental cases.

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) Statement of evidence — are there any limits in obtaining or evaluating evidence, can the court request evidence on its own motion?

As already stated above, the Administrative Court freely evaluates the evidence and establishes the facts. It takes into account the facts concluded in the procedure in which the disputed decision was made and the parties may propose what facts should be established and through which evidence, but the Court is not bound by any of that and it can also establish facts on its own. However, in practice, administrative courts do not determine ex officio evidence if doing so would involve court costs.

In administrative proceedings the first instance court is bound by the scope of the review requested by the party filing a lawsuit, but not by its reasons. In practice, lawsuits are drafted to challenge an administrative decision ‘in its entirety’. However, the appellate court, the High Administrative Court, reviews the decision of the 1st instance courts bound by reasons invoked in the appeal.

Both levels of administrative courts have the mandate to review administrative decisions (and administrative contracts) to establish whether they meet the minimum requirements for basic legality. However, they can only do this once the party has initiated the proceedings, regardless of the whether either of the parties has invoked this as an argument. The court has the official mandate to establish the existence of the minimum legal requirements of an act, once this act was put before the court for a decision.

2) Can one introduce new evidence?

One can introduce new evidence, meaning evidence which was not offered in the administrative procedure which resulted with disputed decision. These evidence proposals, as well as other evidence, are not binding for the court. In Croatian case law there are some cases in which the Administrative Court decided not to use new evidence stating that it should have been used during previous procedure (EIA; AA or such). Such cases are US1385-17-16 from 15 th June 2018 and US1-272/15-15 and in both cases it was NGO BIOM vs Ministry of Environment and Energy and the decisions were about wind power plants.

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

There is a Croatian Association of court expert witnesses and valuators. One can search this list and find specific area and subarea which is needed. Each party in the court procedure can suggest that expert witness should be called for specific matter in the case.

However, if there is no expert witness listed for a specific area (for example, habitats of specific species, or EIA process in general) parties can suggest an expert who is not in the list. The Court can also do the same. There are no formal requirements for an expert witness who is not on the list; in terms of what is expected by analogy, it would be the same as for those who are listed. A party suggesting somebody who is not on the list should prove why this witness is an expert in specific field with their CV or similar.

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

Expert opinion is not binding on judges so the judge evaluates this opinion in the same way as other evidence so there is a level of discretion for judges.

3.2) Rules for experts being called upon by the court

One can become a permanent Court expert witness (stalni sudski vještak) according to Ordinance on Permanent Court Expert witnesses and then she/he is included in the aforementioned list. The expert witness has to meet the deadline determined in the decision about expertise, keep confidential everything he concluded in the specific case and also upgrade his knowledge and skills for his area of expertise.

3.3) Rules for experts called upon by the parties

Each party in the court procedure can suggest that an expert witness should be called for a specific matter in the case. The court is not obliged to accept that suggestion but usually does, however, this was not granted in several environmental cases (for example EIA for LNG floating terminal the island of Krk and in wind power plant cases) since the court decided that the opinion of one or several additional experts could not be stronger than the opinion of a group of experts working on EIA study.

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

The expert witness has right to be rewarded for his work which is also regulated by Ordinance on Permanent Court Expert witnesses. The reward is determined by the Court according to scores and the value of 1 point is equal to 2.00 HRK (VAT not included) and 100% higher in case of night work, holiday work, etc. If the Court or State Attorney covers that fee, it is 20% less than in the case when parties suggested an expert witness from the list.

This reward includes preparation of written opinion, attendance of court hearing, travel costs, accommodation costs, etc. The Ordinance on Permanent Court Expert witnesses determines how many points (score) the expert witness can be given for the specific part of his/her work, so for example for preparing the written opinion, the reward can be between 150-4000 points, attendance of the court hearing is 100 pints, etc.

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.

The Croatian Bar Association (Hrvatska odvjetnička komora) has a register of all lawyers publicly available but there are no lawyers which are specialised in the environmental field listed there. This register can be searched by name of lawyers, some specialisation for example lawyers for youth, lawyers for victims of crimes, but there are no environmental lawyers listed specifically. However, there is a list of lawyers providing free legal aid which may be helpful in environmental cases. The register can also be searched by location, i.e. by cities in which they are located.

It is not compulsory to have a legal counsel in environmental court cases (or in general). The Croatian legal system only exceptionally (for specific legal procedures) requires a legal counsel, for example extraordinary legal remedy - revision of the final court decision made in civil law procedure can be submitted only by the person with the Bar exam.

1.1. Existence or not of pro bono assistance

There are some lawyers who have previously been engaged pro bono in environmental cases. There are also lawyers employed in environmental NGOs which provide pro bono assistance in environmental cases. It is also possible to contact the Legal Clinic at the Faculty of Law in Zagreb which is available also on some other law faculties.

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.)?

The Croatian Bar Association (Hrvatska odvjetnička komora) can be contacted for pro bono assistance but one can also obtain free legal aid from few specific environmental NGOs (Zelena akcija/Friends of the Earth Croatia and Sunce). There are no specific procedures, forms or similar. It is also possible to contact the Legal Clinic at the Faculty of Law in Zagreb.

1.3. Who should be addressed by the applicant for pro bono assistance?

The Croatian Bar Association (Hrvatska odvjetnička komora) should be addressed for pro bono assistance but one can also obtain free legal aid from few specific environmental NGOs (Zelena akcija/Friends of the Earth Croatia and Sunce).

It is also possible to contact the Legal Clinic at the Faculty of Law in Zagreb.

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

Croatian Conciliation Association

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

Zelena akcija/Friends of the Earth Croatia

BIOM

Sunc

Zelena Istra

Eko Pan

Hrvatsko društvo za zaštitu ptica i prirode

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

World Wide Fund for Nature (WWF)

Greenpeace

Friend of Earth Europe and Friends of Earth International – NGO Zelena akcija is Friends of the Earth Croatia

Justice and Environment – Zelena akcija/FoE Croatia is a member of the Croatian Conciliation Association (Hrvatska odvjetnička komora)

European Environmental Bureau (EEB) - Zelena akcija/FoE Croatia from Zagreb, Zelena Istra from Pula and Sunce from Split are members from Croatia

Bankwatch - Zelena akcija/FoE Croatia is a member

Birdlife – Association BIOM is BirdLife partner in Croatia

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).

In the General Administrative Procedure Act (Art 109) it is determined that an appeal to a higher or same level administrative body must be filed within 15 days of the date of delivery of the decision unless a longer period is determined (in lex specialis). The Environmental Protection Act does not determine different deadline for appeal.

2) Time limit to deliver decision by an administrative organ

According to General Administrative Procedure Act (Art 121) the second-instance administrative body must issue and deliver the appeal decision to the party as soon as possible and no later than 60 days from the day of appeal submission unless a shorter deadline is determined by lex specialis. There is no different deadline determined in the Environmental Protection Act.

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

Administrative environmental decision can be challenged before the Administrative Court directly if there is no possibility of an appeal or if there is no second instance body. In other cases the hierarchy of legal remedies must be followed.

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

There is no specific deadline for issuing a decision, only the Environmental Protection Act determines that every environmental case is an urgent case (Art 172).

In practice, the timeline for final ruling varies, so sometimes the case is ruled within a year or even less in cases related to access to environmental information, and sometimes it takes more than a year just to get the first hearing, so a ruling could easily wait for more than 2 years.

The Administrative Disputes Act determines that the court must deliver the judgment at a final hearing, but in complex cases the hearing for announcement of the judgment will happen in the next 8 days. Also, the Court is obliged to deliver the judgment in writing to parties within 15 days after it was delivered. This deadline is often not met.

The Croatian legislation (Act on Courts, Act on Civil Court Procedure) as well as the Constitution mention the importance of delivering the judgment within a reasonable time frame, but there is no clear practice as to what is considered as such. However, general protection of the right to a trial within a reasonable time is regulated by the Act on Courts and the Constitutional Act on the Constitutional Court of the Republic of Croatia.

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

Related to administrative review procedure, besides the deadline for submitting an appeal and deadline for the decision from administrative body, there are no other legal deadlines determined.
The timeframe for submitting claim to the Administrative Court is the same as in other administrative cases, 30 days from the delivery of the decision which can be challenged. There is an additional deadline if the decision was not delivered but made publicly available (for example on the website of the Ministry). In that case, the 30-day deadline for submitting the claim to Court begins after 8 days from the publication of the decision.

In relation to judicial procedure (before the Administrative Court), the court sets a time limit for responding to the claim according to circumstances of the case, which may not be less than 30 days and no more than 60 days. The defendant is obliged to submit all the evidence together with the response to a claim as well as to submit all the files pertaining to the subject matter of the dispute. However, if the defendant does not do that or informs the court that for some reason the files cannot be submitted, the court can decide without it.

Basically, the same rule applies to a plaintiff who should lay all the facts of the case and suggest all the evidence which supports those facts already in the claim. However, the Court can ask both parties to deliver detailed explanations of the facts, to submit documents or other evidence and the Court decides about the deadline for that. Additionally, the parties can suggest additional evidence (an expert witness as already described above) and the Court decides whether to approve it and fixes a deadline.

1.7.2. Interim and precautionary measures, enforcement of judgments

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

An administrative appeal has a suspensive effect, according to the General Administrative Procedure Act (Art 112), unless otherwise provided by the law. Exceptionally, in order to protect the public interest or to take urgent action, or to prevent damages that cannot be remedied, an administrative body may decide that the appeal does not have a suspensive effect. The decision must contain a detailed explanation of why the appeal does not have a suspensive effect but this provision is almost never used in the practice of administrative procedure.

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

Since an administrative appeal in principle has suspensive effect, the use of injunctive relief is not often used in these procedures. However, since it is possible for the appeal not to have a suspensive effect, there is the possibility of injunctive relief provided in the law. According to the General Administrative Procedure Act (Art 140), at the proposal of a party and in order to avoid severely irreparable damage, the administrative body which issued a decision may postpone enforcement of the decision until a legally effective decision is rendered in the administrative matter unless otherwise provided for by law and if this is not contrary to the public interest.

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

As mentioned above, according to the General Administrative Procedure Act (Art 140), at the proposal of a party and in order to avoid severely irreparable damage, the administrative body which issued a decision may postpone enforcement of the decision until a final administrative decision is made unless otherwise provided for by law and if this is not contrary to the public interest. There is no deadline for submitting this request but usually it is done at the same time with the appeal or, in a judicial procedure, at the same time as the lawsuit is submitted.

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

All administrative decisions may be executed when they become enforceable. The first instance decisions become enforceable upon expiry of the administrative appeal period if the appeal is not filed, by delivery of the decision to the party if the appeal was not allowed, by delivery of the decision to the party if the appeal has no suspensive effect, by delivery of the decision rejecting the appeal to the party.

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

Initiation of judicial review before the Administrative Court does not have a suspensive effect unless it is determined by special law and there is no such provision in the Environmental Protection Act.

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?

The Administrative Court may decide to suspend the administrative decision if its application could cause the plaintiff damages that can hardly be repaired and unless the specific law provides that the appeal does not have a suspensive effect and if the suspension is contrary to public interests. There is no financial deposit needed for this. The decision of the Administrative Court on injunctive relief can be appealed before the High Administrative Court within 15 days from the delivery to the parties. It must be explained here that the Administrative Disputes Act provides for two precautionary measures: the delaying effect of the lawsuit (Art 26) and the interim measure (Art 47). The first can be rendered at the request of a party or ex officio (although the courts do not exercise this power for the time being), and the second can be issued only at the proposal of a party.

The enforcement of the disputed administrative decision may be postponed only through the special institute of the delaying effect of the lawsuit (Art 26). Interim measures from the Administrative Disputes Act have other functions, which are rarely present in an administrative dispute (e.g. measures in proceedings in which no administrative act is passed, prohibition of disposition of property, etc.). There is no appeal against the decision on the delaying effect of a lawsuit (Administrative Disputes Act, Art 67, para 1 and Art 26 para 2).

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.

The system is primarily based on court fees that vary according to the value of the case. In administrative disputes procedure, according to the Court Fees Act, the court fees depend on the value of the case. If the court can estimate the value. There are 2 remedies against the decision on court fees, which are complaint and appeal as determined in Act on Court Fees, Art 29. Generally, the court fees are not very high. Court fees for a claim to the Administrative Court is 400 Kunas and for appeal to the High Administrative Court 500 Kunas, according to Regulation on Tariff on Court Fees. Also, the fee for the judgment has to be paid and it is 500 Kunas. The court fees for lawsuits in the administrative dispute procedure are based on a flat rate, regardless of the value of the case. However, these are not the only costs.

Before the 2012 reform (described under 1.7.3. -- point 6) the costs of Administrative Court procedure were very low, in fact the only costs were the aforementioned court fees. But, after 2012, the third party in environmental cases (developer, operator) usually hires a lawyer and the plaintiff has to cover that costs if they lose the case.

The costs usually relate to the representation of the plaintiff and the interested party by a lawyer, and to the presentation of evidence. The defendant (respondent (a public body) cannot be represented by a lawyer, but some defendants (central state bodies) can be represented by the state attorney’s office (which is rare in practice). This office is entitled to representation costs (equal to attorneys).

For each submission and each access to the hearing, the lawyer can request a reward of HRK 2,500.00 (approximately EUR 330) + VAT (25%). Courts usually do not award costs related to submissions that do not contain additional arguments, or, after the lawsuit has been filed, contain reasons that may also be presented at the hearing.
The loser pays rule is applied. So, costs of the case may also include material costs of travelling to court for any of the parties. These vary depending on which of the four courts (Zagreb, Osijek, Split and Rijeka) the procedure is conducted in. The costs are usually calculated as 2 HRK per km for car travel + per diem (ca. 170 kn per day). Accommodation costs are usually not invoked and could hardly be justified due to Croatia’s size.

The most significant cost is legal representation costs (a lawyer’s fee) which can be requested if an interested party is represented by a lawyer, which it usually is. At least one hearing is held, but usually two or three are held. Any additional costs, such as expertise on a particular issue, vary depending on the complexity of the issue at hand and the amount of work associated with it. They are generally paid in advance by the requesting party. There is no express statutory reference that costs should not be prohibitive. The case law of the Constitutional Court regarding the proportionality of awarded costs is applicable and this practice mainly refers to the case law of the ECHR (e. g. Klauz v. Croatia, etc.).

Until now, no expert witnesses were allowed in environmental cases, so it is hard to envisage the costs but they could be very high. However, some experts from different faculties would also be willing to do it for free, according to experience of NGO BIOM which suggested expert witnesses in several cases but was not granted.

The biggest costs could probably occur if the developer or operator (third party in environmental case) decides to use the provision of Art 171 of the Environmental Protection Act. It provides that if an administrative decision is not valid due to the fact that this decision was challenged in accordance with EPA, and for that reason the developer, operator or another legal or natural person to which that act refers decides to wait until the legal validity of the act, then the developer, operator or another legal or natural person has the right to demand compensation for damages and a loss of profit from the person who has submitted the request. It must be established that the applicant has abused his right under the provisions of EPA. There is no such case yet but it is serving its purpose which is to discourage citizens and environmental NGOs from challenging such decisions because of the risk of being sued by big companies.

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

There is no direct cost for injunctive relief/interim measure or deposit necessary.

3) Is there legal aid available for natural persons?

The Croatian Bar Association (Hrvatska odvjetnička komora) has a list of lawyers providing pro bono legal aid which can be granted to natural persons who are not otherwise provided for.

There is also Free Legal Aid Act, and the Ministry of Justice is the main institution for a free legal aid system. The system of free legal aid allows citizens with modest resources to engage attorneys and obtain legal aid for specific legal actions and equal access to judicial and administrative procedures.

There is a difference between providing primary and secondary legal aid. Primary legal aid is for example general legal information, counselling and representation with state administration bodies, etc. while secondary legal aid is legal advice, representation before courts, etc. Primary legal aid can be granted if your material circumstances are such that the payment of professional legal assistance could jeopardize your subsistence and the subsistence of members of your household. Secondary legal aid may be granted if your financial situation meets the following conditions: that your total income and the income of your household members do not exceed the amount of the budget base per household member per month (HRK 3,326.00), that the total value of property owned by you and owned by members of your household does not exceed the amount of 60 budget bases (HRK 199,560.00).

The institutional framework of the free legal aid system is made up of state administration offices processing the requests of citizens at the first instance, while the Department for Granting Free Legal Aid at the Ministry of Justice decides on the appeals at second instance, decides at first instance on the entry of associations in the Register of associations authorised to provide primary legal aid, and carries out administrative and professional monitoring of the primary legal aid provider.

All information related to free legal aid is available here.

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?

Associations, legal persons, NGOs can seek and get paid legal aid provided from lawyers. They can use the List of lawyers provided on pages of the Croatian Bar Association or just hire whoever they want. There are no environmental law companies or lawyers but there were some lawyers assisting in some environmental cases.

In Croatia, only natural persons may get a free legal aid. Access to legal aid is denied to NGOs, which is not in accordance with the Aarhus Convention (Article 9, Paragraph 4 and Article 9, Paragraph 5, requiring fair and equitable legal remedies and the duty to examine the possibility of establishing appropriate assistance mechanisms to remove or reduce financial barriers to access to justice). According to the Croatian Free Legal Aid Act, legal persons cannot be beneficiaries of free legal aid.

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

There are no other financial mechanisms available to provide financial assistance.

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

The ‘loser party pays’ principle is envisaged by the law, in different procedural acts. It is important to state that until the Administrative Disputes Act in 2012, the rule was different, meaning that before that, each party was obliged to bear its own costs.

Before the end of the procedure, each party bears its own costs, and the Court bears the costs of procedural moves undertaken ex officio. After the judgment, the losing party also has to cover the costs of the winning party, unless there are reasons to decide differently. For example, the parties could suggest that each of them covers their own part, the court could decide that NGO was acting in public interest and it does not have to cover its costs, but those possibilities have not been used yet. If there is an appeal to the High Administrative Court, this also suspends the decision on the costs.

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?

According to the Administrative Disputes Act, if the party partially succeeded in the dispute, the Administrative Court can decide based on the success achieved and order that each party bears its own costs or that the costs are shared in proportion to the success in the dispute[9].

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?

The Ministry of Economy and Sustainable Development has a long list of national legislation as well as international treaties related to environmental protection. There is no subdivision related to environmental access to justice so one would have to know what they want to find. The aforementioned list can be found under Propisi iz područja zaštite okoliša.

Basic rules on access to justice can be found in Environmental Protection Act.

Provisions on access to justice in environmental matters are in Art 19 (basic principle of access to justice in environmental matters) in Art 167 – 172 in Environmental Protection Act.

Also, there are some other Acts which are relevant to access to justice in environmental matters such as:

General Administrative Procedure Act.
Administrative Disputes Act.
3) **Civil procedure Act.**

All national legislation in general can be found on website of [Official Gazette](https://narodne-novine.nn.hr portals/narodne-novine) (Narodne novine).

NGO [Zelena lstra](https://www.kriticka-lstra.eu) has some information about environmental court cases available on their web site.

NGO [Zelena akcija](https://zelenaakcija.org) has some publications available which are related to access to justice in environmental matters. Some publications are about different legal tools which can be used in environmental cases and some just contain information about access to justice, among other things. This also has information about specific cases.

3) **NGO BIOM** also has some information available about their court cases.

[NGO Sunce](https://www.kriticka-lstra.eu) has some publications available which contain information about access to justice and specific cases.

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

Usually, administrative decisions related to EIA, AA, IPPC/IED are published on website of the administrative body which issued them (Ministry, County, etc.). These decisions also have to contain information on access to justice (CRO: pouka o pravnom lijeku).

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

There are no different sectoral rules for active dissemination of information on access to justice.

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

It is obligatory to provide access to justice information in the administrative decision and in the judgment of the Administrative Court together with the deadline for submission of a claim or appeal.

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

According to the Administrative Disputes Act, the rule is that administrative disputes are conducted in Croatian and in the Latin script. However, parties and participants in administrative disputes have the right to use their own language with a certified translator before the court. Translation costs must be covered by the party to whom they refer unless special law provides differently. There are no exceptional rules set in environmental legislation related to this.

1.8. Special procedural rules


**County-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 specific rules on standing and access to justice relating to screening. A decision on EIA screening or whether to carry out and EIA procedure or not is made in the form of administrative decision ([rješenje/upravni akt](https://www.kriticka-lstra.eu)). This means that such a decision can be challenged and the same rules that apply to other environmental procedures can be applied here (standing rules described under section 1.4 point 3). For example, if the authority issues a decision that the EIA is not needed, an NGO or natural person can challenge that decision before the Administrative Court. The timeframe is the same as in other administrative cases, 30 days from the delivery of the decision which can be challenged. There is an additional deadline if the decision was not delivered but made publicly available (for example on the website of the Ministry). In that case the 30-day deadline for submitting the claim to court begins after 8 days from the publication of the decision.

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

Decision on scoping is not made in the form of administrative decision ([rješenje/upravni akt](https://www.kriticka-lstra.eu)) so this decision cannot be challenged separately but only later, together with the final decision on EIA.

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

Administrative decisions on environmental projects can be challenged when made in the form of administrative act ([rješenje/upravni akt](https://www.kriticka-lstra.eu)) so in the final EIA decision but also in the screening phase.

The timeframe for submitting a claim to the Administrative Court is the same as in other administrative cases, 30 days from the delivery of the decision which can be challenged. There is an additional deadline if the decision was not delivered but made publicly available (for example on the website of the Ministry).

In that case the 30-day deadline for submitting the claim to court begins after 8 days from the publication of the decision.

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

Final authorisation of the project can be challenged as described under the previous point. Standing rules are the same according to the Environmental Protection Act for all environmental procedures conducted under that Act. An EIA decision can be challenged by a natural person, group of individuals (for example neighbours, owners of the same property, etc.) and an NGO which fulfills specific requirements. However, this is more restricted in the case of a construction permit, meaning the final authorisation of the project since the legislation regulating this field determines more strictly who can be a party in the process (owners of the neighbouring properties).

According to the Environmental Protection Act (EPA) (OG 80/13, 153/13, 78/15, 12/18) Art 167 par 1 and Art 168 par 1, individuals have the right to file an appeal if they can prove impairment of their right due to the location and/or nature and impact of the project and if they participated in the procedure as a member of the public concerned.

According to the EPA Art 167 par 2 and Art 168 par 2, An NGO has a sufficient legal interest in the procedures regulated by the Environmental Protection Act which provide for the participation of the public concerned, if it fulfills the following requirements:

- If it is registered in accordance with special regulations governing associations and if environmental protection, including protection of human health and protection or rational use of natural resources, is set out as a goal in its statute,
- If it has been registered for at least two years prior to the initiation of the public authority’s procedure (in relation to which it is expressing its legal interest), and if it can prove that in that period it actively participated in activities related to environmental protection in the territory of the city or municipality where it has a registered seat in accordance with its Statute. Such an NGO must have the right to file an appeal with the Ministry or file a lawsuit before the competent court, for the purpose of challenging the procedural and/or substantive legality of decisions, actions or omissions. The right of an NGO to access to justice in environmental matters is not dependent on participation in administrative procedures which lead to the decision which is challenged before the court.

The Environmental Protection Act does not have specific provisions on access to justice in environmental matters for foreign NGOs, but also it does not have a provision which would forbid that. In that sense, if a foreign NGO can meet all the requirements needed for NGOs to have standing, it would probably be allowed by the Court.

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

The Administrative Court can review substantive and procedural legality of an EIA decision-making process. In practice the Court does not review scientific accuracy of an environmental impact statement. So it actually only controls procedural legality in practice, although it can appoint experts witnesses or allow parties in the procedure to suggest experts. The Administrative Court hears lawsuits both as a court of Cassation (procedural mistakes and wrong implementation of material law) and a Reformatory court (establishment of facts). However, since the reformatory powers of the Administrative courts were only recently introduced (2012), the courts are still shy of using these powers. As a consequence, in practice the court mainly acts as a Court of Cassation,
especially in complex matters such as environmental law. There are no specific rules for acting on a motion for environmental matters, but they are the same in all cases.

6) At what stage are decisions, acts or omissions challengeable?
As a rule, decisions, acts or omissions are challengeable together with the final administrative decision (EIA decision; permit, etc.).

7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
The Court will reject the claim if the hierarchy of legal remedies was not followed. If that environmental administrative decision was issued by a lower level of environmental authority, for example city, municipality or county (regional) level, it is possible to appeal to the Ministry of Economy and Sustainable Development. Appeals decided by the Ministry can be challenged before the administrative court. The appeal to the Ministry must be used before going to the Court, so the Ministry issues a decision which can then be brought to the Administrative Court.
When an administrative decision has been delivered by the Ministry, there is no higher body for appeal but it is possible to start a dispute before the Administrative Court.

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?
Yes for individuals and no for NGOs. Based on the wording of Article 168 of Environmental Protection Act (hereinafter: EPA), access to justice is preconditioned for members of the interested public by public participation. However, there is an additional provision provided for NGOs (fulfilling other requirement, of course) for whom participation in the public consultation phase is not required in order to have standing.

9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
According to the Act on Administrative Disputes, the Court will, before making a decision, give opportunity to each party to express an opinion on demands or statement of other parties and about all the fact and legal questions which are part of the dispute[12]. Also, the Court is obliged to ensure that lack of knowledge and experience of the parties does not cause harm of any rights which they have.

10) How is the notion of "timely" implemented by the national legislation?
There is no specific rule on timeliness determined for access to justice in EIA cases. See section 1.7.1. point 4.

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, as in other administrative procedures there is no specific rule which would apply only to court cases related to EIA procedure. It must be explained here that the Administrative Disputes Act provides for two precautionary measures: the delaying effect of the lawsuit (Art 26) and the interim measure (Art 47). The first can be rendered at the request of a party or ex officio (although the courts do not exercise this power for the time being), and the second can be issued only at the proposal of a party.

The enforcement of the disputed administrative decision may only be postponed through the special institute of the delaying effect of the lawsuit (Art 26). Interim measures from the Administrative Disputes Act have other functions, which are rarely present in an administrative dispute (e. g. measures in proceedings in which no environmental act is passed, prohibition of disposition of property, etc.). There is no appeal against the decision on the delaying effect of a lawsuit (Administrative Disputes Act, Art 67, para 1 and Art 26 para 2).

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
There are no specific rules on access to justice in IPPC/IED cases.

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?
Only final decisions on IPPC/IED can be challenged, meaning the environmental permit (okolišna dozvola). Standing rules are the same according to the Environmental Protection Act for all environmental procedures conducted under that Act. An IPPC/IED decision can be challenged by a natural person, group of individuals (for example neighbours, owners of the same property, etc.) and an NGO which fulfils specific requirements.

According to the Environmental Protection Act (EPA) (OG 80/13, 153/13, 78/15, 12/18) Art 167 par 1 and Art 168 par 1, individuals have the right to file an appeal if they can prove impairment of their right due to the location and/or nature and impact of the project and if they participated in the procedure as a member of the public concerned.

According to the EPA Art 167 par 2 and Art 168 par 2, an NGO has a sufficient legal interest in the procedures regulated by the Environmental Protection Act which provide for the participation of the public concerned if it fulfils the following requirements:
if it is registered in accordance with special regulations governing associations and if environmental protection, including protection of human health and protection or rational use of natural resources, is set out as a goal in its statute, and if it has been registered for at least two years prior to the initiation of the public authority’s procedure (in relation to which it is expressing its legal interest), and if it can prove that in that period it actively participated in activities related to environmental protection in the territory of the city or municipality where it has a registered seat in accordance with its Statute. Such an NGO must have the right to file an appeal with the Ministry or file a lawsuit before the competent court, for the purpose of challenging the procedural and/or substantive legality of decisions, actions or omissions. The right of an NGO to access to justice in environmental matters is not dependent on participation in administrative procedures which lead to decision which is challenged before the court.

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)
When the EIA and IPPC/IED are integrated procedures, a decision on EIA screening or whether to carry out an EIA procedure or not is made in the form of an administrative decision (rješenje/upravni akt)[14]. This means that such decision can be challenged and the same rules that apply to other environmental procedures can be applied here (standing rules described under section 1.4 point 3). The timeframe for submitting claim to Administrative Court is the same as in other administrative cases, 30 days from the delivery of the decision which can be challenged. There is an additional deadline if the decision was not delivered but made publicly available (for example on the website of the Ministry). In that case the 30-day deadline for submitting the claim to court begins after 9 days from the publication of the decision.

4) Rules on standing relating to scoping (conditions, timeframe, public concerned)
Decision on scoping is not made in the form of administrative decision[15] (rješenje/upravni akt) so this decision cannot be challenged separately but only later, together with the final decision on EIA, if the IPPC/IED and EIA procedure were integrated.

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?
As a rule, administrative decisions on environmental projects are challengeable together with the final administrative decision (environmental permit/okolišna dozvola).
The timeframe for submitting a claim to the Administrative Court is the same as in other administrative cases, 30 days from the delivery of the decision which can be challenged. There is an additional deadline if the decision was not delivered but made publicly available (for example on the website of the Ministry). In that case the 30-day deadline for submitting the claim to Court begins after 8 days from the publication of the decision.

6) Can the public challenge the final authorisation?

NGO or individuals can challenge a final authorisation, meaning an environmental permit.

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 Court can review substantive and procedural legality of an IED decision-making process (environmental permit/okolišna dozvola). In practice, the Court does not review the scientific accuracy of IED documentation. So, it actually only controls procedural legality in practice, although it can appoint experts witnesses or allow parties in the procedure to suggest experts. The Administrative Court hears lawsuits both as a court of Cassation (procedural mistakes and wrong implementation of material law) and a Reformatory court (establishment of facts). However, since the reformatory powers of the Administrative courts were only recently introduced (2010), the courts are still shy of using these powers. As a consequence, in practice the court mainly acts as a Court of Cassation, especially in complex matters such as environmental law.

Administrative courts have the mandate to review administrative decisions (and administrative contracts) to establish whether they meet the minimum requirements for basic legality. However, they can only do this once the party has initiated the proceedings, regardless of whether either of the parties has invoked this as an argument. The court has the official mandate to establish the existence of the minimum legal requirements of an act once this act was put for decision before the court. The court cannot act on its own motion.

The court can start a procedure of assessing the legality of a general act (e.g. law, spatial plan, ordinance etc.) on its own motion. However, this has to be preceded by the information received from a citizen or ombudsman or a request by another court. This narrows the concept of acting on its own motion.

8) At what stage are these challengeable?

As a rule, decisions on an IED are challengeable in the final administrative decision (environmental permit/okolišna dozvola). Exceptionally, if the IED is integrated in an EIA procedure, then there is possibility of challenging a decision on EIA screening.

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

The Court will reject the claim if the hierarchy of legal remedies was not followed. If the environmental administrative decision was issued by a lower level of environmental authority, for example city, municipality or county (regional) level, one can appeal to the Ministry of Economy and Sustainable Development. Appeals decided by the Ministry can be challenged before the administrative court. The appeal to the Ministry must be filed before going to the Court, so the Ministry issues a decision which one can then bring to the Administration court.

When an administrative decision has been delivered by the Ministry, there is no higher body for appeal but one can start a dispute before the Administrative Court.

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?

Yes for individuals and no for NGOs. Based on the wording of Article 168 of the Environmental Protection Act (hereinafter: EPA) access to justice is preconditioned for members of the interested public by public participation. However, there is additional provision provided for NGOs (fulfilling other requirements, of course) for whom participation in the public consultation phase is not required in order to have standing.

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

According to the Act on Administrative Disputes, the Court will, before making a decision, give each party the opportunity to express an opinion on demands or statement of other parties and about all the facts and legal questions which are part of the dispute [16]. Also, the Court is obliged to ensure that lack of knowledge and experience of the parties does not cause harm to any rights which they have.

According to the practice of the Constitutional Court, it considers the principle of equality of funds in the sense of fair balance which necessarily entails a reasonable option of parties to present the facts and support them with their evidence in a way that they do not place any of the parties in a significantly worse position than the opposite party [17].

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

There is no specific rule on timeliness determined for access to justice in IED cases. See section 1.7.1. point 4.

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, as in other administrative procedures there is no specific rule which would apply only to court cases related to IED procedure. It must be explained here that the Administrative Disputes Act provides for two precautionary measures: the delaying effect of the lawsuit (Art 26) and the interim measure (Art 47). The first can be rendered at the request of a party or ex officio (although the courts do not exercise this power for the time being), and the second can be issued only at the proposal of a party.

The enforcement of the disputed administrative decision may only be postponed through the special institute of the delaying effect of the lawsuit (Art 26). Interim measures from the Administrative Disputes Act have other functions, which are rarely present in an administrative dispute (e.g. measures in proceedings in which no administrative act is passed, prohibition of disposition of property, etc.). There is no appeal against the decision on the delaying effect of a lawsuit (Administrative Disputes Act, Art 67, para 1 and Art 26 para 2).

In the case of a lawsuit made by Želena akcija, Želena Istra and several private plaintiffs against the environmental permit (at that time called an ecological permit) issued by the Ministry of Environmental Protection and Nature for the thermal power plant Plomin C, injunctive relief was claimed. The court denied the injunctive relief since the decision on environmental acceptability does not represent a direct executive act for the realisation of the project. However, the decision does make the necessary condition to obtain such a direct executive act in further steps of the project. The public and public concerned do not have the right to participate in these proceedings and therefore they cannot claim suspension of the enforcement of the environmental acceptability decision before the case is closed in court.

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

There are no specific rules on information on access to justice in IED cases.

1.8.3. Environmental liability [16]

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?
The EPA[19] provides that the public affected by environmental damage (including the public concerned, i.e. also environmental NGOs) can submit an environmental damage notification (prijava) to the competent authority. The authority decides about this notification in the form of administrative act (upravni akt) which can only be challenged before the Administrative Court and no appeal to administrative authorities is allowed. Standing rules in such cases are the same as in other environmental disputes. Authorities act ex officio through inspections. If they establish the occurrence of damage, they need to follow up by initiating any applicable legislation for the case in question. This can vary from issuing a fine, issuing an order to comply and/or restitution of the original state, or initiating criminal proceedings, if applicable.

However, no access to justice procedure for the interested public, in accordance with Article 13(1) ELD, is envisaged for those cases where the authorities acted ex officio. This means that, following the existing rules, the public would need to initiate a new environmental damage notification (prijava) only to challenge, before the administrative court, the act resolving it if unsatisfied with how the case was handled ex officio (and following the notification). This is surely a redundancy in procedure which leads to unreasonable extension of time needed to address an environmental damage case.

2) In what deadline does one need to introduce appeals?
As mentioned above, appeal is not possible but the deadline for an administrative dispute is the same as in other environmental cases. The timeframe for submitting a claim to the Administrative Court is the same as in other administrative cases, 30 days from the delivery of the decision which can be challenged. There is an additional deadline if the decision was not delivered but made publicly available (for example on the website of the Ministry). In that case the 30-day deadline for submitting the claim to Court begins after 8 days from the publication of the decision.

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?
The EPA[20] provides that an environmental damage notification must be accompanied by appropriate information and data supporting claims on environmental damage. There is no other specific requirement.

4) Are there specific requirements regarding ‘plausibility’ for showing that environmental damage occurred, and if yes, which ones?
The EPA[21] provides that upon environmental damage notification, the inspection service of the competent authority must carry out an inspection at the location to which the application relates and check if the notification convincingly indicates the existence of environmental damage. The inspection service will then give the operator the opportunity to comment on the claims in the notification.

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)?
I am not aware of required certain manner or time limits set in this sense.

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?
The operator is responsible for damage to the environment but also for imminent threat of such damage. However, it seems that the public can only make a notification (report to inspections) on environmental damage to the authority and not on the imminent threat of such damage.

7) Which are the competent authorities designated by the MS?
The Ministry of Economy and Sustainable Development is the competent authority for environmental liability.

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?
As mentioned above, a decision on the notification on environmental damage and the same is with the approval of the remediation plan (sanacijski plan) are issued in the form of an administrative act (upravni akt), so only judicial review is possible.

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?
The Environmental Protection Act contains rules that if the Ministry or other administrative environmental body (on County level or level of the City of Zagreb) concludes that specific environmental decision could significantly affect the environment and/or the health of another country, the Ministry or other body is obliged to inform that country about that procedure. It can be a strategy, plan programme (SEA procedure), project, facility (EIA) procedure, industry or similar facility (IED permit). Also, the request for involvement in such a procedure can come from that country which believes it will be affected by specific decision. The rules to challenge environmental decisions are the same for affected countries as for Croatian individuals and NGOs, so final decisions can be challenged before the Administrative Court. The exemption is the decision on SEA which cannot be challenged since it is not issued in the form of an administrative act (upravni akt).

2) Notion of public concerned?
The same rules are applied to public concerned from other countries as for domestic public concerned. There are no specific rules set only for Croatian citizens but also not specifically for citizens of other countries. Environmental administrative procedures are basically open to everyone in the sense of involvement in a specific procedure, it is another thing 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)?
The Environmental Protection Act does not have specific provisions on access to justice in environmental matters for foreign NGOs, but neither does it have provisions which would forbid that. In that sense, if a foreign NGO can meet all the requirements needed for NGOs to have standing, it would probably be allowed by the Court. Unfortunately, there is still no case in which an NGO from an affected country has submitted or joined an environmental case, so it is not certain what the court would decide.

Regarding other questions, the rules which are set out for Croatian NGOs would probably be used for foreign NGOs – free legal aid is not provided to NGOs but only to natural persons, administrative decisions can be challenged before Administrative Court, injunctive relief is possible but rarely granted in environmental cases. The timeframe is the same as in other administrative cases, 30 days from the delivery of the decision which can be challenged. There is an additional deadline if the decision was not delivered but made publicly available (for example on the website of the Ministry). In that case the 30-day deadline for submitting the claim to Court begins after 8 days from the publication of the decision.

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)?
According to the Environmental Protection Act[22], individuals have the right to file an appeal if they can prove impairment of their right due to the location and/or nature and impact of the project and if they participated in the procedure as a member of the public concerned. So, if a foreign citizen can prove impairment of his/her right in the sense of that provision of EPA, he/she can have standing.

Regarding other questions, administrative decisions can be challenged before the Administrative Court, injunctive relief is possible but rarely granted in environmental cases, the timeframe is the same as in other administrative cases, 30 days from the delivery of the decision which can be challenged. There is an additional deadline if the decision was not delivered but made publicly available (for example on the website of the Ministry). In that case the 30-day
Act on the State Administration system on whose motion the procedure was initiated, against whom the procedure is conducted or who is entitled to participate in the procedure in order to protect her rights or legal interests can be a party to the administrative procedure. A general rule stipulates that a party to the administrative procedure is “a natural person or legal entity based on whose motion the procedure was initiated, against whom the procedure is conducted or who is entitled to participate in the procedure in order to protect her rights or legal interests”.

5) At what stage is the information provided to the public concerned (including the above parties)?

The information to the public concerned of another country is provided in the same time and under the same conditions as for domestic public concerned. This is not so clearly stated in the EPA but for each procedure (SEA, EIA, IED) it is determined that rules on access to information must be provided with provisions of the EPA and Ordinance on Access to Information and Public Participation in Environmental Matters.

6) What are the timeframes for public involvement including access to justice?

The timeframe is the same as in other administrative cases, 30 days from the delivery of the decision which can be challenged. There is an additional deadline if the decision was not delivered but made publicly available (for example on the website of the Ministry). In that case the 30-day deadline for submitting the claim to Court begins after 8 days from the publication of the decision. Non-Croatian citizens can obtain legal aid in Croatia, so can hire lawyers easily but it could be hard to obtain free legal aid as it is already also pretty hard to get it for Croatian citizens.

7) How is information on access to justice provided to the parties?

There is no special rule provided regarding information on access to justice to foreign parties. All administrative decisions, including environmental decisions, have to contain information on access to justice (CRO: pouka o pravnom lijeku).

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

According to the Administrative Disputes Act, the rule is that administrative disputes are conducted in Croatian and in the Latin script. However, parties and participants in administrative dispute have the right to use their own language with a certified translator before the court. Translation costs must be covered by the party to whom they refer unless special law provides differently.

Regarding documents submitted to Court, the rule is that all documents are in Croatian or translated into Croatian. In practice if some documentation is submitted in a foreign language, the Court can order the party to translate it, the Court can order a translation or it disregards documentation which is not in Croatian.

Ministry of Justice also provides a list of Permanent Court Interpreters (stalni sudski tumač) for different languages.

9) Any other relevant rules?

I am not aware of any other important rule besides those already described in this chapter.

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[1] Constitution, Art 118/3
[2] Šarin D.; Constitutional Court of the Republic of Croatia, Zagreb, Croatia
[3] Act on the State Administration system (Zakon o sustavu državne uprave) (O.G. 150/11, 12/13, 93/16, 104/16)
[4] According to Administrative judge in Rijeka Alen Ražko statement
[8] General Administrative Procedure Act, Art. 112 par 3
[9] Article 79, Administrative Dispute Act
[10] Article 90 of Environmental Protection Act, NN 118/18
[11] Article 86 of the Environmental Protection Act
[12] Art 6 of the Act on Administrative Disputes
[14] Article 90 of Environmental Protection Act, NN 118/18
[15] Article 86 of the Environmental Protection Act
[16] Art 6 of the Act on Administrative Disputes
[17] Dr.sc. Šarin D., page 736. and 737, Aspekti prava na pravično suđenje.
[18] See also case C-529/15
[19] Environmental Protection Act, OG 12/2018, Art 191
[20] Environmental Protection Act, OG 12/2018, Article 191
[21] Environmental Protection Act, OG 12/2018, Article 191
[22] EPA; OG 80/13, 153/13, 78/15, 12/18 Art 167 par 1 and Art 168 par 1

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

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?

Basic rules for administrative procedures are given in the General Administrative Procedure Act of 2009 (hereinafter: GAPA). GAPA has basic provisions (Articles 1-39) which are applicable to all administrative procedures. Sectoral specificities of administrative procedures can be detailed in sectoral laws but they may not derogate from the basic provisions of GAPA. GAPA has a general provision on standing which is given in Article 4 and which determines who can be a party to the administrative procedure. A general rule stipulates that a party to the administrative procedure is “a natural person or legal entity based on whose motion the procedure was initiated, against whom the procedure is conducted or who is entitled to participate in the procedure in order to protect her rights or legal interests”.
So, according to general provisions, in addition to the direct parties to the proceedings, a party to the proceedings can also be one capable of proving the impairment of their right. Under the general provisions, only parties to the proceedings can appeal or have recourse to judicial review. Appeal is submitted within 15 days of the delivery of decision (unless stated differently), and a lawsuit is submitted within 30 days of the delivery (unless stated differently). Sectoral laws usually define an exhaustive list of possible parties to the administrative procedure in question. E.g. the Spatial Planning Act defines the possible parties for the issuing of a location permit as a party requesting the permit, owner or holder of rights over the real-estate for which the permit is issued, and owner or holder of rights over the adjoining real-estate. In practice, parties which might prove the impairment of rights (e.g. owners of the real-estate not directly bordering the real-estate in question), and following the provision of Article 4 GAPa could be afforded legal standing in the issuing of a location permit, are usually not recognized as parties which could prove an impairment of a right under Article 4 of GAPa. Effectively, legal standing is enforced only based on express provisions on legal standing contained in sectorial laws. Special standing rights are recognized for environmental NGOs for those administrative procedures carried out on the basis of the Environment Protection Act (EIA, IED, SEA etc.). Although NGOs are not recognized as parties to those proceedings, but participate as public and interested public, they can nevertheless access courts and challenge decisions passed in those procedures. 

A lawsuit may be submitted to the court against decisions which cannot be appealed, or against unsuccessful appeals. Based on the sectoral laws, only the parties to the procedure can submit a lawsuit. The lawsuits generally need to be submitted within 30 days since of delivery of the administration decision (or rejection of administrative appeal) to the parties. However, the general law governing administrative disputes before Administrative courts contains much wider general provisions. Based on the Act on Administrative Disputes (hereinafter: AAD), parties to the administrative dispute are the plaintiff, respondent and interested (third) party. Not only is the plaintiff very broadly defined, but so is the interested party. The plaintiff is any natural or legal person whose rights or legal interests have been impaired by an individual decision, act or omissions of the public authority or by the failure of the public authority to pass an individual decision or act within a prescribed time limit, or by the conclusion, termination or implementation of the administrative contract (Administrative contracts are concluded between a public authority and a party to the administrative proceedings for the purpose of implementing rights and obligations of the decision passed in the administrative procedure in those instances when a conclusion of such contract is expressly provided in the sectoral law). An interested party, one intervening in the administrative dispute between the plaintiff and the respondent, is any person whose rights or legal interests would be affected by the annulment, modification, or the passing of an individual decision, by the act or omission of the public authority, and by the conclusion, termination or implementation of the administrative contract. There is also an additional, special type of interested party – e.g. ombudsman, but parties of this type very rarely decide to take part in disputes. The Administrative Court hears lawsuits both as a court of Cassation (procedural mistakes and wrong implementation of material law) and a Reformatory court (establishment of facts). However, since the reformatory powers of the Administrative courts were only recently introduced (2010), the courts are still shy of using these powers. As a consequence, in practice the court mainly acts as a Court of Cassation, especially in complex matters such as environmental law. 

Capacities of Croatian environmental NGOs are fairly limited, so they carefully choose cases to initiate. Usually these are straightforward ius standi cases regulated under the Environment Protection Act. So, the authors are unfamiliar if there are any test cases which would invoke access to justice based on ECJ case law. However, even in the “regular” cases, courts are reluctant to apply and interpret ECJ case law. They are grossly unfamiliar with the workings of the EU judicial system and lack knowledge and capacities to consult ECJ case law. Even when ECJ case law is invoked by parties and when courts decide in line with it, they usually tend to ignore invoking the ECJ case law as part of their decision-making process. Even in those cases decisions are justified in reference to domestic legal norms. Consequently, domestic legal norms are rarely, if ever, averted in favour of the ECJ case law, and ECJ case law is sometimes not even invoked by the parties due to poor chances of success. In general, it could be concluded that NGOs are not obstructed in exercising their access to justice rights by being denied a possibility to submit a lawsuit or administrative appeal. However, the poor quality of review and limited possibilities to review factual questions seriously undermine the effectiveness of legal remedies and consequently of access to justice rights. 

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? Administrative review is available when a first instance decision was passed by an authority other than the central public authority, e.g. county office for environmental matters or another type of regional/local authority. The central public authority (i.e. the Ministry) has all the powers in establishing the facts needed for passing the decision as does the first instance authority. However, the Ministry rarely establishes facts on their own and usually looks only at the procedural legality of the challenged decision and application of law. It either confirms the decision or remits it to the first instance authority for a retrial. When a Ministry confirms a first instance decision made by another authority, or when it passes such decisions itself as a first instance authority, usually no appeal is available but there is a recourse to judicial review before an administrative court via lawsuit. As mentioned above, the Administrative Court hears lawsuits both as a court of Cassation (procedural mistakes and wrong implementation of material law) and a Reformatory court (establishment of facts). Hence the court has the mandate to establish all necessary facts. In environmental matters it rarely acts on that mandate and usually only looks at the procedural legality of the decision and the application of law. It is an overwhelming experience of environmental NGOs that their substantiated requests to establish facts by way of expert testimony are overruled. 

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? Yes, if such review procedures are available. If a decision is made by the authority against whose decisions there is no possibility of administrative appeal to the superior authority (e.g. the Ministry), then the first next step is a judicial review. 

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.? Yes for individuals and no for NGOs. Based on the wording of Article 168 of the Environmental Protection Act (hereinafter: EPA), access to justice is preconditioned for members of the interested public by public participation. However, there is additional provision provided for NGOs (fulfilling other requirement, of course) for whom participation in the public consultation phase is not required in order to have standing. 

In a procedure based on the Act on Spatial Planning, if a party does not respond to a call for public inquiry in the process of issuing a location permit, that party loses a right to request a renewal of the procedure. 

5) Are there some grounds/arguments precluded from the judicial review phase? In the judicial proceedings against the EIA permit, according to the established case law a fact that a project is not in line with the spatial planning documents cannot be substantially challenged. The fact that the project is in line with the spatial planning documents is proven in the EIA procedure by way of the Opinion or other document of the competent authority (which is an authority other than that competent for the EIA process). In the appeal against an EIA permit, only the existence of such an opinion or document can be challenged and not its content/veracity. The fact of conformity of a project with the spatial planning documents is established in the procedure of issuing a location permit. However, although the location permit is a development consent as defined by the EIA Directive, the public has no legal standing to challenge the location permit (as it does for the EIA permit). Hence, the public has no direct legal standing to challenge the conformity of projects with the spatial plans.
6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

GAPA, in its article 6, provides that a principle of proportionality must be maintained between protecting the party’s interests and the public interest. The right of a party may be limited only where such limitation is prescribed by law and only in as much as it is necessary for achieving the purpose of the law in a manner proportionate with the aim to be achieved. When, based on law, an obligation is set upon a party, the measures prescribed must be the most advantageous for the party if the purpose of the law may be achieved by those measures. The authorities are in general obligated to enable the easiest and the fastest fulfilment of party’s rights. Article 6 provides for the establishment of material truth, i.e. all facts and circumstances important for reaching the correct and legal decision. The authority is free to establish all facts and assess their meaning and in doing so it must take into account all available evidence and facts, taken independently and in their correlation.

The Act on Administrative Disputes which relates to judicial review of administrative decisions further strengthens the position of the parties in administrative disputes. The disputes are conducted as direct, oral and public disputes in which each party needs to be given an opportunity to address requests and arguments of other parties to the dispute and all facts and legal questions of the case in question. It should be noted that there are a few exceptions to the obligation to hold an oral hearing (Administrative Disputes Act, Art 36), but they are rarely applied in environmental cases, where key facts are most often disputed. According to the Act on Administrative Disputes, the Court will, before making a decision, give each party the opportunity to express opinion on demands or statement of other parties and about all the facts and legal question which are part of the dispute[2]. Also, the Court is obliged to ensure that lack of knowledge and experience of the parties does not cause harm of any rights which they have.

According to the practice of the Constitutional Court, it considers the principle of equality of funds in the sense of fair balance which necessarily entails a reasonable option of parties to present the facts and support them with their evidence in a way that they do not place any of the parties in a significantly worse position than the opposite party[3]. These rights are further elaborated through a 2012 decision (U-III6002/2011) of the Constitutional Court. In the cited decision, the court establishes the elements of a fair trial as proscribed in the Article 6.1. of the European Convention on Human Rights and in Article 29.1 of the Croatian Constitution. It finds that administrative proceedings are inherently at risk of being biased towards the state’s authority and that this risk needs to be mitigated through careful consideration of all aspects of the case in question and by giving all parties equal opportunities to prove facts they deem important and to provide evidence for such facts. This is especially important given the fact that administrative dispute is the only recourse against a decision of the public authority in the administrative proceedings. Irrespective of this decision, administrative courts as a rule reject all evidence to establish facts proposed by environmental NGOs.

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

The general provision is that administrative matters in which the public authority acts upon the request by the party and directly resolves the matter in question should be handled immediately and no later than 30 days from the application. In cases when the authority needs to establish facts the deadline is 60 days. Deadlines vary depending on the type and complexity of procedure and they can be differently set in sectoral legislation.

Judicial review is not bound by any deadlines which would be provided in the legislation. The speed of resolving administrative disputes is mostly impacted by the court’s workload. Whereas previously the average time for resolving administrative disputes was between 2 and a half and 3 and a half years, lately this was reduced to a year and a half on average.

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 national general provisions?

An appeal in the administrative procedure generally postpones the enforcement of the decision, unless stated differently. Submitting a lawsuit in an administrative dispute procedure before the court generally does not delay the enforcement of the administrative decision.

It must be explained here that the Administrative Disputes Act provides for two precautionary measures: the delaying effect of the lawsuit (Art 26) and the interim measure (Art 47). The first can be rendered at the request of a party or ex officio (although the courts do not exercise this power for the time being), and the second can be issued only at the proposal of a party.

The enforcement of the disputed administrative decision may be postponed only through the special institute of the delaying effect of the lawsuit (Art 26). Interim measures from the Administrative Disputes Act have other functions, which are rarely present in an administrative dispute (e.g. measures in proceedings in which no administrative act is passed, prohibition of disposition of property, etc.). There is no appeal against the decision on the delaying effect of a lawsuit (Administrative Disputes Act, Art 67, para 1 and Art 26 para 2).

Interim measures exist as a possibility under the provision of Article 47 AAD. The types of interim measures are not specified so, logically, any measure capable of achieving the purpose for which it is granted is allowed. Most commonly, these would be connected to the postponing of the effects of administrative decision. The purpose of allowing an interim measure is to prevent grave and irreparable damage to the party requesting the interim measure. E.g. this can be either from the direct damaging effects of the administrative decision or by the acts of the authority which would prevent the party from benefitting from a judicial decision should it be different from the administrative decision.

The other instrument is the Enforcement Postponement. As mentioned already above, a lawsuit against an administrative decision does not postpone its enforcement. However, two different instruments enable the postponement of administrative decisions.

First is the provision of Article 140/1 GAPA. Under this provision, a deciding public authority can decide to postpone the enforcement of its decision if the following conditions are cumulatively met:

- postponement was requested by the party to the proceedings;
- the purpose of the postponement is to avoid the occurrence of damage which would be hard to amend (but not impossible, i.e. not irreparable damage);
- that the postponement is not expressly forbidden by law for the particular decision;
- that the postponement does not contravene the public interest.

Second is the provision of Article 26/2 AAD. Under this provision the administrative court can decide that the filing of a lawsuit postpones the enforcement of the administrative decision if the following conditions are cumulatively met:

- If the enforcement would result in a damage for the plaintiff which would be hard to amend, and
- if the law does not provide that the appeal (in administrative procedure, not in administrative dispute) against that particular decision does not postpone its enforcement (as it usually does).

However, this request is hardly ever used. One of the major reasons is that the courts rarely ever allow it, and in most cases do not even decide on it.

In most cases they reach a decision about the request for enforcement postponement together with the decision about the main issue, in the final judgment, rendering enforcement postponement completely purposeless.

The main difference between the two instruments, interim measures and enforcement postponement, is in the conditions which need to be met for their application. The first and obvious difference is the quality of the impending damage – for the interim measure, the damage needs to be irreparable and for the enforcement postponement it needs to be hard to amend. Public interest is another condition which differently applies. Enforcement postponement...
cannot contravene the public interest, whereas an interim measure can go even against the public interest if the impending damage is grave and irreparable. Also, interim measures can be issued even in situations where the law prescribes that the appeal does not postpone the enforcement of the decision.

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 court fees for lawsuits in the administrative dispute procedure are based on a flat rate, regardless of the value of the case. A fee for submitting a lawsuit and a fee for passing a judgment is paid. They amount to about 150 Euros. However, these are not the only costs. Usually the costs relate to the representation of the plaintiff and the interested party by a lawyer, and to the presentation of evidence. The defendant/respondent (a public body) cannot be represented by a lawyer, but some defendants (central state bodies) can be represented by the state attorney's office (which is rare in practice). This office is entitled to representation costs (equal to attorneys).

For each submission and each access to the hearing, the lawyer can request a reward of HRK 2,500.00 (approximately EUR 330) + VAT (25%). Courts do not usually award costs related to submissions that do not contain additional arguments, or, after the lawsuit has been filed, contain reasons that may also be presented at the hearing.

The loser pays rule is applied. So, costs of the case may also include material costs of travelling to court for any of the parties. These vary depending in which of the four courts (Zagreb, Osijek, Split and Rijeka) the procedure is conducted. The costs are usually calculated as 2 HRK per km for car travel + per diem (ca. 170 kn per day). Accommodation costs are usually not invoked and could hardly be justified due to Croatia's size.

The most significant cost is legal representation costs (a lawyer's fee) which can be requested if an interested party is represented by a lawyer, which it usually is. At least one hearing is held, but usually two or three are held. Any additional costs, such as expertise on a particular issue, vary depending on the complexity of the issue at hand and the amount of work connected to it. They are generally paid in advance by the requesting party. There is no express statutory reference that costs should not be prohibitive. The case law of the Constitutional Court regarding the proportionality of awarded costs is applicable and this practice mainly refers to the case law of the ECHR (e.g. Klauz v. Croatia, etc.).

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 process of a Strategic Environmental Assessment is concluded by issuing a Report on the results of the Assessment (Article 73/2 EPA). The Report is not considered a decision on the specific issue passed in the administrative procedure– administrative decision (cro: upravni akt). Appeals in the administrative procedure and lawsuits in the administrative dispute procedures are initiated against an administrative decision. Hence, there is no recourse to judicial review.

However, plans and programmes for which the SEA is conducted are considered general acts. Review of their legality is possible before the High Administrative Court in a sui generis review procedure. Although anyone has the right to initiate the review of legality of general acts, this right is however limited by the condition that the review can only be initiated based on the individual act passed based on the general act, e.g. location permit issued based on the spatial plan in question.

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? Administrative review is practically not applicable here, but most likely in the case when a superior body decides on a first instance decision, it covers procedural and substantive legality.

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

Yes, in other cases. But, as there is no possibility of administrative review of decisions which are the case here, there is no such requirement here.

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.?

5) Is it not necessary to participate in the public consultation phase of the administrative procedure but there is no possibility of judicial review here. 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?

As it is highly unlikely that such decisions are disputed before the Administrative Court, the use of injunctive relief here is also unlikely.

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?

There are no costs as access to justice is currently not possible in these cases.

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[5]

Example of plan or program not submitted to the procedure set out in the Strategic Environmental Assessment can be:

any strategy, plan or program which is issued for use of small areas on local level or minor changes and/or amendments of any strategies, plans or programs for which SEA is obligatory when authority decides that the draft of the plan should not be submitted to SEA.

This means that for aforementioned strategies, plans and programmes as well as minor changes of strategies, plans and programmes for which SEA is obligatory, the authority (ministry or County administrative body) conducts an assessment to determine if SEA is needed and decides that it is not needed. The main issue here is that such a decision is not issued in the form of an administrative act (upravni akt/rješenje), as well as the decision on SEA itself, too.

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 rules on standing for both individuals and NGOs wishing to obtain administrative review and legal challenge before national court are limited in such cases. The main problem is that decision on such plans or programmes is not made in the form of an administrative act (upravni akt). This means that such decisions (odluke) cannot be the subject of an administrative review or disputed before the Administrative Court. Such decisions do not even have information on legal remedies at the end.
Such decision (odluke) can be annulled by the administrative body which issued them. Also, in cases where the first instance decision was issued by the county level administrative body, the Ministry (as a superior body) can initiate an annulment. Individuals and NGOs could most likely send a request for annulment but there is no obligation for the administrative body to do that. Given the high level of discretion on side of the administrative authorities to act in such cases, this cannot be considered a means of access to justice.

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? Administrative review is practically not applicable here, but most likely in cases where a superior body decides on a first instance decision, it covers procedural and substantive legality.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? Yes, in other cases. But, as there is no possibility of administrative review of decisions which are the case here, there is no such requirement here.

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.? Standing is not applicable here, so this is no precondition.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions? There are no special rules applicable to each sector apart from general national provisions on injunctive relief. It must be explained here that the Administrative Disputes Act provides for two precautionary measures: the delaying effect of the lawsuit (Art 26) and the interim measure (Art 47). The first can be rendered at the request of a party or ex officio (although the courts do not exercise this power for the time being), and the second can be issued only at the proposal of a party. The enforcement of the disputed administrative decision may be postponed only through the special institute of the delaying effect of the lawsuit (Art 26). Interim measures from the Administrative Disputes Act have other functions, which are rarely present in an administrative dispute (e. g. measures in proceedings in which no administrative act is passed, prohibition of disposition of property, etc.). There is no appeal against the decision on the delaying effect of a lawsuit (Administrative Disputes Act, Art 67, para 1 and Art 26 para 2).

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive? Since there is not possibility of access to justice in these areas, there are no costs.

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

The Waste Management Plan of Croatia is one example of a plan required to be prepared under EU environmental legislation. The Waste Management Plan of Croatia for 2017-2022 was issued by the Government in the form of a decision (odluke), which is legislation such as government regulation. The Plan was adopted by the Government based on the Act on the Sustainable Waste Management, Art 173, OG 94/13.

The other example is the River Basin Management Plan of Croatia for 2016-2021. This Plan was also issued by the Government in the form of decision (odluke), which is a piece of legislation such as a regulation. The Plan was adopted by the Government based on the Act on Water, Art 36, OG 153/09, 63 /11, 130/11, 56/13 i 14/14.

In general, there is still no case law in Croatia which can demonstrate application of the Janacek case, but in my opinion current Croatian legislation does not provide for the efficient application of the Janacek case. In that case, the Court required that an individual, whose health was endangered by high levels of prohibited emissions in the air, was directly entitled to require the competent authorities to prepare an action plan to remove such emissions. Thus, it requires that an individual has judicial means against failure of public authorities to enact an act of general application. Under general rules of judicial review, when a person claims that a public body has failed to enact certain decision, he may initiate judicial review against such failure if he shows probable legal interest, which may consist in the violation of his right to a healthy life. However, the action can only be brought before the Administrative Court if the decision at issue was an individualised decision. Thus, judicial review cannot be initiated against the failure of public authorities to enact an act of general application.

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? If the Plan is adopted in the form of legislation, the only possibility of its direct judicial review is before the Constitutional Court. In Croatia, the Constitutional Court decides on the compliance of laws with the constitution, on the compliance of other regulations with the constitution and laws, and on the compliance of laws with international treaties. There are three ways to institute the procedure of assessing the constitutionality and legality at the Constitutional Court: by the request of authorised institutions, by the decision of the Constitutional Court based on the proposal of any natural or legal person, and by the initiative of the Constitutional Court itself. Authorised persons for filing a request to institute the procedure of the assessment of the constitutionality and legality are one-fifth of the members of the Croatian Parliament, a working body of the Croatian Parliament, the President of the Republic of Croatia, the Government (in relation to by-laws, but not laws), the Supreme Court or another court (if the question of constitutionality and legality appears in court process), the ombudsman, and the representative bodies of local and regional government (about the issues of structure, scope and funding of local authorities). The Constitutional Court must make a decision on such a request following an urgent procedure within 30 days.

Everyone, i.e. any natural or legal person (so also NGOs), may submit a proposal to the Constitutional Court to institute the procedure of assessment of whether laws comply with the Constitution and whether other regulations comply with the Constitution and laws. The Constitutional Court decides in a session whether to accept the proposal and start the procedure, in which case it will begin the procedure no later than within a year from the date of filing the proposal.

If a law is proclaimed unconstitutional by the decision of the Constitutional Court – it shall be repealed. If some other regulation (by-laws) is found unconstitutional or illegal – it shall be repealed or annulled (ceases to be valid from the date of the promulgation). The difference between a repeal and annulment is that if the regulation is annulled, it is as if that regulation has never been in force at all, and all the legal consequences that occurred between the date of becoming effective and the date of annulment are also annulled. However, if the regulation is repealed, the relevant moment is the date of the decision of the Constitutional Court. All legal consequences that occurred prior to that moment remain in force, but the regulation is from that date onward without any legal effect. Legal consequences of the repeal are such that anyone successful in requesting the assessment of constitutionality/legality of law or regulation, whose rights have been violated by a decision based on the repealed regulation or law, has the right to file a request with competent authority for the amendment of that decision. All others have that right only if the regulation was annulled. The proposal may be filed within six months from the moment the decision of the Constitutional Court is announced.

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)?
It does make a difference since if a plan or programme is adopted in the form of legislation then access to justice is provided only before the Constitutional Court. The formal nature of the act is decisive.

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?

Administrative review and judicial review are not applicable here. In Croatia, the Constitutional Court decides on the compliance of laws with the constitution, on the compliance of other regulations with the constitution and laws, and on the compliance of laws with international treaties.

There are three ways to institute the procedure of assessing the constitutionality and legality at the Constitutional Court: by the request of authorised institutions, by the decision of the Constitutional Court based on the proposal of any natural or legal person, and by the initiative of the Constitutional Court itself. Authorised persons for filing a request to institute the procedure of the assessment of the constitutionality and legality are one-fifth of the members of the Croatian Parliament, a working body of the Croatian Parliament, the President of the Republic of Croatia, the Government (in relation to by-laws, but not laws), the Supreme Court or another court (if the question of constitutionality and legality appears in court process), the ombudsman, and the representative bodies of local and regional government (about the issues of structure, scope and funding of local authorities). The Constitutional Court must make a decision on such request following an urgent procedure within 30 days.

Everyone, i.e. any natural or legal person (so also NGOs), may submit a proposal to the Constitutional Court to institute the procedure of assessment whether laws comply with the Constitution and whether other regulations comply with the Constitution and laws. The Constitutional Court decides in a session whether to accept the proposal and start the procedure, in which case it will begin the procedure no later than within a year from the date of filing of the proposal.

If a law is proclaimed unconstitutional by the decision of the Constitutional Court – it shall be repealed. If some other regulation (by-laws)[9] is found unconstitutional or illegal – it shall be repealed or annulled (ceases to be valid from the date of the promulgation). The difference between a repeal and annulment is that if the regulation is annulled, it is as if that regulation has never been in force at all, and all the legal consequences that occurred between the date of becoming effective and the date of annulment are also annulled. However, if the regulation is repealed, the relevant moment is the date of the decision of the Constitutional Court. All legal consequences that occurred prior to that moment remain in force, but the regulation is from that date onward without any legal effect. Legal consequences of the repeal are such that anyone successful in requesting the assessment of constitutionality/legality of law or regulation, whose rights have been violated by a decision based on the repealed regulation or law, has the right to file a request with competent authority for the amendment of that decision. All others have that right only if the regulation was annulled. The proposal may be filed within six months from the moment the decision of the Constitutional Court is announced.

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? Yes generally, but it is not applicable here.[10]

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 a possibility to comment on draft legislation during the public consultation process but this is not a requirement for individuals or NGOs to ask judicial review when this legislation is adopted.

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

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

In its article 6, GAPA provides that a principle of proportionality between protecting the party’s interests and the public interest must be maintained. The right of a party may be limited only where such limitation is prescribed by law and only in as much as it is necessary to achieve the purpose of the law in a manner proportionate with the aim to be achieved. When, based on law, an obligation is set upon a party, the measures proscribed must be the most advantageous for the party if the purpose of the law may be achieved by those measures. The authorities are in general obligated to enable the easiest and the fastest fulfilment of party’s rights. Article 8 provides for the establishment of material truth, i.e. all facts and circumstances important for reaching the correct and legal decision. The authority is free to establish all facts and assess their meaning and in doing so it must take into account all available evidence and facts, taken independently and in their correlation. The Act on Administrative Disputes further strengthens the position of the parties in the administrative disputes. The disputes are conducted as direct, oral and public disputes in which each party needs to be given an opportunity to address requests and arguments of other parties to the dispute and all facts and legal questions of the case in question. According to the Act on Administrative Disputes, the court will, before making a decision, give each party the opportunity to express opinion on demands or statement of other parties and about all the fact and legal question which are part of the dispute[11]. Also, the Court is obliged to ensure that lack of knowledge and experience of the parties does not cause harm of any rights which they have.

According to the practice of the Constitutional Court, it considers the principle of equality of funds in the sense of fair balance which necessarily entails a reasonable option of parties to present the facts and support them with their evidence in a way that they do not place any of the parties in a significantly worse position than the opposite party[12]. These rights are further elaborated through a 2012 decision (U-III6002/2011) of the Constitutional Court. In the cited decision, the court establishes the elements of the fair trial as prescribed in Article 6.1. of the European Convention on Human Rights and in Article 29.1 of Croatian Constitution. It finds that administrative proceedings are inherently at risk of being biased towards the state’s authority and that this risk needs to be mitigated through careful consideration of all aspects of the case in question and by giving all parties equal opportunities to prove facts they deem important and to provide evidence for such facts. This is especially important given the fact that an administrative dispute is the only recourse against a decision of the public authority in the administrative proceedings. Irrespective of this decision, administrative courts as a rule reject all evidence to establish facts proposed by environmental NGOs.

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

The Croatian legislation (Act on Courts, Act on Civil Court Procedure) as well as the Constitution mention the importance of delivering the judgment within a reasonable time-limit, but there is no clear practice as to what is considered as such. However, it is important to note that the Constitutional Court is not willing to recognize a violation of the right to a trial within a reasonable time if the party has not used the legal instruments available to it by the Law on Courts to protect this right[13]. These instruments are a request for protection of the right to a trial within a reasonable time and a request for payment of appropriate compensation for violation of the right to a trial within a reasonable time (Article 64, paragraph 1, items 1 and 2 of the Courts Act).

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

There is no “traditional” injunctive relief available in this case, but pending the final judgment the Constitutional Court may provisionally suspend the application of the act at issue.

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?
Access to the Constitutional Court is free, there are no fees envisaged. However, if individuals hire lawyers (which is not obligatory) then lawyers’ fees must be covered. Third parties are not introduced in the proceedings and loser pays principle does not apply here.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[14]

The Waste Management Plan of Croatia is an example of a plan required to be prepared under EU environmental legislation. The Waste management Plan of Croatia for 2017-2022 was issued by the Government in the form of decision (odluka), which is legislation such as a government regulation. The Plan was adopted by the Government based on the Act on the Sustainable Waste Management, Art 173, OG 94/13.

Another example is the River Basin Management Plan of Croatia for 2016-2021. This Plan was also issued by the Government in the form of decision (odluka), which is piece of legislation such as a regulation. The Plan was adopted by the Government based on the Act on Water, Art 36, OG 153/09, 63/11, 130/11, 56/13 i 14/14.

The Plan for air protection, ozone layer and climate change mitigation of the Republic of Croatia is also issued in the form of Government decision (odluka), so it is also legislation. This Plan was adopted under the Air Protection Act, OG 127/19.

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

In Croatia, the Constitutional Court decides on the compliance of laws with the constitution, on the compliance of other regulations with the constitution and laws, and on the compliance of laws with international treaties. There are three ways to institute the procedure of assessing the constitutionality and legality at the Constitutional Court: by the request of authorised institutions, by the decision of the Constitutional Court based on the proposal of any natural or legal person, and by the initiative of the Constitutional Court itself. Authorised persons for filing a request to institute the procedure of the assessment of the constitutionality and legality are one-fifth of the members of the Croatian Parliament, a working body of the Croatian Parliament, the President of the Republic of Croatia, the Government (in relation to by-laws, but not laws), the Supreme Court or another court (if the question of constitutionality and legality appears in court process), the ombudsman, and the representative bodies of local and regional government (about the issues of structure, scope and funding of local authorities). The Constitutional Court must make a decision on such request following an urgent procedure within 30 days.

Everyone, i.e. any natural or legal person (so also NGOs), may submit a proposal to the Constitutional Court to institute the procedure of assessment of whether laws comply with the Constitution and whether other regulations comply with the Constitution and laws. The Constitutional Court decides in a session whether to accept the proposal and start the procedure, in which case it will begin the procedure no later than within a year from the date of filing the proposal. If a law is proclaimed unconstitutional by the decision of the Constitutional Court – it shall be repealed. If some other regulation (by-laws)[15] is found unconstitutional or illegal – it shall be repealed or annulled (ceases to be valid from the date of the promulgation). The difference between a repeal and annulment is that if the regulation is annulled, it is as if that regulation has never been in force at all, and all the legal consequences that occurred between the date of becoming effective and the date of annulment are also annulled. However, if the regulation is repealed, the relevant moment is the date of the decision of the Constitutional Court. All legal consequences that occurred prior to that moment remain in force, but the regulation is from that date onward without any legal effect. Legal consequences of the repeal are such that anyone successful in requesting the assessment of constitutionality/legality of law or regulation, whose rights have been violated by a decision based on the repealed regulation or law, has the right to file a request with competent authority for the amendment of that decision. All others have that right only if the regulation was annulled. The proposal may be filed within six months from the moment the decision of the Constitutional Court is announced.

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 possibility of administrative review of a piece of legislation. The only possibility is judicial review by the Constitutional court which then covers both procedural and substantive legality and constitutionality.

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 a general requirement to exhaust all legal remedies before going before Constitution Court. However, as in this case there is no other legal remedy against legislation, one can go to the Constitutional court without any prior procedure.

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 a possibility to comment on draft legislation during public consultation process but this is not a requirement for individuals or NGOs to ask judicial review when this legislation is adopted.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions? There is no “traditional” injunctive relief available in this case but pending the final judgment, the Constitutional Court may provisionally suspend the application of the act at issue.

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? Access to the Constitutional Court is free, there are no fees envisaged. However, if individuals hire lawyers (which is not obligatory) then lawyers’ fees must be covered. Third parties are not introduced in the proceedings and loser pays principle does not apply here.

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[16]? I am not aware of any specific procedure according to national law to challenge directly a piece of legislation adopted by the EU institution or body before the national court.

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[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
[4] The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.
It is important to note that in Croatia an administrative dispute and judicial review may be initiated if an administrative body has not issued an administrative decision that it was obliged to issue, in the case of the silence of the administration (šutnja uprave). One needs to distinguish here between two types of administrative procedures based on which the time limits for reviews are calculated. One is a simpler administrative procedure when the court can immediately establish the relevant facts (no opposing parties to the proceedings) (Croc: neposredno rješavanje upravne stvari). The deadline to pass a decision in such cases is 30 days. The other is an investigative administrative procedure in which the authority needs to establish the relevant facts in order to pass a decision (Croc: ispitni postupak). The deadline to pass a decision in such cases is 60 days. Second instance decisions on appeals are also due in 60 days.

For example, if a second instance body, in Croatia within 60 days, failed to render a decision on the party's appeal against the first instance decision, such party may institute a judicial review as if the appeal was rejected. It should be noted that the judicial review can only be initiated, whereas there is no such condition for the administrative appeal, no earlier than 8 days before the appeal should have been decided (so 60 + 8 days). The following relate to cases where somebody does not comply with the rules of a judgment:

According to the Act on Courts[1] (Zakon o sudovima), everyone in the Republic of Croatia is obliged to respect the final enforceable and executive court decision and obey it. Although it is a general duty, it is particularly binding on the defendants in an administrative dispute since these are public law bodies, which form part of the apparatus in the function of legal order[2].

One of the principles of the administrative disputes is the obligatory status of the court decisions[3]. Failure to execute a final administrative court judgment constitutes a criminal offence against the judiciary – non-execution of a court decision[4]. When execution of a judgment represents an obligation of a public official then it is a violation of official duty to public service legislation[5].

The Criminal Code determines that an official or responsible person who does not execute the final court decision which was obliged to be executed (if any other criminal offence for which heavier sentence is determined), will be punished by imprisonment of up to 2 years.

Failure to execute a final administrative court judgment represents a serious breach of official duty since it is considered as non-performance, negligent, untimely or careless performance of official duties according to the Civil Servants Act, as well as of the Law on Civil Servants and Employees in Local and Regional Self-Government (OG 86/06, 61/11, 04/18, 112/19). The Court on Civil Servants (Službenički sud) decides about these breaches of official duties. This court, as well as the Higher Court on Civil Servants, are established by the Government for one or more public bodies.

There are cases that show that the timeline for final judgment and then for the execution of the judgment are very important in environmental matters. Despite the requirement for urgency envisaged by the EPA, the reality is different. For example, in a decision of 2009 the Administrative Court ordered that the EIA procedure for asphalt base must be repeated as public participation was not enabled in the public consultation process. The action was brought by a group of citizens in 2003, and the project was implemented in the meantime. The procedure lasted for 6 years. Upon the court’s decision, the public discussion was organized, all the objections of the citizens were dismissed, and the asphalt base constructed 6 years ago for the purposes of a quarry still exists near citizens’ houses. It can be seen in this case that although the court decision was executed it actually did not make any sense, it was just correction of the procedural mistake and without any impact on the EIA decision.

[1] Zakon o sudovima, Article 6, Par 3
[2] Dr.sc. Rajko Alen, Razlozi neizvršenja odluka upravnog suca i sredstva pravne zaštite, page 247
[3] Act on Administrative Dispute, Article 10
[5] Civil Servants Act, Art 38 OG 92/05, 140/05, 142/06, 77/07, 27/08, 34/11, 49/11, 150/11, 34/12, 38/13 and 37/13

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Access to justice in environmental matters - Italy
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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. Legal order – sources of environmental law

Italy is a non-federal State with a certain degree of decentralisation. In 2001, a Constitutional reform changed the Italian Constitution and adopted a sort of federal model of distribution of competences between the central State and the Regions. Art. 117.2 of the Italian Constitution, as modified in 2001, identifies a list of areas in the exclusive competence of the State. Article 117.3 establishes matters of concurrent competence between State and Regions. In this case, the Regions have the legislative competence, to be exercised in accordance with the fundamental principles elaborated by the central State. Furthermore, the Regions alone have legislative competence in all matters which are not listed as exclusive State or concurrent State and Regional matters (Regional exclusive competence).

The power to legislate on environmental matters falls within the exclusive competence of the State (Art. 117.2 Italian Constitution). However, Art. 117.3 of the Italian Constitution gives Regions concurrent legislative competence in many areas relating to the environment, such as urban planning, health, civil protection, production, transportation and energy distribution. Furthermore, several provisions of the Environmental Code (Legislative Decree 152/2006, or the “EC”), allow Regions to maintain or introduce more stringent protective measures. Rules enacted at the regional level have however a limited impact on matters regulated by the EC, as they usually reproduce State legislation.[1] For example, legal standing, including in environmental matters, is an area falling under the exclusive competence of the State. National rules on standing thus apply to the entire territory of the State.

Today, most Italian environmental laws are transpositions of EU laws, as harmonised and codified in the EC.

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

In the Italian system, the environment is considered as an absolute primary value, and it is protected as both as a matter of public interest with primary constitutional value[2] and as a fundamental personal good.[3] The Ministry of the Environment and of the Territory and Sea Protection (“MATTM”) is the competent authority for the enforcement of environmental policies and granting environmental permits for plants with the most significant environmental footprints. The MATTM can also impose fines for infringements of such permits. It also oversees the clean-up procedures on contaminated land located in the most polluted areas of the country.

Another important role in environmental matters is played by the National Superior Institute for Environmental Protection and Research (ISPRA), together with the Regional Agencies for Environmental Protection (ARPA)[4] and the Provincial Agencies for Environmental Protection (APPa), whose main activities are:

- environmental research and monitoring (e.g. situation of coasts, soil, watercourses, pollution, meteorology);
- providing technical support for the environmental impact assessments;
- surveying the territorial impact of human activities by conducting technical inspections.

Finally, the national police forces (which have also a specialised maritime police section), the local police forces, the specialised section of the Carabinieri for environmental protection, the forest guards (which were absorbed by the Arma dei Carabinieri in 2016), and the customs officials have wide powers of inspection to ensure compliance with the environmental law provisions. The Ecological Operational Unit of the Arma dei Carabinieri (Nucleo Operativo Ecologico dei Carabinieri), in particular, is placed within the functional remit of the Ministry of the Environment and of the Territory and Sea Protection for the surveillance, prevention, and punishment of violations committed against the environment. Should these authorities find a breach of the environmental legislation or a failure to meet permit requirements, they are entitled to:

apply administrative fines;
suspend the permits;
report the violation to the public prosecutor.

In the Italian system, individuals and environmental NGOs having a legitimate interest in the decision-making process can challenge the lawfulness of public authorities' actions in environmental matters. Legitimate interest (so called 'interesse legittimo') is the interest of the party in obtaining an administrative decision. A legitimate interest may thus arise every time a public entity exercises, or fails to exercise, an authoritative power affecting individuals (Art.7 Code of Administrative Procedure, “CAP”, Legislative Decree 2 July 2010, no 104). Individuals and environmental NGOs are also entitled to participate in environmental decision-making and to be granted access to environmental information. Furthermore, they are entitled to claim compensation before civil and criminal courts for both financial and non-financial damages they have suffered as a direct result of environmental wrongs.[5]

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

The Italian Constitution does not contain any explicit provisions protecting the environment. Nevertheless, the protection of the environment can be inferred from the following combined provisions:

Art. 9 dealing with the protection of the "natural landscape and the historical and artistic heritage";
Art. 32 on the protection of "health as a fundamental value of the individual and as a collective interest";
Art. 41 dealing with the prohibition of "economic enterprise against the common good";
Art. 44 on the "rational use of land";
Art. 117(s) which provides for the exclusive legislative competence of the State (and not of the Regions) in matters regarding the "protection of the environment and the ecosystem".
The Constitution contains explicit provisions on access to justice. Art. 24 states that all persons are entitled to take judicial action to protect their individual rights and legitimate interests. The right of defence is inviolable at every stage and level of the proceedings. Those in need are assured, by appropriate measures, of the means for legal action and defence in all levels of jurisdiction. In addition, Art. 113 of the Constitution states that the judicial safeguarding of rights and legitimate interests before the organs of ordinary or administrative justice is always permitted against acts of the Public Administration ("PA"). Such judicial protection cannot be excluded or limited to particular kinds of appeal or to particular categories of act.

3) Acts, Codes, Decrees, etc. - main provisions on environment and access to justice, national codes, acts
In 2006, Italy enacted the EC (Legislative Decree 3 April 2006, no 152), which, as mentioned above, harmonised and codified national environmental laws with EU Directives. The EC sets out the legal framework applicable to: Pollution Prevention and Control (IPPC); Environmental Impact Assessment (EIA); Strategic Environmental Assessment (SEA); soil protection; water policy and management; waste and packaging management; contaminated land management; air quality; environmental damage and sanctions. Access to information, including information on access to justice, is regulated by Law 241/990 (Arts 22-28),[6] in conjunction with Legislative Decree 195/2005 (Art. 7) and Legislative Decree 104/2010 (Art.118). Furthermore, Art. 3 EPC regulates the right to access environmental information and the right to participate in the decision-making process in environmental matters, and establishes that anyone, without having to prove the existence of an interest, can have access to information regarding the state of the environment and the landscape.

Public participation and access to justice in relation to unlawful decisions by the PA are regulated by Law 241/1990, as amended and implemented in the provisions of the EC[7] regulating participation in specific environmental procedures, including EIA, SEA and IEA procedures. Access to justice in relation to decisions, acts or omissions of the PA is regulated by the EC as amended by Legislative Decree 128/2010 and the by general procedural rules set by Law 241/1990.

4) Examples of national case-law, role of the Supreme Court in environmental cases
The Italian Supreme Court (Corte di Cassazione) is the highest judicial body, although it cannot be considered as a third instance court. This Court is competent only to assess violation or the misinterpretation of the law by the lower courts. It also adjudicates on conflicts of competence, jurisdiction and powers within the judiciary. In civil and criminal matters it has the power to re-examine decisions or orders on appeal from lower courts but only on points of law (decision on legitimacy); that is, to confirm whether the court dealing with the merits has applied and interpreted the law correctly.

The Italian Supreme Court has played an important role in the interpretation of national provisions related to the environment. Although the Italian system does not recognise a separate right to a healthy environment, the Italian Supreme Court has interpreted Art. 32 of the Constitution, which guarantees the individual right to health, as the individual right to live in a 'healthy environment'. The Supreme Court affirmed the inviolability of this right, which cannot be suppressed by the Public Administration even for reasons of public order, as it constitutes an absolute right.[8]

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 to administrative or judicial proceedings can rely on an international agreement only in so far as they refer to the internal act that ratified it.

1.2. Jurisdiction of the courts

1) Number of levels in the court system
The Italian judicial system is divided into ordinary and non-ordinary jurisdiction. The Constitutional Court is not part of the judiciary although its functions are substantially judiciary. Among the different powers, it judges on controversies relating to the constitutional legitimacy of laws and enactments having the force of law from the State and Regions. It also decides on conflicts of powers between the different institutions of the State, between State and Regions and between Regions. Ordinary jurisdiction deals with civil or criminal matters and is administered by ordinary judges and honorary judges who form the judiciary. Honorary judges are judges who are not professionals and they have jurisdiction over minor civil and criminal cases (for example, justice of the peace or ‘giudice di pace’).

The first instance jurisdiction, either in civil or criminal matters, is exercised by judicial bodies as follows:

- Justices of the Peace, a monocentric honorary body which deals with minor claims (for example claims not exceeding 5000 euros) or predetermined minor crimes;
- Ordinary Tribunal, which may sit as a court with a single judge court or a panel of judges depending on the procedural rules applicable to the case at hand;
- Court of Assizes (Corte D’Assise), which deals only with predetermined very serious crimes (for example terrorism);
- Juvenile Court (Tribunale per i minori).

The second instance jurisdiction, either in civil or criminal matters, is exercised by judicial bodies as follows:

- Court of Appeal (Corte d’appello), which reviews the judgments delivered by the courts of first instance. It can (totally or partially) amend the judgment rendered in the first instance or dismiss the application;
- The Court of Assizes of Appeal (Corte D’Assise d’appello), reviews the judgments of the Courts of Assizes. It can (totally or partially) amend the judgment rendered in the first instance or dismiss the application.

The non-ordinary jurisdiction includes the:

- Court of Auditors (Corte dei Conti)

Military Courts

Administrative Jurisdiction

The administrative jurisdiction aims to guarantee respect by the PA of the principle of the rule of law and to protect individual rights and legitimate interests. As mentioned earlier, legitimate interest is the interest of the party in obtaining an administrative decision. A legitimate interest may thus arise every time a public entity exercises, or fails to exercise, an authoritative power affecting individuals. All administrative decisions may be challenged before the administrative judiciary, including those issued by the highest level of the administration (such as acts issued by the executive). Only political acts cannot be challenged before the administrative judge. The administrative jurisdiction is composed of the Regional Administrative Tribunals (TAR), in the first instance, and the Council of State (Consiglio di Stato), in the second and final instance.

The highest judicial body in civil and criminal matters is the Supreme Court of Cassation. It is not, however, a third instance Court. The Supreme Court of Cassation is in fact competent only to assess violation or the misinterpretation of the law by a lower court. Cases of conflict of competence between special judges or between special and ordinary judges are also referred to the Supreme Court of Cassation, which rules in a joint sitting of all sections (Sezioni Unite).

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)?
In criminal proceedings, territorial jurisdiction is determined by the place where the crime was committed. Depending on the type and seriousness of the offence, the crime will be tried before a Justice of the Peace, Ordinary Tribunal, or Court of Assizes. Cases of conflict of competence or jurisdiction can be challenged by the parties or by court’s own motion at every stage of the trial proceedings (Art. 20 Code of Criminal Procedure).
In civil proceedings the general rule is that the competent court is the one in the defendant’s place of residence or domicile (Art. 18 Code of Civil Procedure). Depending on the economic value of the claim, the case will be tried before the Justice of the Peace or the Ordinary Tribunal. Cases of conflict of competence or jurisdiction can be challenged by the parties or by court’s own motion at every stage of the trial proceedings (Art. 37 and 41 Code of Civil Procedure).

There are 20 TARs, seated in the 20 regions of Italy. In administrative proceedings, the general rule is that territorial jurisdiction is determined by the place where the PA (responsible for the contested decision, act or omission) operates (Art. 13 CAP). Conflicts of jurisdiction can be challenged by the parties or by the tribunal’s own motion during the first instance proceedings (Art. 9 CAP).

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

The Italian legal system does not provide for special judicial bodies or for special judicial proceedings in environmental matters. These are mainly dealt with by the administrative jurisdiction, which follows the general rules of the administrative procedure.

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.

Appeals against administrative acts fall within the exclusive competence of administrative judges. The administrative jurisdiction has a general competence over the legitimacy of acts issued by the Public Administration which are alleged to infringe upon “legitimate interests” (i.e. a violation of an individual’s interests caused by a decision of the PA). In this case the administrative tribunal can order the reversal of an administrative decision which has been found invalid due to lack of competence, a breach of the law, or abuse of power. When administrative judges quash an administrative decision, they can specify suitable measures to ensure implementation of the judgment (Art. 34.1 CAP). Since 2000,[9] an administrative judge can also order the PA to pay a compensation for damages suffered by an individual due to acts or omissions of the PA (Art. 30 CAP).

Furthermore, the administrative jurisdiction has a residual exclusive competence over some matters (Art. 133 CAP), for example:

- access to administrative documents;
- decisions of the PA regarding energy production;
- management of the waste cycle;
- decisions adopted in violation of environmental damage regulations.

The exclusive competence does not challenge a specific act issued by the PA, but it is used to enforce a right recognised by law. The administrative judge can order the PA to award damages, to do or give something, or to provide a specific service (so-called reintegrazione in forma specifica) (Art. 34 CAP).

As a general rule, a tribunal cannot on its own motion adjudge on claims which have not been brought before it and it must rule within the limits of the request. Once a proceeding has been initiated by the parties, judges have limited powers of own motion. By way of example, the judge can on his own motion:

- undertake preparatory enquiries or appoint a technical expert as a consultant (so-called Consultante Tecnico d’Ufficio - CTU) tasked with assessing the technical aspects of the decision under consideration (see question 1.5);
- seek clarifications and request further documents from the parties to substantiate the case during the inquiry phase of the proceedings (Art. 63);
- decide who has to bear certain costs of the judicial proceedings (Art. 26);
- declare an administrative act void in the cases prescribed by law (Art. 35);
- specify suitable measures to ensure implementation of the judgment.

1.3. Organisation of justice at administrative and judicial level

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

In the Italian national system, the administrative framework refers to the State, regional administrations, provinces, municipalities, and any bodies which perform public duties (Art. 41-43 Constitution). The MATTM has competence with regard to: permits for waste disposal in marine waters; measures concerning power lines with tension over 150 KV; environmental impact assessment (EIA), strategic environmental assessment (SEA) and integrated pollution prevention and control (IPPC/IED) procedures for sites of particular significance.

Regions have planning and programming competences. Moreover, Regions are entrusted with the power to adopt specific administrative measures such as waste management permits, air emission permits, and EIA and IPPC procedures when not reserved to the State and not delegated to Provinces by the Regions.

As the Regions have the option to delegate administrative powers to municipalities, the precise nature of the powers of municipalities varies, although in general the competences conferred in environmental matters have been limited in scope.[10]

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

Administrative environmental decisions can be appealed before the competent TAR within 60 days from notification of the decision to the affected party or from the date of publication of the decision (Art. 2 and 21 of Law 1034/1971 as subsequently amended). Administrative remedies do not have to be exhausted before taking a case to a Tribunal (Art. 20 of Law 1034/1971). The decision of the TAR is appealable before the Council of State within 60 days from notification of the tribunal decision. In the national system, there is no time limit for the tribunal to deliver a judgment. Art. 111 of the Constitution requires judicial proceedings to be completed within a reasonable time. Nevertheless, an average of three years is needed by the administrative tribunal to decide.[11] Furthermore, Art. 2.2 CAP requires the administrative judge and the parties to cooperate to achieve a reasonable duration of the trial.

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

The Italian legal system does not provide for special judicial bodies or for special judicial proceedings in environmental matters. These are mainly dealt with by the administrative jurisdiction, which follows the general rules of the administrative procedure.

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

Along with judicial remedies, the Italian legal system provides for non-judicial proceedings to challenge administrative acts (ricorsi amministrativi – Decree of the President of the Republic 1199/1971). These include:

- the typical hierarchical appeal: submitted to the superior organ of the PA that adopted the decision;
- the atypical hierarchical appeal: submitted to a different organ of the PA from the one that adopted the decision in absence of a hierarchical relationship;
- the opposition appeal: submitted to the same organ of the PA that adopted the decision.

Against administrative environmental decisions, individuals and NGOs can resort to both non-judicial and judicial remedies. In non-judicial remedies, the administrative organs before which the act has been appealed have to deliver the decisions within the time limit provided by law, which varies according to the different procedures involved. For example, the time limits can be 30, 60, 90 or 120 days from the submission of the request (Decree of the President of the Republic 1199/1971). The decision adopted by the administrative organ as result of the non-judicial remedy can be challenged before the TAR and the Council of State. These non-judicial proceedings review not only the legality, but also the merits – the appropriateness – of the decision and they are not a precondition for the judicial administrative appeal. On the other hand, these procedures do not preclude the possibility of going before the administrative tribunal (TAR) if the PA dismisses the appeal.
Administrative environmental decisions (EIA, SEA, IPPC) are appealable before the body that is hierarchically superior to the one that issues the decision (hierarchical appeal). The applicant has to file the appeal within 30 days from notification of the decision affecting his or her interests. This procedure has to be concluded by the PA within 90 days.

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

The system of non-judicial proceedings provides for an extraordinary and residual means of appeal, so-called Appeal before the President of the Republic (Ricorso Straordinario al Presidente della Repubblica), through which only the legality (not the merits) of a definitive act of the PA can be challenged. Once this remedy is chosen, the judicial administrative appeal is precluded. An appeal before the President of the Republic can be filed within 120 days from notification of the contested decision and is decided according to the mandatory advice of the Council of State.

Furthermore, at every stage of the judicial proceedings, parties can ask the judge to submit a request for preliminary reference to the CJUE. As general rule, the judge has discretionary power on whether to refer the preliminary question. The obligation to refer arises when domestic judicial remedies are no longer available and an opinion on the application of EU law is needed in order to reach a decision. The reference also becomes mandatory even for a court of first instance when a question as to the validity of EU law is raised. This is because national courts have no jurisdiction to declare void measures taken by the EU institutions.[12]

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

In the Italian judicial system, alternative dispute resolution mechanisms, such as mediation and conciliation, are compulsory only in civil procedures and they concern only specific matters (Legislative Decree 28/2010). Therefore, alternative dispute resolution mechanisms are not available in the context of administrative judgments dealing with environmental matters.

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

In Italy, Law 127/1997 introduced the Ombudsman at the regional level and in the autonomous Provinces, but there is no Ombudsperson at the national level. [13] They can assist the public in the preparation of an appeal (they cannot, however, bring the claim to court themselves) and can request the PA to review a contested action or omission (Art.16 Law 127/1997).

Private criminal prosecution is not available in the Italian legal system. Only the public prosecutor has the power – which is also an obligation – to initiate criminal proceedings (Art. 112 of the Constitution). However, natural and legal persons can lodge a complaint with the public prosecutor against criminal acts harmful to the environment and health.

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)?

The EC defines the ‘concerned public’ as the public affected or likely to be affected by, or having an interest in, the environmental decision-making. NGOs promoting environmental protection and meeting the requirements under national law are considered by law to have an interest (Art. 5, letter v) EC).

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

For the above actors (within the meaning of the concerned public) there are no rules applicable in sectoral or procedural legislation such as EIA, IPPC. Legal standing is granted to any subject whose interest is affected by the decision of the PA (Art.7 CAP).

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.)

The Italian legal system provides members of the public having a legitimate interest in an administrative decision with the possibility to participate in the environmental decision-making process. This right is further enhanced by the possibility to challenge the final decision resulting from the decision-making process before an administrative or judicial body, provided that their right or legitimate interest might have been infringed.

As regards individuals, it has been noted that administrative case law on standing seems to rely on vague and flexible concepts like ‘vicinities’ (a stable and relevant link between the claimaint and the environmental area at stake, to be verified on a case-by-case basis).[14] For instance, being the owner (or living in the boarders) of a piece of land affected by environmentally harmful activities or a source of pollution may suffice to establish standing.[15] Moreover, the recognised environmental NGOs accredited with the Ministry of Environment under Article 13 of Law No 349/1986 are considered to have an interest in environmental decisions, acts or omissions. In order to be officially recognised by the Ministry of the Environment and to have legal standing, the associations need to fulfill certain requirements: they need to act across the whole Country or in at least 5 Regions; to have democratic internal rules; to pursue objectives of environmental protection; and to have continuity of action.

According to Italian administrative case-law, legal standing can also be conferred by the judge upon organisations and ad hoc groups representing an interest that could be impaired by the decision, once a concrete and stable connection with the territory is established. Standing of groups and associations can thus be granted, on a case-by-case basis, provided that the group or association is effectively and consistently involved in the protection of the environment and represents the local community affected by the measure challenged.[16]

According to Italian administrative case-law, legal standing can also be conferred by judges upon foreign NGOs representing an interest that could be prejudiced by the decision.

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

As a general rule, judicial proceedings must be held in Italian (Art. 122 of the Italian Code of Civil Procedure). Nonetheless, the law provides for some exceptions with regard to Regions and autonomous Provinces. For example, in Trentino-Alto Adige, German has equal status with Italian with reference to specific acts in the proceedings. In Valle d’Aosta, French has equal status with Italian, and in Friuli-Venezia Giulia, specific rights are granted to the Slovenian-speaking minority. Outside these exceptions, when a non-Italian speaker has to be heard or when the judge needs to examine documents not written in Italian, an interpreter can be appointed. In criminal proceedings the defendant is granted free assistance from an interpreter (Art. 111 of the Constitution and Art. 143 of the Code of Criminal Procedure). In administrative and civil proceedings, the judge decides which party has to pay the interpreter’s fee (Art. 53 of the rules implementing the civil procedure code). The Italian legal system applies the ‘losing party pays’ principle, so the loser must pay the costs of the interpreter. Nevertheless, the judge can limit the losing party’s liability for costs if he or she finds that the costs incurred by the winning party are excessive or unnecessary.

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?

The rules that apply to evidence in environmental cases derive from the civil, criminal and administrative codes of procedure. In particular, two basic principles regulate the collection of evidence: the burden of proof is on the applicant; and the collection of evidence follows the adversarial principle (contradittorio tra le parti).

It is the responsibility of the parties to provide to the judge the evidence that is available to them. Parties to a dispute can provide documentary submissions and request the judge to order the appointment of an expert, inspections of persons or things, exhibition of documents or other objects, or hearing of witnesses. The judge can uphold or dismiss these requests with a motivated decree.
Furthermore, some NGOs have opened the judge is usually interpreted to allow lawyers who are ethically or socially motivated to provide this service. No specific license is required by lawyers to and to

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

The website of the Ministry of the Environment provides a in the field, links to sites where these NGOs are accessible

The website of the Ministry of the Environment provides a list of environmental NGOs active in Italy.

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

Environmental administrative decisions (VIA, VAS and AIA) are appealable before the body that is hierarchically superior to the one that issued the decision (Hierarchical appeal – Art. 17 of Decree of the President of the Republic 1199/1971). The applicant has to file the appeal within 30 days from notification of the decision affecting his or her interests.

2) Time limit to deliver decision by an administrative organ

The procedure has to be concluded within 90 days with the final adoption of a new administrative decision which is appealable before the TAR and the Council of State (Art. 20 of Law 1034/1971). If, after 90 days from the appeal, the PA has not communicated the decision to the interested party, the appeal is considered to be rejected. The rejection can be appealed before the TAR and the Council of State.

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

Environmental administrative decisions can also be appealed directly before the TAR within 60 days from notification of the decision to the affected party or from the date of publication of the decision (Art. 2 and 21 of Law 1034/1971 as subsequently amended). Administrative remedies, therefore, do not have to be exhausted before taking a case to the administrative tribunal (Art. 20 of Law 1034/1971).

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

In Italy, there is no deadline set for the national court to deliver its judgment. However, Art. 111 of the Constitution requires judicial proceedings to be completed within a reasonable time. Generally, an average of three years is needed by administrative tribunals to decide.

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

Natural and legal persons can challenge environmental administrative decisions before the TAR within 60 days from notification of the decisions. All the allegations and requests from the parties must be submitted within the inquiry phase (fase istruttoria) otherwise they will be declared inadmissible by the judge. The parties can produce documents up to 40 days before the hearing, memos up to 30 days and replies to new documents and new briefs up to 20 days before the hearing. Late submission of briefs or documents may be exceptionally authorised by the judge at the request of a party (Art. 54 and Art. 73 CAP).

1.7.2. Interim and precautionary measures, enforcement of judgments

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

When challenging an administrative decision, neither the administrative appeal nor the application for judicial review have automatic suspensive effect. Under Art. 55 CAP, the applicant can ask the tribunal for suspension of the effects of the challenged decisions or for the adoption of any suitable interim measures. The administrative tribunal will annul the decision when the grounds raised by the applicant are well-founded. Execution of the administrative measure can also be suspended for serious reasons, and for the time strictly necessary, by the same body that issued the measure or by another body required by law. The suspension deadline is explicitly indicated in the act that orders the suspension and can be extended or deferred only once, or reduced if this is considered necessary by the PA (Art. 21-quarter of Law 241/1990).

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

As far as administrative proceedings are concerned, an injunction can be granted only at the request of the claimant and it has to be addressed to the competent tribunal. The decision on the granting of injunctive relief is challengeable before the Council of State within 30 days from notification of the measure or within 60 days from publication of the measure in the official law journal (Art. 2 and 21 of Law 1034/1971 as subsequently amended). Administrative remedies, therefore, do not have to be exhausted before taking a case to the administrative tribunal (Art. 20 of Law 1034/1971).

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?

A request for injunctive relief in environmental matters can be introduced after the adoption of the final decision and has to be addressed to the competent tribunal.

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

Generally, the administrative decisions can be immediately executed irrespective of any appeal or an action submitted to the tribunal.

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

When an administrative decision is challenged, neither the administrative appeal nor the application for judicial review have automatic suspensive effect. Claimants wishing to suspend an administrative decision need to address the request to the competent PA or to the administrative tribunal.

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?

The criteria for granting injunctive relief before the administrative judge are defined by the CAP: once the request is made, the judge has to decide on the matter during the first available hearing after notification of the request and after 10 days from lodging of the appeal. The parties are allowed to submit documents until two days before the decision on the request and are entitled to appear before the tribunal.

In order to take the decision, the judge has to verify whether execution of the contested act could do serious and irreparable damage to the claimant’s interests. Once this condition is verified, the judge can issue an order containing the reasons why the injunctive measure should be granted. The injunctive measure can then be enforced by the claimant and it may contain an order:

to suspend the contested decision;
to pay a sum of money.

It can also provide for other types of injunctive measures, such as judicial attachment or urgent actions.

If the decision on injunctive relief has irreversible effect, the judge may decide to grant it only upon payment of bail. Furthermore, if the decision on the injunction is not executed, wholly or in part, the interested party can request the tribunal (TAR) to take the appropriate enforcement measures. The decision on the granting of injunctive relief is challengeable before the Council of State within 30 days from notification of the measure or within 60 days from publication of the measure in the official law journal.

Several international NGOs are active on the national territory. Examples are:

- Greenpeace Italia
- WWF Italia
- Earth Council Italia
- Society for International Development Italy
- World Farmers’ Organization (WFO)
- Action Committee for the Three Global Conventions (CA3C)
- Friends of the Earth Italy
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.?

The cost categories faced by an applicant when seeking access to justice in environmental matters are:

- the court fee (Contributo Unificato);
- the stamp duty (27 euros);
- the lawyers’ fees;
- the experts’ fees (when needed).

The court fees vary depending on the type of proceedings and on the value of the dispute declared by the applicant (Art.13 of Presidential Decree no 115 /2002 on judicial fees).[29] In administrative proceedings, the court fee might vary from a minimum of € 650 to a maximum of € 6,000. In case of appeal, it may vary from a minimum of € 925 to a maximum of € 9,000.

Few examples relevant to environmental administrative proceedings can be made:

<table>
<thead>
<tr>
<th>Type of Administrative Appeal</th>
<th>Court Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Proceedings concerning access to environmental information</td>
<td>Free</td>
</tr>
<tr>
<td>Proceedings concerning access to administrative documents</td>
<td>300 euros</td>
</tr>
<tr>
<td>Proceedings against the silence of the PA</td>
<td>300 euros</td>
</tr>
<tr>
<td>Proceedings concerning the execution of judgments</td>
<td>300 euros</td>
</tr>
<tr>
<td>Appeal before TAR and Council of State</td>
<td>850 euros</td>
</tr>
<tr>
<td>Extraordinary appeal before the President of the Republic</td>
<td>850 euros</td>
</tr>
</tbody>
</table>

If the claim is successful, the claimant is reimbursed by the losing party/ies, unless the judge rules that each party shall bear its own costs.

Under Art. 9.4 of Law 21/2012, all professionals, lawyers included, must give their clients an advance estimate of all the costs linked to the professional activity as well as an indication of the degree of complexity of the case.

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

The court fee for injunctive relief/interim injunction follows above-mentioned rules but it is reduced of 50%, and stamp duties are mandatory. A deposit/cross-undertaking in damages can be offered by the applicant or ordered by the judge. As mentioned, if the decision on the injunctive relief has irreversible effect, the judge may decide to grant it only upon payment of bail.

3) Is there legal aid available for natural persons?

In the Italian system, financial assistance for indigents is a fundamental right enshrined in the Italian Constitution (Art. 24). Decree of the President of the Republic no 115/2002 therefore provides that legal aid must be granted by the State (patrocinio a spese dello Stato) to natural persons who have an annual income below € 11,493.82. This threshold is updated every two years by a decree of the Ministry of Justice, in line with inflation.

In civil, criminal, and administrative proceedings, a request filed on unstamped paper must be submitted to the competent bar association,[30] which might ask the applicant to produce further documents in order to prove his or her economic status. Within 10 days from the request the bar association has to uphold or dismiss the application. If the request is upheld the applicant can choose a lawyer from the list held by the bar association, and the court fee as well as the lawyers’ fees are paid by the State. If the request is rejected, the applicant can reapply directly to the judge who is presiding in the case.

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?

Art. 119 of Decree of the President of the Republic no 115/2002 extends legal aid also to entities and associations, provided that they do not operate for profit; that they do not engage in economic activities (both criteria need to be met); and that they have an annual income not exceeding € 11,493.82. The request for legal aid by entities and associations follow the same rules provided for natural persons.[31]

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

While natural persons can only request legal aid or pro bono assistance from law firms, environmental associations in Italy can also rely on different channels for funding. For example, they can ask to be included in the list of non-profit entities to which citizens can devolve 5/1000 of their taxes due to the State. They can also draw on EU, State, regional and local special funds.[32]

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

The Italian legal system applies the ‘loser party pays’ principle (Art. 91 of the Code of Civil Procedure). Nevertheless, judges can limit the losing party’s liability for costs at their own discretion if they find that the costs incurred by the winning party are excessive or unnecessary. In circumstances prescribed by law the judge can also rule that each party must bear its own costs. This applies, for instance, when one party won on one controversial point while the other party succeeded on another, or for other exceptional reasons set forth in the judgment (Art. 92 of the Code of Civil Procedure).

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 some matters the law provides for exemption from the court fees, considering the importance of the rights involved. By way of example, there are no court fees for:

- access to information cases;
- civil action in criminal proceedings when asking for generic compensation.

Furthermore, environmental protection associations recognised by the MATTM can enjoy exemption from payment of the court fees, provided that they act to protect common collective interests in environmental matters.[33]

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?

Detailed information on access to justice is provided here.

The NGO Legambiente also provides practical information on instruments of access to justice, including templates for exercising the right of access to environmental documents and for reporting suspected violations of environmental law.[34] Furthermore, in 2003 the ISPRA Public Relations Office was set up to facilitate citizens’ access to environmental information at the national level.

The Italian legislator has also provided for other forms of structured dissemination:

- The National Environmental Information System - SINA (Sistema Informativo Ambientale) is the national system for the collection and monitoring of environmental information.
- The environmental assessment portal provides information about ongoing environmental assessments.
- Detailed information on inspections planned and performed under the Industrial Emissions Directive is made available by ISPRA.

2) During different environmental procedures how is this information provided? From whom should the applicant request information?
Information on environmental administrative decisions is published on the website of the competent PA and made available in the national GU (Gazzetta Ufficiale della Repubblica Italiana) or regional BUR (Bollettino Ufficiale Regionale). Information on access to justice is provided in each administrative decision published by the PA.

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

There are no sectoral rules applicable for EIA, IPPC procedures.

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

Under Art. 3 and Art. 8 of Law 241/1990, every decision of the PA notified to its addressee must indicate the competent authority – together with the deadlines – before which it is possible to obtain judicial review. Furthermore, Art 8.2.d of Law 241/1990 (and Art. 40-41 and 64-bis of Legislative Decree no 82 /2005) provides for telematic means of access to environmental information and access to justice.

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

As a general rule, judicial proceedings have to be conducted in Italian language (Art. 122 of the Italian Code of Civil Procedure). Nonetheless, the law provides for some exceptions with regard to Regions and autonomous Provinces. For example, in Trentino-Alto Adige German has equal status with Italian with respect to specific acts of the proceeding. In Valle d’Aosta French has equal status with Italian, and in Friuli-Venezia Giulia, specific rights are granted to the Slovenian-speaking minority. Outside these exceptions, when a non-Italian speaker has to be heard or when the judge needs to examine documents not written in Italian, an interpreter can be appointed. In criminal proceedings the defendant is granted the free assistance from an interpreter (Art. 111 of the Constitution and Art. 143 of the Code of Criminal Procedure). In administrative and civil proceedings, the judge decides which party has to pay the interpreter’s fee (Art. 53 of the rules implementing the civil procedure code). The Italian legal system applies the ‘losing party pays’ principle, so the loser should pay the costs of the interpreter. Nevertheless, the judge can limit the losing party’s liability for costs if he or she finds that the costs incurred by the winning party are excessive or unnecessary.

1.8. Special procedural rules


Country-specific EIA rules related to access to justice

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

The EIA (Valutazione di Impatto Ambientale - VIA) applies to construction projects with a potential adverse effect on the environment. The main legislative act covering the EIA procedure is the EC as modified by Law 128/2010 and Legislative Decree 104/2017, which implements EU Directive 2014/52/EU. In this procedure the PA determines the need for an environmental impact assessment (screening); defines the object of the environmental impact study (scoping); consults the applicant and the interested public; evaluates the results of the environmental impact assessment together with the results of the consultations; decides on release of the project authorisation; makes public the decision and monitors the environmental effects of the authorised activity (Art. 19 EC). As regards the screening procedure, this is the process of determining whether or not an EIA is required for a particular project. According to the general rules on public participation in decision-making process, natural and legal persons likely to be affected by the decision, as well as anybody having a private or public interest, including associations representing common interests, can participate in the screening procedure when such interests are likely to be affected. According to the rules on public participation set forth in the EC, the party proposing the activity shall send to the competent authority the preliminary environmental impact study. The preliminary study is then published on the website of the competent authority and the public concerned can submit comments within 45 days (Art. 19 EC). The competent authority adopts the final decision within the next 45 days. All documentation relating to the procedure and the final decision, including comments and opinions presented by the public, is published by the competent authority on its website. The final screening decisions on whether or not an EIA has to be carried out can be appealed before the administrative judge by natural and legal persons who have a legitimate interest, or whose rights might be infringed upon by the decision, within 60 days from the date of its publication according to the general rules of administrative judicial proceedings.

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

The scoping procedure is the process of identifying the content and extent of the environmental information to be submitted to the competent authority under the EIA. Members of the public with a legitimate interest or likely to be affected by the decision, including public interest groups such as NGOs, are entitled to participate in the scoping procedure. The party proposing the activity shall send to the competent authority the environmental impact study which is published on the website of the competent authority. The public concerned can provide written comments within 60 days from the day the documentation was published. The competent authority can also decide to organise consultations through public hearings which aim at further discussing with the public technical opinions and observations. The public hearing concludes with the preparation of a report which has to be taken into consideration for the final decision (Art. 24 bis EC). The final EIA scoping decisions (determining the object of the environmental impact study) can only be reviewed together with the final decision on the EIA procedure (Art. 21 and 27 EC).

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

Usually, the public can challenge the environmental decision during the consultation phase which takes place after the first step of the environmental authorisation procedure (i.e. the screening phase). The EIA scoping decisions can only be reviewed together with the final decision on the EIA procedure (Art. 21 and Art. 27 EPC).

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

Natural and legal persons who have a legitimate interest (including foreign NGOs), or whose rights may be infringed by the decision, can always challenge the final authorisation according to the general rules on administrative procedure. This is appealable before the body hierarchically superior to the one that issued the decision within 30 days from notification of the decision affecting his or her interests. This procedure has to be concluded within 90 days with the final adoption of a new administrative decision appealable before the TAR and the Council of State (Art. 20 of Law 1034/1971). Administrative decisions, acts or omissions can be appealed directly before the TAR within 60 days from notification of the decision to the affected party or from the date of publication of the decision (Art. 2 and Art. 21 of Law 1034/1971, as subsequently amended).

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

Administrative tribunals review not only the procedural/legality of the administrative decisions but also their substantive legality. Under the first category, tribunals check whether the proper authority has taken the decision following the prescribed procedural steps. Under the second, tribunals check whether environmental laws were complied with. Administrative tribunals also look beyond the administrative decision and may involve a technical expert tasked with verifying the material and the project data, who will produce a report on which the final decision will be based (Art. 67 of Law 156/2010). Under both the procedural and the substantive legality check, the administrative tribunals can annul the decision of the PA and award damages (Art. 30 CAP). The tribunal may also order inspections, request tests or delegate a technical expert as a consultant to evaluate the material and the data concerning the environmental impact study (Art. 67 of Law 156/2010).

6) At what stage are decisions, acts or omissions challengeable?
Decisions, acts or omissions are challengeable after the adoption of the screening decision or the final decision authorising or rejecting the authorisation (Art. 21 and Art. 27 EPC).

7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? Administrative remedies do not have to be exhausted before taking a case to Court (Art. 20 of Law 1034/1971).

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 the administrative tribunals it is not necessary to have participated in the public consultation phase of the EIA procedure. Legal standing is in fact granted to any party whose interest is affected by the decision (Art. 7 CAP).

9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction? In the Italian system, administrative jurisdiction is informed by the adversarial principle, equal standing of the parties, and due process (Art. 2 CAP) in line with Art. 111 of the Constitution and the case law of the ECHR[38] and the CJEU. The parties to the trial, according to Art. 2 and Art. 111 of the Constitution, must be also put in a position of equality. When challenging an environmental administrative decision, parties can therefore ask the judge to appoint an expert, to inspect persons or things, to request the presentation of documents or other objects, or to hear witnesses.

10) How is the notion of “timely” implemented by the national legislation? Art. 111 of the Constitution requires judicial proceedings to be completed within a reasonable time. Nevertheless, an average of three years is needed by the administrative tribunal to decide.[37]

While sanctions are not applied for administrative tribunals delivering delayed decisions, Law 89/2001 provides that anyone who has suffered material or moral damage from the breach of the right to a reasonable duration of the trial (as foreseen by Art. 6, para 1 of the ECHR) is entitled to go before the Appeal Court in order to claim damages. The reasonable duration of the trial must be assessed by the Appeal Court taking into account the complexity of the case and the behaviour of the parties and of the judge, as well as the conduct of any other authority that is called to contribute to the definition of the proceeding (Art. 2.2 of Law 89/2001).

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? The injunctive relief in EIA procedures is available according to the general rules set forth in section 1.7.2 and it can be applied to the final EIA decision. Furthermore, the PA that adopted the latter can decide to temporarily suspend the effects of the EIA decision for serious reasons. The suspension can be extended just once or reduced in case of subsequent suspensions (Art. 21quater, 2 of Law 244/1990).

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

The integrated pollution prevention and control (IPPC) procedure was introduced in the EC through the adoption of Legislative Decree 128/2010 as modified by Legislative Decree 49/2014, Legislative Decree 127/2016 and Law 167/2017.[38] The IPPC is the procedure through which the competent authority adopts the AIA decision (Autorizzazione Integrale Ambientale) authorising the construction or the functioning of certain plants that are likely to produce environmental pollution.

According to the general rules on public participation in decision-making processes, natural and legal persons likely to be affected by the AIA decision, as well as anybody having a private or public interest, including associations representing common interests, can participate in the IPPC procedure when such interests are likely to be affected. IPPC legislation is complemented by sectoral provisions on public participation. Accordingly, during AIA procedures, the public concerned can submit observations within 30 days from publication of the request of the permit on the competent authority’s website.

There are no special rules related to access to justice for IPPC/IED procedures. The AIA decision can therefore be appealed according to the general rules of administrative judicial proceedings.

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? According to the general rule of administrative procedure, any natural or legal person whose rights or legitimate interest might be infringed by the administrative decision can appeal the decision granting or rejecting the permit before the body that is hierarchically superior to the one that issued the decision. Administrative decisions can also be appealed directly before the TAR.

Natural and legal persons, including foreign NGOs, which have a legitimate interest, or whose rights are infringed by the decision, can challenge the final decision according to the general rules of administrative procedure.

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

There is no per se screening in the IPPC procedure. However, when IPPC projects fall within the scope of the EIA, the EIA screening procedure is required. In this case the AIA can be released only after the competent authority has decided not to subject the projects to EIA. In these circumstances, the rules set forth in section 1.8.1 apply.

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

There is no per se scoping in the IPPC procedure.

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions? When IPPC projects fall within the scope of the EIA, natural and legal persons can challenge the EIA screening decision. Natural and legal persons can also challenge the final decision authorising or rejecting the permit. These decisions are challengeable before the TAR within 60 days from notification of the decision to the affected party or from the date of publication of the decision. Decisions on environmental projects are also challengeable before the body hierarchically superior to the one that issued the decision within 30 days from notification of the decision affecting his or her interest. This procedure has to be concluded within 90 days with the final adoption of a new administrative decision appealable before the TAR and the Council of State.

6) Can the public challenge the final authorisation? Natural and legal persons, including foreign NGOs, which have a legitimate interest, or whose rights are infringed by the decision, can always challenge the final authorisation according to the general rules on administrative procedure.

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?

Administrative tribunals review not only the procedural legality of the administrative decisions but also their substantive legality. Under the first category, tribunals check whether the proper authority has taken the decision following the prescribed procedural steps. Under the second, tribunals check whether environmental laws were complied with. Administrative tribunals also look beyond the administrative decision and may involve a technical expert tasked with verifying the material and the project data, who will produce a report on which the final decision will be based (Art. 67 of Law 156/2010). Under both the
procedural and the substantive legality check, administrative tribunals can annul the decision of the PA and award damages (Art. 30 CAP). The administrative tribunal may also order inspections, request tests or delegate a technical expert as a consultant to evaluate the material and the data concerning the environmental impact study (Art. 67 of Law 156/2010).

8) At what stage are these challengeable?
The public concerned can challenge the final administrative decision or the EIA screening decision when applicable (see in this respect 1.8.2.(5)).

9) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
Administrative remedies do not have to be exhausted before taking a case to tribunal (Art. 20 of Law 1034/1971).

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 the administrative tribunals it is not necessary to have participated in the public consultation phase of the IPPC procedure. Legal standing is in fact granted to any party whose interest is affected by the decision (Art. 7 CAP).

11) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
In the Italian legal system, administrative jurisdiction is informed by the adversarial principle, equal standing of the parties, and due process (Art. 2 CAP), in line with Art. 111 of the Constitution and the case law of the ECHR[39] and the CJEU. Parties, according to Art. 2 and Art. 111 of the Constitution, must be in a position of equality. When challenging an environmental administrative decision, parties can therefore ask the judge to appoint an expert, to inspect persons or things, to request the presentation of documents or other objects, or to hear witnesses.

12) How is the notion of "timely" implemented by the national legislation?
Art. 111 of the Constitution requires judicial proceedings to be completed within a reasonable time. Nevertheless, an average of three years is needed by the administrative tribunal to decide. [40]
While sanctions are not applied for tribunals delivering delayed decisions, Law 89/2001 provides that anyone who has suffered material or moral damage from the breach of the right to a reasonable duration of the trial (as foreseen by Art. 6, para 1 of the ECHR) is entitled to go before the Appeal Court in order to claim damages. The reasonable duration of the trial must be assessed by the Appeal Court taking into account the complexity of the case and the behaviour of the parties and of the judge, as well as the conduct of any other authority that is called to contribute to the definition of the proceeding (Art. 2.2 of Law 89/2001).

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?
The injunctive relief in IPPC procedures is available according to the general rules set forth in section 1.7.2. It refers to the final AIA decision. Furthermore, the PA that adopted the AIA decision can decide to suspend it temporarily for serious reasons. The suspension can be extended just once or reduced in case of subsequent needs (Art. 21quarter, 2 of Law 241/1990).

14) Is information on access to justice provided to the public in a structured and accessible manner?
According to Art. 3 and Art. 8 of Law 241/1990 every decision of the PA notified to its addressee must indicate the competent authority - together with the deadlines – before which it is possible to obtain judicial review.

1.8.3. Environmental liability[41]
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?
In Italy, the Environmental Liability Directive 2004/35/EC has been transposed in Title III, part VI of the EC. Under Art. 309 of the EC, while citizens and recognised NGOs are not entitled to go to court autonomously in order to enforce environmental liability, they can submit to the METTM information, observations and documents concerning alleged environmental damage and request the METTM to act to remedy it. Recognised NGOs can also intervene in the environmental liability proceedings that the METTM may decide to start (Art.18 para 5 of Law 349/1986).
As regards standing to challenge the decision taken on environmental remediation, Art. 310 EC provides that any natural or legal persons who have a legitimate interest in participating in the proceeding related to the environmental remediation, or whose rights could be infringed by the environmental damage, can resort to both judicial and non-judicial remedies in order to:
- appeal the decisions that are in contrast with the environmental liability legislations;
- appeal the inactivity of the METTM in adopting precautionary, preventive or mitigating measures necessary to mitigate the environmental harm or in starting an environmental liability action against the party responsible for the damage;
- ask for compensation for the injury caused by the delay on the part of the METTM in adopting such measures.
Recognised environmental NGOs are considered by law to have a legitimate interest in participating in the environmental damage proceedings (Art. 309.2 EC). Furthermore, it is common judicial practice that environmental associations non-recognised by the METTM under Art. 13 of Law 349/1986, may also be entitled to take legal action if they: a) pursue effective and non-occasional actions in favour of environmental protection; and b) represent the local community impacted by the challenged decision. [42]

2) In what deadline does one need to introduce appeals?
According to the general rules on administrative procedure (Art. 29 CAP), natural and legal persons can appeal the TAR within 60 days from notification or publication of the contested decision. Judicial remedy can be preceded by an opposition appeal (see section 1.3.4.) filed with the METTM. Claimants can also resort to extraordinary appeal to the President of the Republic.
Omission of the METTM must be filed within 30 days. Against the silence of or rejection from the METTM, it is always possible to appeal the TAR within 60 days from notification of the decision rejecting the opposition, or 31 days after presentation of the opposition if no decision has been rendered (Art. 310 EC). The extraordinary appeal to the President of the Republic must be filed within 120 days from notification or publication of the contested decision.

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?
As regards the observations accompanying the request for action of the METTM under Art. 309, the EC does not provide for any formalities or specific requirements. Art. 309 only requires that observations are combined with documents and information concerning any case of environmental damage.

4) Are there specific requirements regarding ‘plausibility’ for showing that environmental damage occurred, and if yes, which ones?
The EC does not provide for specific requirements in this respect.

5) Is there a certain manner required and/or time limits set, 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 EC does not provide a time limit for the competent authority to notify in writing, by post or by certified e-mail, the decision regarding the observations to the interested subjects. However, Art. 309 EC provides that the METTM shall act without delay. Against the silence of the METTM, claimants can appeal the TAR (Art. 310 EC).
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?

No extension of the entitlement to request action by competent authority is foreseen in the EC in cases of imminent threat.

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

The METTM, on behalf of the State, is entitled to take legal action in environmental liability matters. The ministerial action usually takes place in collaboration with the Regions, the local authorities and any other public authority that is entitled to participate (Art. 299, paras 1-2 of the EC as amended by Legislative Decree 128/2010).

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

Administrative review procedures do not need to 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?

If a project has an adverse impact on the environment in a transboundary context, the affected State and its population must be involved in the EIA or SEA procedure according to the rules set forth by the ESPOO Convention (implemented in Italy by Law 640/1994). For cross-border projects the METTM (Directorate for Environmental Protection) is responsible for issuing the notification to the affected State and providing the relevant documentation to its population. In Italy, there are no specific rules on access to justice for cross-border procedures. Therefore, national rules on access to justice apply. To this extent, the public concerned can challenge the environmental decision according to the rules set forth in sections 1.8.1 (EIA screening decision and EIA final decision) and 2.2 (SEA screening decision and SEA final decision).

2) Notion of public concerned?

In a transboundary context, the population living in the areas likely to be affected by the cross-border project represents the “public concerned”. Therefore, it includes citizens of the State of origin as well as those of the affected State who are to receive an equal treatment of information and participation (Art. 2, para 6 of the Espoo Convention).

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)?

If Italy breaches the participatory rights of the NGOs of an affected neighbouring State, it must grant those subjects the same rights conferred upon the citizens of the State of origin on the principle of non-discrimination (see e.g. Espoo Convention Art. 2 para 6).

A foreign NGO, although not officially recognised, could go before the Italian administrative judge in order to challenge the legitimacy of a proposed plan, programme, project or activity decision adopted by the Italian PA claiming that it has been excluded from the consultation phase. Legal standing, in fact, can be conferred by the Italian judge even on a case-by-case basis, irrespective of official recognition by the METTM.

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)?

If Italy violates the participatory rights of citizens of an affected neighbouring State, it must grant those subjects the same rights conferred upon the citizens of the State of origin on the principle of non-discrimination (see e.g. Espoo Convention Art. 2 para 6).

A foreign citizen could go before the Italian administrative judge in order to challenge the legitimacy of a proposed plan, programme, project or activity decision adopted by the Italian PA claiming that it has been excluded from the consultation phase.

5) At what stage is the information provided to the public concerned (including the above parties)?

The public concerned is informed about the procedure from the consultation phase.

6) What are the timeframes for public involvement including access to justice?

When a proposed plan, programme, project or activity is likely to cause a significant adverse transboundary impact, the METTM notifies and sends all relevant documentation to any State Party which may be affected. The affected State can notify its interest to intervene, provide comments and request access to the administrative procedures and reports. The affected State can also appeal the decision to the national courts according to the legal procedures set forth in the EC (see e.g. Resolution n. 502/2009 of the METTM). If the appeal is successful, the Italian court can declare the decision null and void.

7) How is information on access to justice provided to the parties?

The METTM has an obligation to send the State participating in the procedure the final administrative decision. The decision, according to Art.3 and Art. 8 of Law 241/1990, indicates the competent authority — together with the deadlines — before which it is possible to obtain judicial review.

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

As a general rule, judicial proceedings only must be held in Italian (Art. 122 of the Italian Code of Civil Procedure). Nonetheless, the law provides for some exceptions with regard to Regions and autonomous Provinces. For example, in Trentino-Alto Adige, German has equal status with Italian with reference to specific acts of the proceeding. In Valle d’Aosta, French has equal status with Italian, and in Friuli-Venezia Giulia, specific rights are granted to the Slovenian-speaking minority. Outside these exceptions, when a non-Italian speaker has to be heard or when the judge needs to examine documents not written in Italian, an interpreter can be appointed. In criminal proceedings the defendant is granted free assistance from an interpreter (Art. 111 of the Constitution and Art. 143 of the Code of Criminal Procedure). In administrative and civil proceedings, the judge decides which party has to pay the interpreter’s fee (Art. 53 of the rules implementing the civil procedure code). The Italian legal system applies the ‘losing party pays’ principle, so the loser must pay the costs of the interpreter. Nevertheless, the judge can limit the losing party’s liability for costs if he or she finds that the costs incurred by the winning party are excessive or unnecessary.

9) Are other relevant rules?

If a transboundary project causes damages to the population of a neighbouring State (be it Italy or one of its neighbouring States), individuals could go either before the court of their own State (where the harmful event has occurred) or before the courts of the neighbouring State where the harmful activity is located in order to be awarded damages (Council Regulation 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters).


The page contains a study on the implementation of Articles 9.3 and 9.4 of the Aarhus Convention in Italy. It discusses the role of the Supreme Court, the Constitutional Court, and the Regional Administrators in environmental protection. The text highlights the importance of pro bono practices and the establishment of Pro Bono Italia, a non-profit association of lawyers, law firms, and forensic associations. The page also mentions the impact of EU directives on environmental law in Italy, including access to justice, compensation for damage, and the role of NGOs in court proceedings. The text concludes with references to judicial decisions and legislative changes in Italy.
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?

According to the case law of the CJEU,[2] access to justice must be granted also to challenge certain decisions related to specific activities and projects that do not fall within the scope of the EIA or IED Directives. For example, access to justice should be granted to challenge decisions adopted in violation of the Habitats Directive (Directive 92/43/CEE), the Water Framework Directive (Directive 2000/60/EC), or the Seveso III Directive (Directive 2012/18/EU).

According to the general rules set forth in section 1.4.2, in order to have standing, natural and legal persons need to prove that their rights or legitimate interests may be infringed by the decision, act, or omission. Recognised environmental NGOs are considered to have a legitimate interest. These administrative decisions are appealable before the body that is hierarchically superior to the one that issued the decision within 30 days from notification of the decision affecting his or her interest, or directly before the TAR within 60 days.

As discussed in section 1.4.2, tribunals, on a case-by-case basis, can also grant standing to associations or ad hoc groups. As far as individuals are concerned, it has been noted that the case law of administrative law on standing seems to rely on the vague and flexible concept of ‘vicinitas’. To this extent, reports indicate that access to justice overall is effective enough to comply with the case law of the CJEU.[3] For example, in the case of a permit decision concerning an industrial activity not covered by the IED, participants have the right of access to related documents and may submit documents and briefs which must be considered when deciding on the application (Art. 10 of Law 24/1990).[4] The decision may be challenged before the hierarchically superior administrative body or administrative tribunals within 30 or 60 days from the moment the interested parties may be expected to have known that the permit had been granted. It must be noted, however, that given its inherent flexibility, the vicinitas concept allows for a case-by-case approach to standing for individuals, which at times may be considered somewhat restrictive by tribunals.[5]

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 appeal reviews not only the legality, but also the merits – the appropriateness – of the decision. The administrative tribunals may verify both the procedural and the substantive legality of the decision.

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

Administrative remedies do not have to be exhausted before taking a case to Tribunal (Art. 20 of Law 1034/1971).

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

In order to have standing before the administrative tribunals it is not necessary to have participated in the public consultation phase. Legal standing is in fact granted to any party whose interest is affected by the decision (Art. 7 CAP).

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

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

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

In the Italian system, administrative jurisdiction is informed by the adversarial principle, equal standing of the parties, and due process (Art. 2 CAP.), in conformity with Art. 111 of the Constitution and the case law of the ECtHR[8] and CJEU. Parties, according to Art. 2 and Art. 111 of the Constitution, must be in a position of equality. When challenging an environmental administrative decision, parties can therefore ask the judge to appoint an expert, to inspect persons or things, to request the presentation of documents or other objects, or to hear witnesses.

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

Art. 111 of the Constitution requires judicial proceedings to be completed within a reasonable time. Nevertheless, an average of three years is needed by the administrative tribunal to decide.[7]

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 injunctive relief is available according to the general rules set forth in section 1.7.2.

9) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court?

What are the safeguards against the costs being prohibitive, and do these include express statutory reference to a requirement that costs should not be prohibitive?

In Italy, there is no statutory clause requiring the courts to avoid prohibitive costs. Nevertheless, Art. 1 and Art. 7 CAP refer to the principle of due process, which is interpreted the avoidance of prohibitive costs. Costs of access to justice in these areas can be estimated according to the rules set forth in 1.7.3. The Italian legal system applies the loser pays principle (Art. 91 of the Code of Civil Procedure). If it loses, the applicant will therefore bear the costs. Nevertheless, the judge can limit the losing party’s liability for costs if he or she finds that the costs incurred by the winning party are excessive or unnecessary. The judge can also rule that each party has to bear their own costs: when one party won on one controversial point whereas the other party succeeded on another, or for “other exceptional reasons set forth in the judgment” (Art. 92 of the Code of Civil Procedure).

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[9]

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 SEA (Valutazione Azione Strategica - VAS) is a procedure through which the PA approves strategic plans and programmes in order to preserve the environment. This procedure includes: determining the need for an environmental impact assessment (screening); preparing an “environmental report”; consulting the applicant, the PA and the interested public; examining the “environmental report” and the results of the consultations; deciding on the release of the VAS authorisation; informing the public of the decision and monitoring the environmental effects of the authorised activity (Title II of the EC). This procedure applies, for example, to plans/programmes which are prepared for: agriculture, forestry, fisheries, energy, industry, transport, waste/ water management, telecommunications, tourism, town & country planning or land use and plans and programmes listed in Annex II, II-bis, III e IV (Art. 6(2)EC). According to the general rules on legal standing set forth in section 1.4.2, individuals and NGOs who have a legitimate interest, or whose rights may be infringed, can resort to both judicial and non-judicial remedies to challenge the decision, act or omission. The SEA screening decision can be challenged according to the general rules of administrative procedure. The SEA environmental report can only be reviewed together with the final decision on the SEA procedure. These administrative decisions are appealable before the body that is hierarchically superior to the one that issued the decision within 30 days
from notification of the decision affecting his or her interest. This procedure has to be concluded within 90 days with the final adoption of a new administrative decision appealable before the TAR and the Council of State (Art. 20 of Law 1034/1971). Applicants can appeal directly to the TAR within 60 days from notification of the decision to the affected party or from the date of publication of the decision (Art. 2 and 21 of Law 1034/1971 as subsequently amended). As discussed in section 1.4.2, recognised NGOs are considered to have a legitimate interest in environmental decisions. Administrative tribunals, on a case-by-case basis, can also grant standing to associations or ad hoc groups. As far as individuals are concerned, it has been noted that the case law of the administrative tribunals on standing seems to rely on the vague and flexible concepts, such as that of ‘vicinitas’. Access to justice to challenge SEA decisions is therefore flexible enough to comply with the case law of the CJEU.

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 appeal reviews not only the legality, but also the merits – the appropriateness – of the decision. The administrative tribunals may verify both the procedural and the substantive legality of the decision.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? Administrative remedies do not have to be exhausted before taking a case to Tribunal (Art. 20 of Law 1034/1971).

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 SEA procedure for public consultation is similar to the EIA procedure: the notice is published in the GU or BUR and the public has 60 days to comment. Comments from the public are taken into consideration for the final decision, which must be accompanied by a motivated opinion. To be an Italian citizen is not a prerequisite for participating in the consultation in accordance with the principle of non-discrimination.

In order to have standing before the administrative tribunals, it is however not necessary to have participated in the public consultation phase. Legal standing is in fact granted to any party whose interest is affected by the decision (Art. 7 CAP).

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 injunctive relief is available according to the general rules set forth in 1.7.2.

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

Costs of access to justice in these areas can be estimated according to the rules set forth in 1.7.3.

1.3. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with the public participation requirements of Article 7 of the Aarhus Convention in respect of plans and programmes not submitted to the procedures set out in the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[9]

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?

Art. 7 of the Aarhus Convention requires public participation concerning plans, programmes and policies relating to the environment to the extent appropriate. In Italy, public participation to decision-making on plans and programmes is guaranteed mainly through the application of the SEA procedure. An important recent practice followed by public authorities is indeed to apply the SEA procedure, including public participation requirements, even in situations where discretion is still available.[10] Furthermore, in Italy public participation in plans and programmes has been developed with particular relevance at the local level even in situations where the SEA procedure is not applied. By way of example:

Local Agenda 21: the participatory Agenda 21 process follows two main steps: a) the creation of a dedicated 'local forum for Agenda 21' which provides for the involvement of local territorial stakeholders interested in pursuing a specific 'Agenda 21 local project'; b) the drawing up of an Agenda 21 Action Plan: a strategic document targeting all parties involved (Local Authorities, enterprises, organisations, associations, schools, media).

Law 394/1991 on natural protected areas (parks established at the national, regional or local level) provides for public participation in the plan to establish and manage parks.

Legislative Decree 287/2000 (on local administration) states that municipalities and provinces are obliged to promote public participation and access to information through their statutes.

Public participation is also envisaged in local decision-making on draft plans, e.g. on waste-water management, water protection plans (Piani di tutela delle acque) prevention of noise or air pollution, town planning, structural interventions, land-use, river-basin management and local/regional development. [11] In addition, it should be noted that Art. 7 of the Aarhus Convention can also encompass plans that, like the ones listed here, do not pass through a SEA procedure, but unlike these, are not (at least in principle) related to the environment. By way of example, the Italian Ministry of University and Research has recently opened a call for public consultation regarding the National Research Programmes 2021-2027 (NRP). With the NRP 2021-2027, the Ministry of University and Research intended to set in motion a participatory strategic planning process to contribute to the sustainable development of society and respond to emergency requests. [12]

As regards access to justice, the public with a legitimate interest in an administrative decision (individuals and associations) can not only participate in the decision-making but also challenge administrative tribunals in any unlawful decision adopted by a public authority (Law 1034/1971 and Law 241/1990). Only political acts cannot be challenged before the administrative judge. The public can also resort to administrative review (Decree of the President of the Republic no 1199/1971). Indeed, a decision can be considered to be unlawful when it is inconsistent with legal provisions regulating the way the discretionary power of the administration should be exercised, including those on public participation.[13] These administrative decisions are appealable before the body that is hierarchically superior to the one that issued the decision within 30 days from notification of the decision affecting his or her interest. This procedure has to be concluded within 90 days with the final adoption of a new administrative decision appealable before the TAR and the Council of State (Art. 20 of Law 1034/1971). Applicants can appeal directly to the TAR within 60 days from notification of the decision to the affected party or from the date of the publication of the decision (Art. 2 and 21 of Law 1034/1971 as subsequently amended).

It is difficult to establish with certainty with the resources allocated for this work whether or not access to justice is in this instance effective. Nevertheless, the requirements to be granted standing set forth in section 1.4.2. could be considered flexible enough as to comply with the case law of the CJEU. It must be noted, however, that given its inherent flexibility, the vicinitas concept allows for a case-by-case approach which at times may be considered somewhat restrictive by administrative tribunals.[14]

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 appeal reviews not only the legality, but also the merits – the appropriateness – of the decision. The administrative tribunals may verify both the procedural and the substantive legality of the decision.
3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? Administrative remedies do not have to be exhausted before taking a case to Tribunals (Art. 20 of Law 1034/1971).

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure — to make comments, participate at hearing, etc.? In order to have standing before the administrative tribunals it is not necessary to have participated in the public consultation phase. Legal standing is in fact granted to any party whose interest is affected by the decision (Art. 7 CAP).

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 injunctive relief is available according to the general rules set forth in section 1.7.2.

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

Costs of access to justice in these areas can be estimated according to the rules set forth in 1.7.3.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[15]

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?

Each person or group of persons, whose right or legitimate interest has been breached by a public authority’s decision act or omission concerning plans and programmes required to be prepared under EU environmental legislation has legal standing to resort to both judicial and non-judicial remedies according with the general rules of administrative procedure. These administrative decisions are appealable before the body that is hierarchically superior to the one that issued the decision within 30 days from notification of the decision affecting his or her interest. This procedure has to be concluded within 90 days with the final adoption of a new administrative decision appealable before the TAR and the Council of State (Art. 20 of Law 1034/1971). Applicants can appeal directly to the TAR within 60 days from notification of the decision to the affected party or from the date of publication of the decision (Art. 2 and 21 of Law 1034/1971 as subsequently amended).

As to whether or not access to justice is effective, the requirements to be granted standing set forth in section 1.4.2. should be flexible enough to comply with the case law of the CJEU. For example, if the competent authority for air quality legislation has failed to establish an air quality plan for a municipality in breach of EU air quality norms, a citizen or environmental NGO could submit a complaint to the Municipality (or to the local ombudsman where there is one). [16] If this is not effective, the concerned citizen or NGO can go before the TAR.

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)?

The form in which the plan or programme is adopted can make a difference in terms of legal standing. If a certain plan or programme is issued in the form of a measure of a general nature, private individuals cannot access to justice except for the parts in which the measure is immediately harmful to their legitimate interests or rights. In this case, the generality of the prescriptions might make proof of standing more difficult.

If a certain plan or programme is issued in the form of a regulatory act, the recipients of these acts are easily recognisable, and the act can directly affect his/her subjective legal situation. For them, proof of standing can be easier.

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 appeal reviews not only the legality, but also the merits – the appropriateness – of the decision. The administrative tribunals may verify both the procedural and the substantive legality of the decision.

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? Administrative remedies do not have to be exhausted before taking a case to Tribunal (Art. 20 of Law 1034/1971).

5) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure — to make comments, participate at hearing, etc.? In order to have standing before the administrative tribunals it is not necessary to have participated in the public consultation phase. Legal standing is in fact granted to any party whose interest is affected by the decision (Art. 7 CAP).

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?

In the Italian system, administrative jurisprudence is informed by the adversarial principle, equal standing of the parties, and due process (Art. 2 C.A.P), in conformity with Art. 111 of the Constitution and the case law of the ECHR[17] and the CJEU. Parties, according to Art. 2 and Art. 111 of the Constitution, must be in a position of equality. When challenging an environmental administrative decision, parties can therefore ask the judge to appoint an expert, to inspect persons or things, to request the presentation of documents or other objects, or to hear witnesses.

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

Art. 111 of the Constitution requires judicial proceedings to be completed within a reasonable time. Nevertheless, an average of three years is needed by the administrative tribunal to decide: [18]

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 injunctive relief is available according to the general rules set forth in 1.7.2.

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

Costs on access to justice in these areas can be estimated according to the rules set forth in 1.7.3.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[19]

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?

EU legislation is mainly transposed in Italy through:

Primary law (‘legge di rango ordinario’); e.g. Parliamentary law, Regional Law, D.lg, D.Lgs);
Secondary law: e.g. regional executive regulations.

It is important here to distinguish two different situations according to the kind of act used to transpose EU laws:

Primary law: natural and legal persons who have a legitimate interest, or whose rights might be infringed by an administrative decision taken on the basis of a primary law conflicting with EU Treaties, Regulations or self-executive laws law, can challenge the act and require the judge to disapply the administrative act in the specific case.

Primary laws conflicting with EU Treaties, Regulations or self-executive laws can also per se be challenged in courts of law. Natural and legal persons can require the judge to disapply the conflicting national law, to interpret the conflicting national law in conformity with EU law, or to refer the case to the Constitutional Court (the TAR, for instance, cannot disapply the conflicting Parliamentary law but can refer the case to the Constitutional Court). Applicants can also request the judge or the Constitutional Court to refer the case to the CJEU.

Secondary law: natural or legal persons who have a legitimate interest, or whose rights might be infringed from the measures, can challenge the secondary law according to the general principles of administrative procedure and request the judge to disapply the conflicting norm or to refer the case to the CJEU.

The administrative act adopted on the basis of the conflicting secondary law will be totally or partially annulled by the judge.

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 tribunals may verify both the procedural and the substantive legality of the decision. The Constitutional Court may verify the constitutional legitimacy of the legislative or regulatory act used to implement or transpose the EU law.

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

Administrative remedies do not have to be exhausted before taking a case to Tribunals.

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

In order to have standing before the administrative tribunals it is not necessary to have participated in the public consultation phase. Legal standing is in fact granted to any party whose interest is affected by the 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?

Before the administrative judge, injunctive relief is available according to the general rules set forth in section 1.7.2. Before the Constitutional Court, the request for injunctive relief is precluded.

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?

Costs of access to justice in these areas can be estimated according to the rules set forth in 1.7.3. Natural and legal persons do not have standing before the Constitutional Court, so they do not incur any costs.

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?[20]

A preliminary reference under Art. 267 TFEU is possible according to the rules set forth in 1.3.5

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[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, as described under the Commission Notice C/2017/2616 on access to justice in environmental matters.


[3] Institute for European Environmental Policy, Development of an assessment framework on environmental governance in the EU Member States.


[6] Please note, in this respect, that Italy has been found on several occasion to be in breach to Art 6.1 ECHR. See e.g. Cocchiarella v. Italy, application no 64886/01, judgment of 29/03/2006.

[7] See in this respect the 2018 EU Justice Scoreboard; see also CEPEJ Indicators on Efficiency.

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

[9] 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.


[12] For further information visit "Programma Nazionale per la Ricerca 2021-2027".

[13] Ibid.


[15] 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, Janeczek and cases such as Boxsus 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.


[17] Please note, in this respect, that Italy has been found on several occasion to be in breach to Art 6.1 ECHR. See e.g. Cocchiarella v. Italy, application no 64886/01, judgment of 29/03/2006.

[18] See in this respect the 2018 EU Justice Scoreboard; see also CEPEJ Indicators on Efficiency.

[19] 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.

[20] 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

In the Italian system there are no sanctions against the PA delivering delayed decisions. However, the applicant can appeal the silence of the PA before the administrative tribunal (TAR) (Art. 31 and 117 CAP) and seek compensation for the damage caused by the delay (Art. 30 and 112 CAP).

Furthermore, in cases when the PA has failed to comply with a judgment, applicants can resort to the so-called giudizio di ottemperanza (Arts 112-115 CAP).

Following these proceedings, the judge can order the administration to comply within a specific time, as well as declare null and void any acts adopted in violation of the judgment. The tribunal can also replace the inert administration or appoint an ad acta commissioner.

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### Access to justice in environmental matters - Cyprus

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**


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. Legal order — Sources of environmental law

As will be seen immediately below (1.1.2), the Cyprus Constitution of 1960 was promulgated before environmental rights became generally recognized, so it has not been a direct source of environmental legislation. Legislation was nevertheless introduced, either in colonial times or after independence, affecting aspects of the environment such as the protection of forests, rivers, and the foreshore.

Reference to the environment in legislation, as a holistic concept requiring protection came after Cyprus joined the EU in 2004, within the framework of the Nature Directives and other relevant provisions. So, it would be fair to say that the EU has provided our most important source of environmental legislation. The Aarhus Convention and the Convention on Human Rights are potential sources of environmental rights which have not been much utilized so far. Early attempts to introduce environmental protection in case law in the late 1990s came to a virtual halt for many years, for reasons that will be explained at para 1.1.2. below. Thus, case law as developed by Cypriot Courts has been a direct, but very limited, source of environmental law, and consequently the case law of the EUCJ on environmental matters has been rarely referred to or utilised.

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

Environmental legislation places responsibility primarily on the state to protect the environment. Two independent officials, the Ombudsperson and the Commissioner for the Environment may be petitioned by the public (viz. any natural or legal person), but their decisions/opinions are not legally binding on the offending department. The highest level of protection is provided by the courts of law. However, natural or legal persons may only pursue protection of the environment through court action if they are personally affected by the situation. In other words, their right is based on the principle of personal interest or 'legal proximity'. Environmental NGOs can only pursue redress through the court in a limited set of circumstances outlined in sectoral law.

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

As already mentioned, the Cyprus Constitution was drafted in the 1950s before environmental rights became popular. Consequently, there is no express provision in the Cyprus Constitution regarding protection of the environment, either as an obligation by the state or as a right towards nature or the individual. There is a right to life (Article 7) which has been interpreted by case law as a right of individuals, as represented by their local authority, to a healthy environment in their place of residence (Pyrga Community v. the Republic (1991) 4CLR). The importance of environment for a healthy life was re-affirmed in the appeal hearing in the above case (Cyprus v. Pyrga (1996) 3AAD 503), but its interpretation remained narrowly defined geographically to those within the area affected, and the court called upon the government to pass suitable legislation, a development which happened only after joining the EU and in a strictly limited way to accommodate certain directives, as will be seen further down. There is currently a proposal before the House of Representatives to amend Article 7(1) of the Constitution so as to recognize a right to health, environment and biodiversity.

Given that there is no environmental provision in the Constitution, the main provisions regarding access to justice on environmental matters are those that apply generally, and the Constitution's main provisions regarding access to justice are delineated in Articles 29, 30 and 146. Article 29 provides that every person (including non-Cypriots and legal persons) has a right individually or jointly with others to address any competent authority, to have their complaint apply generally, and the Constitution's main provisions regarding access to justice in the national constitution (if applicable)

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

The provisions for access to environmental justice were introduced when the Aarhus Convention was enacted into law (Law No 33(III)/2003), but without actively enhancing NGO rights, until the enactment of EU law made it imperative to do so. Even then, the focus was mainly on access to information (Access to Environmental Information Law, 119(I)/2004). When the EIA and the IPPC Directives were enacted, legal provision was made within those laws to grant limited rights to NGOs for standing (locus standi) before the courts. Similarly, with the Directive on Environmental Liability that followed.

4) **Examples of national case-law, role of the Supreme Court in environmental cases.**
The Supreme Court has played both a positive and a negative role in furthering environmental rights. Following the Judgment of Pikis J. in Pyrga community v. the Republic (1991, see 1.1.2 above) it was accepted that citizens can invoke a right to life under the Constitution if threatened by an event with environmentally negative repercussions. It also highlighted the importance of the environment for the wellbeing of mankind, as well as the legitimate right - and indeed obligation - of a local authority to seek the protection of the law for the health of its residents, as against any other complainants, including local NGOs, who, despite geographical proximity, were deemed to have no legitimate interest under article 146 of the Constitution. The Pyrga case has made legal history by broadening the interpretation of the constitutional right to life and extending it to encompass environmental considerations, which in the late 1990s emboldened NGOs and the Cyprus Technical Chamber (a body enacted by law), to initiate recourses against planning permits in or near the Akamas Peninsula, a nature reserve under threat from development. Although the claims succeeded at first instance, they were overturned by the Supreme Court in plenary, which did not recognize a legitimate interest of the applicants. It was further held that to allow these recourses would amount to an actio popularis, which is not recognised as a cause of action in the Cypriot legal system.

These decisions are now under question in academic circles, on the ground that the court gave an extremely narrow interpretation of legitimate interest, but they have not yet been superseded. One could add that they were based on an incomplete understanding at the time of the significance of environment as a science, and the global effects of biodiversity loss. Given the inherent nature of environmental impacts to manifest in an indirect, long-term manner, affecting a large number of people, the narrow interpretation of an existing, personal, and legitimate interest by the Supreme Court fails to account for the unique nature of environmental considerations.

Be that as it may, the restrictive decision in Thanos Hotels of 2000 has weighed down on legal thinking for the past two decades, and consequently, until recently, no NGO has dared to initiate action in court against environmentally harmful administrative decisions or actions. Meanwhile, jurisdiction to hear administrative recourses has since 2015 been transferred to the Administrative Court, a court of first instance. Two environmental cases are known to be in process, No s 1929/2018 and 1768/2019) Friends of Akamas v. the Republic.

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 to an administrative or judicial procedure can rely on international agreements only in so far as they have been transposed into Cyprus law. According to the Constitution, Article 169, legal rights derive from the Constitution or from legislation. International agreements which have been promulgated into law and published in the official gazette have primacy over national laws (but not over the Constitution)

1.2. Jurisdiction in the Courts

1) Number of levels in the court system

Generally, a two-tier court system applies with proceedings starting in a court of first instance and if the court decision is appealed, it will be heard by the Supreme Court.

Courts of first instance are:

The District Courts which have civil and criminal jurisdiction.

There are six District Courts, one in each of the six towns of the island. Two of them (the Famagusta and the Kyrenia District Courts) have ceased to function since the Turkish military occupation in 1974, and their jurisdiction has been taken over by the Nicosia and Larnaca Courts. Each District Court has jurisdiction to hear and determine all civil actions, where the cause of action has arisen wholly or in part within the limits of that district, or where the defendant at the time of filing the action resides or carries on business within the limits of the Court. A criminal offence may be tried by a President of the District Court, a Senior District Judge or a District Judge sitting alone or by an Assize Court. The case normally goes to an Assize Court if it carries a penalty of imprisonment over five years and/or a fine over €50,000.

The Assize Courts

An Assize Court (there are now four Assize Courts based at Nicosia, Limassol, Larnaca and Paphos) is composed of three judges and has jurisdiction to try all criminal offences punishable by the Criminal Code or any other law, carrying penalties higher than the ones imposed by the District Courts.

The Family Courts

There are three Family Courts, one for Nicosia and Kyrenia, one for Limassol and Paphos and one for Larnaca and Famagusta. There is also one Family Court for Religious Groups, based in Nicosia. The Family Court has jurisdiction to take up petitions concerning the dissolution of marriage as well as matters which relate to parental support, maintenance, adoption and property relations between spouses provided that the parties are residing in the Republic.

The Industrial Disputes Court

The Industrial Tribunal (there are now three Industrial Tribunals based at Nicosia, Limassol and Larnaca) has jurisdiction to entertain applications by employees for unjustified dismissal and redundancy payments. It is composed of a President (who is a judicial officer) and two lay members representing the employers and employees.

The Rent Control Tribunal

The Rent Control Tribunal (there are now three, in Nicosia, Limassol, and Paphos) has jurisdiction to try all the disputes which arise from the application of the Rent Control Laws, which include amongst other matters, the rent payable and recovery of possession. A Rent Control Tribunal is composed of a President (who is a judicial officer) and two lay members representing the tenants and the landlords.

The Military Court

The Military Court has jurisdiction to try military offences under the Criminal Code and any other crimes committed by members of the armed forces. It is composed of a President (who is a judicial officer) and two assessors who are appointed by the Supreme Council of Judicature from a list of military officers.

The Administrative Court

Sitting only in Nicosia, it adjudicates on any recourse filed against a decision, act, or omission of any organ of state, any authority or person exercising executive or administrative authority. Recourses are made on the ground that such decision, action, or omission violates the provisions of the Constitution or of any law or is in excess or in abuse of any power vested in such organ, authority, or person.

There are no special courts for environmental issues, so an action against any organ of state, authority or person exercising administrative or executive authority, will be brought before the Administrative Court.

In addition to the above-mentioned courts of first instance, the Supreme Court sits as a court of first instance when acting as an Admiralty Court or an Electoral Court.

Appellate Jurisdiction

The Supreme Court hears appeals from all courts of first instance and also has exclusive jurisdiction to issue the prerogative orders of habeas corpus (to release someone from detention) and orders instructing a party to do something or refrain from doing something or to correct a decision.

The Supreme Court sitting as a Constitutional Court, has jurisdiction to hear cases when the constitutionality of a law passed by Parliament is challenged by the President of the Republic (Article 140(1)), and may also adjudicate on whether there is a conflict of power or issue of competence between state organs or authorities (Article 139). This Court hears appeals against decisions of the Administrative Court, and under Article 144 examines the constitutionality of
any law if raised at any time by an affected party during a legal process. Moreover, under Article 146, it will examine the claim of any legal or natural person with a legitimate interest, that he/she has been affected by an administrative act/decision which is incompatible with the Constitution.

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)?

The jurisdiction of first instance courts is sufficiently clear to determine which court has jurisdiction. In some circumstances a party may decide whether to bring an action e.g. in the District Court or in the Industrial Disputes Court depending on the level of damages sought (higher in the District Court though a much lengthier process), but normally proceedings should start in the right court and the right city. In relation to damages caused, as a result of violation of environmental legislation, an action by an individual affected can be filed in the District Court where the damage was caused. A criminal case may also be filed by the Attorney General based on a specific environmental law (e.g. protection of nature) or under the more recently enacted law for crimes against the environment, Law 22((I)2012, in the court which has jurisdiction for the area involved.

There is no distinction between ordinary and extraordinary remedies before a court. Panels of three Judges decide finally on civil and criminal appeals in the Supreme Court. The Supreme Court may uphold, vary, set aside, or order the retrial of a case as they may think fit. It is, nevertheless, possible for the Attorney General to promote an extraordinary remedy such as a nolle prosequi which is an order to stop proceedings on grounds of public interest, or to make a recommendation for clemency.

A citizen wishing to challenge an administrative act, decision, or omission in Court, must apply to the Administrative Court in Nicosia, irrespective of where the offending act takes place. The Administrative Court will review the legality of the challenged act or decision, based on the information presented in the case file, but does not extend to the merits of the case (unless the recourse relates to tax or asylum). The Court may quash an administrative action in part of in full and remand the case to the authority issuing the decision. The authority is bound by the Court decision.

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

There are none and there are no expert judges. Recourse to the Administrative Court will be heard under the same conditions as any other recourse. Nevertheless, some environmental issues are decided under criminal or civil jurisdiction, e.g., the Law for Crimes against the Environment No 22((I)2012 and the Law on Environmental Liability, No 189(1)2007. In criminal procedures, everyone is entitled to report criminal acts (e.g., misuse of power by certain authorities) to the prosecutor. They can participate and bear witness at the proceedings. Remedies against court decisions are normally restricted to the prosecutor and the accused (although victims in crimes now have rights against perpetrators and failure to prosecute). In order to seek a judicial remedy, the complainant must have a legitimate interest as defined in Article 146 of the Constitution. This right must be exercised within 75 days of becoming aware of the event complained of.

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.

In proceedings before the Administrative Court, the Court can, of its own motion, examine matters of general interest such as time limit, executory nature of the act, competence of the organ, legitimate interest of the complainant. The Court cannot examine of its own motion constitutional issues and violation of fundamental rights. These constitutionality issues must be specifically pleaded. The presiding judge decides on such matters as the timing of the hearing, whether additional evidence can be admitted, or whether to grant injunctive relief, if raised by the applicant.

1.3. Organisation of justice at administrative and judicial level

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

Where the act or omission is committed by an administrative organ or authority, there are courses of action available at the judicial and non-judicial level. Parties must distinguish between hierarchical/administrative and judicial recourses. Hierarchical control is exercised by a supervisor or a director over subordinates. In specific legislation there is provision for review of executive acts by higher administrative authorities (hierarchical recourses), if requested by an affected party, i.e., a party that has legitimate interest, (which could be an NGO, if the act complained of relates to legislation that specifically grants rights to NGOs). For example, the Law on Access to Environmental Information 119(1)2004, art. 10, provides that if the info requested by any citizen (including an NGO) is refused, or is incomplete, a hierarchical recourse may be made to the responsible Minister. Such recourse procedure, however, is not final or conclusive and does not bar the filing of a recourse to the Administrative Court. A hierarchical recourse has the advantages that a) the higher authority will examine issues both of procedure and substance, and b) the 75-day period for challenging the omission or action will be ‘frozen’, if so provided in the legislation or agreed by the parties, while the review process is being conducted.

In addition to hierarchical recourses mentioned above, other non-judicial remedies available in environmental matters include applications to either the Ombudsman or the Environment Commissioner, though neither have executive power, so applying to either, even if they produce a favourable statement, might not produce a remedy. The range of non-judicial remedies includes:

Complaints to the Ombudsman: The office of the Ombudsman was established in 1992 to protect citizens’ rights when affected by public administration decisions which are contrary to the law, or not in accordance with the proper exercise of administrative authority, without requiring the time and expense of going to court. A complaint is made by letter attaching copies of any necessary documents. The Ombudsman’s decision is not binding, but will carry weight if the party later goes to court. The Ombudsman, however, cannot consider a complaint if there is a case pending before the courts. When the institution of Ombudsman was introduced it was an inexpensive and speedy procedure. It is still inexpensive, but no longer speedy and could well take over a year to receive a reply.

Complaints to the Environment Commissioner who is appointed by, and reports to, the President of the Republic. The Commissioner may submit proposals and recommendations to the relevant Ministries for the implementation of environmental guidelines and may ask that a report be submitted. All citizens including NGOs can address the Commissioner, even though his/her recommendations are not binding, and the most one can expect is to secure the moral weight of the Commissioner’s support.

Complaints to the Minister: Article 29 of the Constitution regarding the right to petition official authorities, enshrines this right. The Minister has overview responsibility for an offending action/decision by any of his departments and he/she should be addressed by letter, either in the mode of a formal hierarchical appeal or less formally. The Minister will examine the procedural and substantive context of the complaint.

Complaints to the local authority: Any person, including non-Cypriots, residing in the Republic, may make a complaint as above, by letter sent individually or through a lawyer. If there is no response, and depending on the issue, it may be challengeable in the Administrative Court, in which case the 75-day rule applies for initiating a recourse.

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

Since there are no Environmental courts, appeals will be made to the Administrative Court in the same way that any other administrative decision would be challenged, and the process will take as long as any other recourse, viz. probably at least two years, more like four years. The requirements of Article 146 of the Constitution must be met concerning the legitimate interest of the applicant. In other words, the applicant, whether a natural or legal person, must have a personal, direct, existing, and legitimate interest which has been affected. This does not extend to interest groups, but in the case of an environmental NGO, legitimate interest, and consequently legal standing in a limited set of circumstances, may be recognised under laws that have been introduced as a result of transposing European directives.
They are:
The EIA law, as amended, No 127 (I)/2018, article 48; the IPPC law, now replaced by the Industrial Emissions Law, No 184(I)/2013, article 42, and the Environmental Liability Law, No 189 (I)/2007, article 14 (I). Details are given in the appropriate sections below, see para 1.4.2. Additionally, the Freedom of Access to Information Law, 125(I)/2000, provides the right of any person, including NGOs to challenge an omission or refusal by an authority to provide information within its competence.

3) Existence of special environmental courts, main role, competence
There is no special environmental court, hence the applicant will follow the procedure described above, viz. unless otherwise provided, redress will be sought through the Administrative Court.

4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)
Appeals against environmental decisions are governed by the situation described at 1.3.2) above. Appeals against court orders would be made to the Supreme Court if the order was made by a court of first instance. Therefore, under Article 146 of the Constitution, an appeal against the Administrative Court’s decision would be made to the Supreme Court and the deadline is 42 days. Appeals against intermediary decisions may only be allowed if they are considered decisive to the rights of the parties, and only within 15 days.

5) Extraordinary ways of appeal. Rules in the environmental area. Rules for introducing preliminary references
Rule 1/2008 of the Supreme Court applies for seeking guidance from the European Court of Justice on the interpretation of EU provisions through the preliminary ruling procedure (πρόκληση της τορπομητή). The application may be made at any time during the proceedings by the parties or on the Court’s own motion. The final decision as to whether a case will be referred to the CJEU remains with the national court. It is not frequently used in practice, and as already explained, there have not yet been instances of its use concerning environmental issues.

There are no extraordinary ways of appeal.

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?
No formal solutions such as mediation exist. However, NGOs which consider legal action too costly or too cumbersome, might consider it more effective to raise the issue with the responsible Minister, or to bring it to the attention of the Parliamentary Committee for the Environment (where the issue will be aired, but not necessarily solved), or to make a formal complaint to DG Environment, Brussels. If successful in the latter, DG Environment will start a review procedure against the state, which may result in an infringement procedure under Article 258 TFEU. Also, NGOs can always raise cases at the Bern Convention for the Protection of Wildlife (Council of Europe) and if successful, a file is opened against the offending state which has a certain nuisance value, although penalties cannot be imposed.

7) How can other actors help (ombudsperson (if applicable), public prosecutor), accessible link to the sites?
As already mentioned above, complaints can be made to the Ombudsperson or to the Commissioner for the Environment, but their published position would not be binding on the authorities. Their position would however carry a certain weight, especially if the case goes before the court. Appealing to the Attorney General would not normally happen because the Attorney General’s remit is to advise the government and defend the Government in court cases. The Attorney General would take action, however, at the initiative of the appropriate government department under the Law for Crimes against the Environment, No 22(I)/2012. In recent years, environmental NGOs have been known to bring instances of maladministration to the attention of the Auditor General who, if he considers that public money is being wrongly spent, would make a relevant public statement and include it in his annual report.

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)?
Any administrative decision, whether environmental or otherwise, can be challenged by any natural or legal person affected by the decision according to Article 146 of the Cyprus Constitution. Specifically, the decision must affect a complainant’s direct, existing (i.e. current) legal interest, which is interpreted to mean that a legitimate interest is personal and refers to one’s property, person, or occupation. This interpretation precludes NGOs or ‘interested parties’ on the ground that if a person would have no right individually because neither his property nor his person nor his health are directly affected, the decision in question does not become actionable simply because a number of persons seeks to question it. In other words, the courts have repeatedly ruled that the concept of actio popularis by concerned parties is not admissible and thus, a challenge by an NGO group falls into this category. In order to overcome this situation and to comply with the EU Directives regarding Integrated Pollution Prevention Control and Environmental Impact Assessment, laws were introduced in 2003 and 2005 respectively which partially address the locus standi of environmental NGOs (see question 1.4.2) below). Although these laws, and especially the EIA law, have given rise to recourses by individuals, recent cases by ENGOs relying on these rights have not yet been decided.

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?
Differences refer to rights given to NGOs incorporated as a legal entity. These limited rights arise from the EIA Law, the IPPC Law, and the Law on Environmental Liability, No 189(I)/2007. They are ‘new’ rights so to speak, which NGOs would not have otherwise enjoyed, and recognise that under certain circumstances, environmental NGOs ‘have legitimate interests’ as defined in the Constitution.

EIA Law No 140(I)/2005 article 25(1), as amended by law No 127(I)/2018 article 48 (although these articles present some substantial differences between them). Article 25(I) of the 2005 law states that any NGO whose main purpose, according to its statutes, is the protection of the environment, is deemed to have a legitimate interest that could be affected by a planning permission issued by the Town Planning authority, an approval granted by the Environment authority, a decision of the Council of Ministers or other authority approving public works. In such case the NGO is deemed to have a direct legitimate interest and is therefore entitled to file a recourse to the Administrative Court on the basis Article 146 of the Constitution. It should be noted however, that when revised by article 48 of the amending EIA Law in 2018, the enabling provision for NGOs was restricted to challenging only the Environmental Authority responsible for granting environmental approvals, and only in specific cases: regarding the granting of an approval; against a negative screening decision (viz. concluding that no EIA study is necessary); for any decision or omission to hold a public consultation, or for preventing an interested party from participating. Under article 2 of the same law, the ‘Environmental Authority’ is the Director of the Environment Department.

IPPC Law No 56(I)/2003 as replaced by the Industrial Emissions Law 184(I)/2013, which under article 42 provides access to information and consultation and the right of environmental NGOs to judicial recourse if the stipulations regarding provision of information and public participation, are not respected. The Environmental Liability Law No 189(I)/2007, article 14(I) enables any natural or legal person who is affected or could be affected by environmental damage, to make a recourse to justice. The term ‘legal person’ includes any company or association whose main objective, according to its statutes includes environmental protection.

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.)
The following table explains who has legal standing and when. Basically, any person, whether natural or legal, whether a Cypriot or foreign, has the same right to ask for an administrative review, complain to the Ombudsperson, or go to court, if they are personally and directly affected in a legitimate right. NGOs have only the limited rights prescribed by the sectoral laws, already described above.

| Legal Standing |
Legal Standing | Administrative Procedure (κρατική προσφυγή) | Judicial Procedure (Διοικητική Προσφυγή) | Complaint to Ombudsman or Environment Commissioner
--- | --- | --- | ---
Individuals | Only against decision addressed to them. | Need to show a legitimate interest as stated in Article 146 of the Constitution or under sectoral laws, whether or not a citizen of the Republic. | Any person with an interest that has been affected whether or not a citizen of the Republic. |
NGOs | Normally need to show a public interest | Need to show legal standing which will be recognized on grounds of proximity under the Constitution, or if provided by law, viz. the EIA Law of 2018, the IPPC Law as amended by 184(I)/2013 or the Environmental Liability Law 189(I)/2007 | Needs to show either a public service or a local authority mishandling, even if only loosely connected to the NGO. |
Other legal entities | Local authorities directly affected or claiming a public interest for their inhabitants. | Local authorities and possibly other legally recognised entities (e.g. Parents Association, Church council) claiming a public interest under article 146 of the Constitution as interpreted by case law. | As above. |
Ad hoc groups | E.g. citizens groups. Need to show a justifiable interest. | No standing as a group, but members of the group as individuals would have standing if they satisfied the requirements of article 146 of the Constitution. | Need to show either a public service or a local authority mishandling affecting them. |
Foreign NGOs | No specific provision. Probably accepted if NGO demonstrates either a global interest in the subject matter or if the impacts go beyond Cyprus. | The better view is that although no specific provision is made for foreign NGOs, they would not be excluded under the sectoral (EIA, IPPC, ELD) laws, if they were registered entities in their country, aiming at protection of the environment, and could demonstrate sufficient proximity. | No reason why they could not complain against a Cypriot administrative act that affected their subject of interest. |

4) What are the rules for translation and interpretation if foreign parties are involved?
Translation of legal documents is not provided by the courts and will be done at the party’s expense. Interpretation of proceedings is provided in all criminal cases and in other cases by application to the court if a party does not speak one of the country’s official languages (Greek and Turkish), on payment of the translator. When parties are legally represented, their lawyers are assumed to speak Greek. Pleadings (i.e. the formal documents used for the court process) can only be submitted in the official languages. A foreigner may make a sworn declaration (affidavit) in his/her language, accompanied by an approved translation.

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 a recourse to the Administrative Court, the case is conducted on the basis of written submissions, including sworn affidavits by any party if necessary. The administrative department against which the recourse is made must provide the full file(s) relating to the case for examination by the Court. The file(s) provide the main evidence. The Court may review the legality of the challenged act or omission but does not extend to the scientific or other merits of the case. It will, however, extend to whether the department in question examined the impacts of its decision as fully as it should have done. On its own motion, the court can examine matters of general concern such as time limits, the executory nature of an act, the competence of an organ and the legal interest of the complainant. Constitutional issues or violation of fundamental rights need to be pleaded. The applicant must prove his/her case, and the weight of evidence is, as in civil proceedings, on the balance of probabilities.

2) Can one introduce new evidence?
New evidence cannot normally be introduced since the contents of the case files are deemed to contain all relevant material. There are exceptions only if the Court deems there is ‘good reason’ to do so, as established by case law, and then only if it relates to a period before the impugned decision. See case 651 /2019CLR, The Church of Ayios Nicolaos, Pano Delfera v. the Republic (2019).

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts
With the exception of faculty lists produced by universities (referred to elsewhere in this text), there are no published lists of experts at present. Since expert opinion would usually relate to material facts and the Administrative Court does not examine issues of substance, the use of expert evidence is limited. If expert opinion were necessary to support a claim for annulment or to claim damages in the Civil Court, the lawyer handling the case would normally advise the client and suggest an expert. The Court’s permission would be a prerequisite to adding expert opinion.

3.1) Is the expert opinion binding on judges, is there a level of discretion?
In line with the normal practice of the Administrative Court, as per 1.5.3. above, experts would not be called, but if they were, exceptionally, their evidence would not be binding. It is up to the Court to assess its weight and credibility.

3.2) Rules for experts being called upon by the court
Since Cyprus follows the adversarial system, the court would not call upon experts.

3.3) Rules for experts called upon by the parties
As mentioned, expert evidence is not normally admitted in administrative cases, except as stated at 1.5.3. The general court rules as to expert testimony apply.

3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?
Not applicable.

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
Legal Representation:
Representation by legal counsel is not compulsory for individuals. An applicant may present his/her case in person, but, given that administrative law is complex and dependent on case law, this is unlikely. In Cyprus, lawyers are entitled to deal with any legal matter and do not have formal specialisations, although several lawyers choose particular types of cases, or choose not to undertake pleading in court. The list of registered practicing lawyers is placed on the site of the Cyprus Bar Association and is updated regularly. There are no law firms specializing in environmental matters and according to the general code of conduct it is not allowed to advertise. Consequently, and until this rule changes, there could not be a published list. A person wishing to initiate proceedings on an environmental issue would be well advised to seek a lawyer with experience in Constitutional /Administrative law since the proceedings
will most likely be conducted on the basis of Article 146 of the Constitution. Given that Cyprus is a small place, information travels by recommendation. Legal entities such as NGOs, can only go to court if represented by counsel.

There are no NGOs giving public consultation on environmental/legal matters.

1.1) Existence or not of pro bono assistance

There is no practice of pro bono assistance since it is prohibited under the Advocates Law. There may have been instances when a lawyer has waived his/her fee. — not in environmental cases so far, since they have not appeared before the courts — but this would be done entirely privately.

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.)?

Not applicable.

1.3) Who should be addressed by the applicant for pro bono assistance?

Not applicable.

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

The University of Cyprus provides a list of experts which is in effect, a list of its faculty staff and their specializations (see ucy.ac.cy/list of experts). It has been known, in non-environmental cases, e.g. in a recent extradition case tried in the District Court, for the defence lawyers to call upon experts from this UCy list. Other universities issue similar staff lists.

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

A public registry of environmental NGOs is available here.

NGOs who have taken legal action in the past are the Friends of Akamas and the Laona Foundation for the Conservation and Regeneration of the Cypriot Countryside. Friends of Akamas has renewed its efforts with a recent recourse, still before the court. Two other NGOs interested in legal issues are Terra Cypria-the Cyprus Conservation Foundation and the Πρωτοβουλία για τη διάσωση των φυσικών ακτών (Cyprus Initiative For The Protection of the Natural Coastline), but they have not been involved in actions so far.

4) List of International NGOs, who are active in the Member State.

International NGOs with branches in Cyprus (but which have not started legal recourses so far) are Friends of the Earth-Cyprus and Birdlife Cyprus (a member of Birdlife International).

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)

In general, (if not taking the matter to court), a non-judicial administrative decision, whether environmental or otherwise, may be challenged by making a written complaint to the minister responsible or to a relevant superior official. There is no specific time limit, it depends on the case and circumstances. In the case of a formal hierarchical recourse to a minister, specifically provided in legislation, the relevant law will also specify the time limit within which the recourse should be made.

If the law provides that the decision or act must be published in the official gazette the time limit starts from the date of publication.

2) Time limit to deliver decision by an administrative organ

Under Article 29 of the Cyprus Constitution any person addressing a public authority should receive a response within 30 days. The response, however, is often no more than an acknowledgement informing the claimant that further time will be necessary in order to reply fully. A claimant could go to Court, if the reply would lead to an executory act, challengeable under Article 146 of the Constitution.

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

It is possible to challenge the first level administrative decision directly before court, a recourse to justice would be made, provided the complainant met the prerequisites of Article 146 of the Constitution, including the time limit of 75 days.

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

An environmental court case would be treated as any other and the duration is on average 12-16 months for a first instance liaising and at least two years for completion, possibly four. An appeal could last much longer. According to the Procedural Rules 11/1986 judgments from first instance courts must be delivered within six months of hearing final arguments. There is no deadline for the Supreme Court. In practice all types of procedure take a very long time except in rent tribunals and in family courts concerning the interests of minors. If a judgment in the lower courts is not delivered within six months of closing arguments, explanations may need to be given and the parties can seek redress from the Supreme Court. There have been instances of recourse to the European Court of Human Rights against the Cyprus Republic because of court delays, and it was found that such delays are in themselves a denial of justice. Law N.2(1)/2010, based on Article 6 of the European Convention on Human Rights, provides a cause of action to seek compensation for an unreasonably delayed court decision. A Supreme Court decision of 2019, M.D. Cyprus Soya v Attorney General, case no. 1/2018, suggests that it would also apply to delays in adjudication on appeal.

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

The time limits may be found in the Procedural rule 6/2005 (in Greek) which also contains the forms to be filled in by the applicant and the respondent, including individuals appearing without a lawyer. Very briefly within 45 days from receiving notice of the recourse, the respondent must file a reply, and an interested party must do so within 21 days. Exchange of pleadings in writing with arguments in ‘skeleton form’ must be done within 30 days. This process and the dates are specified by the judge hearing the case and it is usual for extensions to be given and for this process to take much longer.

1.7.2. Interim and precautionary measures, enforcement of judgments

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

There is no suspensive effect of a judicial recourse or appeal, nor is it possible to simply seek an injunction. An injunction would be part of the recourse against the validity of the decision or action. Regarding an administrative appeal to a higher non-judicial authority, please see 1.7.2.2 below.

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

In an administrative/hierarchical appeal to a superior authority, it is normal for the administrative act/decision to be suspended while the review is taking place and, if the review finds in favour of the complainant, the process will be discontinued. If the review confirms the action/decision taken, it will be implemented and appealing to the court will not automatically arrest the process.

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?

Unless provided in sectoral laws, there is no general provision for granting injunctions in environmental matters. The normal judicial procedure would need to be followed and satisfied. Requests coming from individuals or groups are very rarely granted and often with considerable financial undertakings as to cross-damages. Such conditions apply so that injunctions are more easily granted to a government department seeking to prevent an illegal act (e.g. to stop an individual from demolishing a building under preservation order). There is an appeal against a decision to refuse an injunction which is made to the Supreme Court.
4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?

Normally there is an immediate execution of an administrative decision irrespective of the appeal introduced, unless a deadline is provided for responses by the affected party. If an administrative appeal is made to a higher authority (ιεραρχική προσφυγή), i.e. to the relevant minister, execution would be suspended, pending his/her decision, as mentioned at 1.7.2.2) above. This presupposes that the offending department has also been kept informed by copy of the complaint made.

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

It is not automatically suspended. See answer 1.7.2.1) and 1.7.2.3) above.

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?

There is a possibility for the national tribunals to provide injunctive relief under very strict criteria, and the amount sought is often too high for an ordinary citizen or an NGO to meet. See answer to 1.7.2.1) and 3) above. However, in the recent case of the Church of Ayios Nicolaos v. the Republic 651/2019CLR, injunctive relief without demanding a financial deposit was granted against the construction of a gas station less than 200 m from a church, which is the accepted Town Planning limit for protection of the vicinity. It was raised within the recourse itself and only granted as it was clear that the complainants, which was a church council and nine other residents of the vicinity, were shown to have locus standi. In the recent case of Demetrou v Limassol Municipality, no 746/2019, the Admin Court denied an injunction against the builders of a skyscraper in a residential neighbourhood, re-iterating the established principles that injunctions are granted with considerable caution and only where there is either flagrant illegality or threat of irretrievable damage. In this case the builders were deemed to be carrying out only preliminary work, and it was held that the issues raised by the complainant, which included references to EU law and the Aarhus Convention, would be better addressed in the recourse itself.

An appeal against a refusal to issue an injunction would be made to the Supreme Court.

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.

An outline of costs can be offered by practicing lawyers. The main cost in any judicial action would be lawyers' fees. Additionally, stamps would be affixed to the action filed (court fees). In civil cases the court fees depend on the amount of damages claimed. In recourses to the Administrative court the average lawyer's fees granted by the court are €1,500 for first instance cases and the stamp plus service amounts to €300. For revisional appeals the cost for stamps and service amount to approximately €450 whereas in civil appeals the stamp depends on the amount claimed. Expert fees for a report could be anything from €500 upwards depending on the report to be prepared, plus a fee for the number of days spent by the expert in court, but as mentioned elsewhere, expert witness would not normally be introduced in the Administrative Court. If there is no agreement between the lawyer and the client, then the minimum fees apply, and the cost calculation should also include the costs of the other party if the complainant loses the case. However, these costs would be calculated according to the court schedule, which does not necessarily cover actual legal costs.

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

A deposit is not obligatory, and the Court has a wide discretion on this matter. There have been cases when the deposit payable ran into thousands of euros, depending on the amount which the other side claims they will lose by not being allowed to proceed (e.g., if a construction is stopped, the estimation will include the days when the labour force will be off the site, the compensation if the work does not finish on time, etc.). But see also the case quoted at para 1.7.2.6.

3) Is there legal aid available for natural persons?

Legal aid is not available to complainants in the Administrative Court, except in the case of asylum seekers.

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?

Legal aid is only available to natural persons, as above.

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

There are no other financial mechanisms available to provide financial assistance.

6) Does the 'loser pays principle apply? How is it applied by courts, are there exceptions?

The loser pays principle is prevalent, although the Court has the discretion not to allow all costs or to order each party to bear its own costs, but this will not be known in advance.

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?

The court cannot provide exemptions from the procedural costs of the applicant whatever their legal status. Yet, as stated immediately above, it can decide not to order the loser to pay the legal costs of the other side. This might be done in particular if the loser is a not-for-profit organisation appealing a government decision, and the decision is a matter of public interest. However, the case will first have to be heard, and the Court will use its discretion, it will not be known in advance.

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?

Access to information is provided under the Freedom of Access to Environmental Information Law, No 119(I)/2004. Its provisions are available in English and Greek. Article 12 of the Law provides that every public authority must organise environmental information within its competence in a way that is accessible to the public. For details, please see the para immediately below. Information concerning access to environmental justice is published on the website of the Department of Environment, with reference to the specific (and limited) legislation that grants legal rights to NGOs. There is no specific site accessible to the public. For details, please see the para immediately below. Information concerning access to environmental justice is published on the website of the Department of Environment, with reference to the specific (and limited) legislation that grants legal rights to NGOs. There is no specific site where national rules on access to justice are available.

2) During different environmental procedures how is this information provided?

Under Article 3 of the Access to Environmental Information Law No 119(I)/2004, any person can apply to the relevant Ministry/Department by letter, either to the officer responsible for the information required, to his/her Head of Department or to the Director General of the Ministry and does not need to show cause or 'proximity' for the information requested, provided the question is clear and specific. If a large number of documents is requested, there may be a charge for supplying them. Environmental information should also appear on a Ministry's or Department's website, as per article 12 of the Law.

A hierarchical appeal may be made (by letter) within 30 days to the Minister of a department which has failed to respond or responded inadequately. This does not preclude the claimant from exercising his/her rights under the Constitution (Article 146) or from applying to the Ombudsperson for a statement of opinion. Refusal of requests for information must be justified and in writing (Article 8(8) of the Law) and must include information regarding the hierarchical or judicial review procedures provided for in Articles 10 and 11, respectively.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?
The above-mentioned sectoral laws all require that information be published on applications made for projects or plans. The detailed provisions are those mentioned at para 1.4.2 above, and can be found on the website of the Environment Department, in English and Greek. The full text of the Aarhus Convention as transposed into Cyprus law can be found here in the English version.

4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment? The administrative decision will carry a standard statement saying that if a party is not satisfied, they may initiate a recourse within the time prescribed.

5) Is translation, interpretation provided to foreign participants? What are the rules applicable? It is not usual, should translations be necessary, they will be charged.

Article 30 of the Cyprus Constitution provides that any person can go to court and is entitled to interpretation if unable to follow the language of the proceedings, but this applies to criminal and similar offences and only to individuals. In an administrative review, the department would probably concede to using English. Pleadings and hearings before the Administrative Court will be conducted in Greek. If the applicant requires translation or interpretation, this will be arranged privately and paid by the applicant. Since an NGO is a legal person, and can only be represented by an advocate, it will presumably be represented by an advocate who speaks the local language.

1.8. Special procedural rules


Country-specific EIA rules relating to access to justice

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

The EIA directive has been transposed by the Environmental Impact Assessment of Certain Projects Law, as amended, No. 127(I)2018, and makes provision for screening under articles 22 to 24. According to these provisions, following an application for directions from the operator of the project, the Director of the Environment Department decides whether an EIA is mandatory according to Annex I of the law, or will undergo a screening process as per Annexes II an IV, and the Director will issue a justified conclusion which will appear on the department’s website. A decision by the Director may be challenged by a party with a legitimate right under Article 146 of the Constitution. In a case against the Town Planning Department, no 46/2017CLR, Taramounta and Stephanou v. the Republic (decided in 2019), a permit for a petrol station was quashed on the ground that the Town Planning Dept had not sought an EIA from the Environment Department, nor was there any justification in the file for not doing so. This was a recourse by two individual residents in the vicinity. It remains to be seen if an NGO could raise a similar challenge.

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

Under article 25(4), the director of the Environment Department decides with the party responsible for the project or installation about the scope of the EIA.

There are no particular provisions in the law for judicial or other review of screening decisions which, in any case, would form part of the process, not a final decision. As preparatory acts, both screening and scoping cannot normally be challenged separately, but can be reviewed as part of a final decision. Nevertheless, it would be possible for any member of the public, including an NGO, to raise a scoping issue at the public consultation stage, article 26, which must take place before the EIA is formally submitted, and it is incumbent on the Director to take into account comments made within 30 days of publication of the process, and if justified to order that the EIA be amended. An amendment is currently under review to strengthen the consultation process (see para immediately below).

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

Preparatory and intermediary acts cannot normally be challenged, until the decision is completed and published, and must be challenged within 75 days thereof. However, Article 48(c) provides the possibility for a recourse in matters concerning (an unsatisfactory) public participation, which procedurally precedes the final decision and could be regarded by the Court as a ‘preparatory action’. In the recent case of Demetriou v. Limassol Municipality, 746/2019 seeking an injunction, issues of proper public participation were raised, and the decision of the Administrative Court referred to them but without taking a position on them. It is unlikely, that one would go directly to court on the strength of Article 48(c) alone (i.e., if it were not part of a number of supporting arguments) without first filing a complaint to the Department or to the Minister, bearing in mind that redress through the court could take too long to be effective. Nevertheless, following EU criticism, an amendment to article 48 has been drafted (but not yet enacted at the time of writing), specifically to strengthen the consultation process in favour of individuals and NGOs. The right of appeal as per Article 146 of the Constitution for individuals and NGOs is re-iterated. The other two instances in which an environmental NGO would be deemed to have a legitimate interest to appeal with reference to Article 146 of the Constitution would be under Article 48 (a) or (b) of the Law, if challenging the environmental permit granted by the Environmental Authority, or the Environmental Authority’s conclusion that an EIA is not necessary.

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

An affected individual can challenge the final authorisation if he/she meets the requirements of Article 146 of the Constitution of having a direct, existing and legitimate interest. This can include a duly registered environmental NGO acting under Article 48 of the EIA Law, if the authorization emanates from the Environment Department. It is uncertain, given the restricted wording of article 48 of the amended EIA Law (compared to article 25 (I) of the previous Law), whether an authorisation which emanates from a department or authority other than the Environment Department, could be challenged by an NGO. There is no provision extending this right to foreign NGOs, nor does the article specifically exclude them. If a foreign NGO could demonstrate “proximity”, i.e. the likelihood to be affected by the authorisation, in, for example, a cross-border situation, it is probable that such NGO could file a challenge under the provisions of article 146 of the Constitution.

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

As already explained elsewhere, the jurisdiction of the Administrative Court in Cyprus is nullifying (or confirmatory). It considers whether the procedures have been correctly followed and interpreted by the offending administrative organ either to confirm the decision/action in whole or in part, or to cancel it in whole or in part, or in the case of an omission, to order that it should be performed. The grounds on which annulment may be justified include lack of competence, error or misconception of law or fact, lack of proper enquiry, lack of due reasoning, failure to comply with the rules of natural justice and good administration (see Sigma Radio v. Cyprus, ECHR, 21.02.11). If the court finds in favour of the applicant, it cannot go into the merits of the case and substitute its own decision, nor can the court invite a scientific expert, since it does not examine the substance of a case, although it could allow a party to present scientific evidence if it concerned a claim for annulment. If the court finds in favour of the applicant, the matter is automatically remitted to the administrative authority or organ for re-examination.

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

Decisions are challengeable when they are published. Acts or omissions which are not published may be challenged as soon as they become apparent to the affected party.

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, unless specifically provided by law.
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?

Participation is not a prerequisite for legal standing. Such standing derives from the legitimate interest of the party, as per Article 146 of the Constitution.

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

Both the Constitution and the Court Procedural Rules confirm that anyone can go to court. They are entitled to a fair trial and to interpretation if unable to understand the language of the court. Article 30 of the Constitution is the equivalent of Article 6 of the European Convention on Human Rights and is interpreted in much the same way. Article 30 applies to all types of cases, civil, criminal and administrative. Although there is no specific reference to 'equality of arms' as such in the Constitution, it is encapsulated in the concept of fair trial, and there is considerable case law on the matter, often with reference to ECHR decisions. The principles have been recently restated in a decision relating to a criminal appeal case delivered in 2020: Republic v. Stavrinou, no 266 /2018. The concept is based on the principle that neither party should be put at a disadvantage, and that this should be determined not by particular incidents during the trial or hearing, but by an overall assessment thereof. Nevertheless, in the case of Marangos v. Cyprus, 4.12.08, which related to an administrative appeal, the ECHR found that the complainant's rights had not been affected by a denial of legal assistance by the Cyprus government, nevertheless, three ECHR judges issued a concurrent decision expressing the view that limiting legal assistance to civil and criminal cases and excluding administrative cases amounts to a lack of equality of arms. Since that time, financial assistance has become available in administrative recourses filed by asylum seekers.

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

Timeliness with reference to the applicant means challenging a decision/act/omission within 75 days of its publication/authorisation or of becoming apparent. Timeliness also refers to the duration of a court case. If a hearing is completed and a decision is not delivered within six months, questions will be asked and the interested party may complain to the Supreme Court. In practice, all types of procedure take a very long time (except in Rent Tribunals and Family Courts concerning the interests of minors). There have been instances of recourse to the ECHR against the Cyprus Republic because of court delays, and it was held that such delays are in themselves a denial of justice and fines were imposed. Law N.2(1)/2010, based on Article 6 of the European Convention on Human Rights, provides a cause of action to seek compensation for an unreasonably delayed court decision. A Supreme Court decision of 2019, M.D. Cyprus Soya v Attorney General, case no. 1/2018, suggests that it would also apply to delays in adjudication on appeal.

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?

Article 46(2)(a) of the Law provides that an application for an interim order may be made in case of major threat to human health or the environment. This includes an ex parte application made by one party (usually the government) in the District Court where the danger is taking place. The application is governed by the Civil Procedure Rules, and it has already been explained elsewhere that financial guarantees could normally be required of an individual applicant and that injunctive remedies are granted with considerable caution on the basis of long-established case law. For further information, please see par 2.1.8.


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

The IPPC/IED Directives have been transposed to Cyprus Legislation by Law No 184(1)2013 as amended by 131(1)2016.

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

An affected citizen can legally challenge a license issued under the IPPC/IE Law when it is published. Under article 42, environmental NGOs can challenge the application of provisions on public consultation and access to information, but no other aspects of the decision. Foreign NGOs are not referred to but would have no more rights than a local NGO.

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

There are no specific provisions on screening under this law, unless, as provided by article 32(4) issuance of a license for an installation fell within the ambit of the EIA Law, in which case articles 12, 13, 17, 21, 23, 24 and 27 of that law would apply.

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

There are no particular provisions in the law for scoping.

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

Normally preparatory and intermediary acts cannot be challenged, but only when the decision is completed and published and within 75 days thereof. However, Article 42 provides the possibility for a recourse in matters concerning public participation, which procedurally precedes the final decision and could be seen as a 'preparatory action' by the court. It is unlikely nevertheless, that one would go directly to court on the strength of Article 42 alone, without first filing a hierarchical complaint to the Department or to the Minister, bearing in mind that redress through the court might take too long to be effective. It should be noted that whereas the right of a party directly affected by a decision/action/omission may touch upon all aspects of legality, as long as the requirements of Article 146 of the Constitution are met, the wording of article 42 of the Law regarding environmental NGOs seems to recognise their legitimate right to challenge a decision/action/omission only with regard to public participation, articles 36-41, and not with reference to the license as such.

6) Can the public challenge the final authorisation?

An affected individual can challenge the final authorisation if he/she meets the requirements of Article 146 of the Constitution of having a direct, present and legitimate interest. So can an environmental NGO, acting under Article 42 of the IPPC/IE Law, only with regard to articles 36-41 of the Law, as mentioned at 1.8.2.3) above. There is no provision extending this right to foreign NGOs, but it is unlikely that they could be excluded if the foreign NGO was acting within the framework of a cross-border 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?

As already explained elsewhere, the jurisdiction of the Administrative Court in Cyprus is nullifying (or confirmatory). It considers whether the procedures have been correctly followed and interpreted by the offending administrative organ either to confirm the decision/action in whole or in part, or to cancel it in whole or in part, or, in the case of an omission, to order that it should be performed. The grounds on which annulment may be justified include lack of competence, error or misconception of law or fact, lack of proper enquiry, lack of due reasoning, failure to comply with the rules of natural justice and good administration (see Sigma Radio v. Cyprus, ECHR, 21.02.11). If the court finds in favour of the applicant, it cannot go into the merits of the case and substitute its own decision, nor can the court invite a scientific expert (since it does not review the substance). If the applicant succeeds, the administrative decision/action is considered null and void, and the matter is automatically remitted to the administrative authority or organ for re-examination.

8) At what stage are these challengeable?

Decisions are challengeable when they have been notified or published. Acts or omissions which are not published may be challenged as soon as they become apparent to the affected party.

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 (unless a hierarchical review is specifically provided for).

10) In order to have standing before the national courts it is 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?

Participation is not a prerequisite for legal standing. Legal standing derives from the legitimate interest of the party, as per Article 146 of the Constitution.

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

Both the Constitution and the Court Procedural Rules confirm that anyone can go to court. They are entitled to a fair trial and to interpretation if unable to understand the language of the court. Article 30 of the Constitution is the equivalent of Article 6 of the European Convention on Human Rights and is interpreted in much the same way. Article 30 applies to all types of cases, civil, criminal and administrative. Although there is no specific reference to 'equality of arms' as such in the Constitution, it is encapsulated in the concept of fair trial, and there is considerable case law on the matter, often with reference to ECHR decisions. The principles have been recently restated in a decision relating to a criminal appeal case delivered in 2020: Republic v. Stavrinou, no 266 /2018. The concept is based on the principle that neither party should be put at a disadvantage, and that this should be determined not by particular incidents during the trial or hearing, but by an overall assessment thereof. Nevertheless, in the case of Marangos v. Cyprus, 4.12.08, which related to an administrative appeal, the ECHR found that the complainant's rights had not been affected by a denial of legal assistance by the Cyprus government, nevertheless, three ECHR judges issued a concurrent decision expressing the view that limiting legal assistance to civil and criminal cases and excluding administrative cases amounts to a lack of equality of arms. Since that time, financial assistance has become available in administrative recourses filed by asylum seekers.

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

Timeliness with reference to the applicant means challenging a decision/act/omission within 75 days of its publication/authorisation or of becoming apparent. Timeliness also refers to the duration of a court case. If a hearing is completed and a decision is not delivered within six months, questions will be asked, and the interested party may complain to the Supreme Court. In practice, all types of procedure take a very long time (except in Rent Tribunals and Family Courts concerning the interests of minors). There have been instances of recourse to the ECHR against the Cyprus Republic because of court delays, and it was held that such delays are in themselves a denial of justice and fines were imposed. Law N.2(1)/2010, based on Article 6 of the European Convention on Human Rights, provides a cause of action to seek compensation for an unreasonably delayed court decision. A Supreme Court decision of 2019, M.D. Cyprus Soya v Attorney General, case no. 1/2018, suggests that it would also apply to delays in adjudication on appeal.

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?

Under article 88 of the Law, injunctive relief through an interim order is available against any licensee who disobeys the license conditions. An application for such order will be applied for by the Attorney-General or the local authority to the appropriate District Court. There is no specific provision for affected parties to seek injunctive relief, but presumably the Civil Procedure Rules apply. For further details, please see par 2.1.8.

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

The most comprehensive guidance is offered on the website of the Environment Department, quoted above, see 1.7.4.

1.8.3. Environmental liability

County-specific rules relating to 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?

The ELD was transposed into Cyprus law by the Environmental Liability concerning Prevention and Remediation of Damage Law No 189/(1)2007. Article 14 (1) of the Law provides that any natural or legal person affected or likely to be affected by environmental damage, or having a legitimate interest in the decisions to prevent damage may notify the Environment Department or other competent authority, of the damage, in writing and outlining the pertinent details. The term ‘legal person’ includes any (registered) company or association whose objective, according to its statutes, is the protection of the environment. Article 17 specifies in unusually broad terms that the natural or legal persons mentioned in article 14(1) of the Law (see above) who are affected by any decision of the responsible authority may initiate a recourse to justice under Article 146 of the Constitution. Article 146 requires that any applicant must have a direct, existing and legitimate interest and, as already mentioned, article 14(1) of the Law recognizes such an interest in environmental NGOs.

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

The deadline is 75 days as with all recourses to the Administrative Court.

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

Article 14(2) of the Law requires that the request for action must be accompanied by all information that justifies the claim made, and article 14(5) states that the provisions of this Law do not apply to impending damage but only to environmental damage which has occurred. There is no specification regarding the scientific evidence that has to be supplied.

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

Article 2 of the Law defines damage as quantifiable. Appendix II gives a list of criteria that would be considered in quantifying damage. This list is intended more as a guide to the Department for assessment of damage (and the action to be taken), but presumably could assist a complainant in preparing a claim for action.

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)?

There is no precise manner or time limit. Under article 14(3), the law provides that the competent authority must notify the operator responsible for the damage allowing a period of not more than 30 days for the operator to respond. Having assessed the response, the competent authority must assess within a maximum of 30 days what the course of action should be, and the complaining party must be notified as soon as possible thereafter. This would imply that the entitled person might not have a formal notification for two months or so.

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?

The provisions of article 14 regarding a request for action do not apply in cases of imminent environmental damage (article 14(5)).

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

In principle the Department of Environment is the competent authority, unless the Minister of Agriculture and Environment appoints another authority.

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?
As a general comment, it should be borne in mind that Cyprus is an island state separated from its nearest European neighbour (the island of Rhodes) by about 300 km. So, the likelihood of transboundary environmental damage emanating from acts or omissions is limited and although relevant provisions exist in the laws implementing EIA, SEA, IPPC and ELD, there has only been one case of transboundary damage (involving Greece).

The EIA Law No 104(1)2005 as amended by 127(1)2018 under article 21; the SEA Law No 105(1)2005 under articles 19 and 22, and the IPPC Law No 184 (1)2013 under article 43, all provide that prior to issuing a permit/license/decision, if the competent authority becomes aware that the action in question may impact on the environment of a member state (MS) or if a MS makes such a claim to the Cyprus Government, then the MS must be provided with all relevant information no later than when the public of Cyprus is informed. Also, sufficient time must be allowed for the relevant information to be published by the state concerned and to receive comments from the public of that country. These must be taken into account by the competent Cypriot authority together with locally made observations in reaching a decision. It is incumbent on the Cypriot competent authority to publish the decision reached, with all justifying explanations, on its website and to communicate the same to the MS which will in turn notify its own public.

2) Notion of public concerned?
The definition is the same as for local public viz. one or more persons who are, or may be, affected by the decision/permit/license.

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)?

With the caveat that this is, as yet, an untried procedure, one could assume that if the NGO has legal standing in its own country it might fall within the definition of those parties with a legitimate interest under the Cyprus Constitution. The recourse would be made either for an administrative review to the department responsible for the decision, or to the Administrative Court in the case of a legal challenge, within 75 days of publication of the decision. The provisions would be the same as for a local applicant, viz. no legal aid, no pro bono, and injunctive relief only in the face of flagrant illegality or major irreversible damage, possibly on payment of a substantial financial guarantee.

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)?

An individual would only have rights under the same conditions as apply to a Cypriot individual, viz. if a direct, existing, personal right were affected. The provisions for aid, injunctive relief, etc., would be as stated above, in 1.8.4.3), the only difference would be that an individual could appear in person before a court, whereas a legal entity cannot.

5) At what stage is the information provided to the public concerned (including the above parties)?

At the same time as it is publicised in Cyprus.

6) What are the timeframes for public involvement including access to justice?

The time frame for the public in an affected country to respond/make observations on the proposed permit/license, etc., during the public consultation procedure is agreed between Cyprus and the affected country and published in the notice to concerned public. The time frame for a recourse to justice is 75 days.

7) How is information on access to justice provided to the parties?

The relevant articles in each of the three Laws do not specify this information, but presumably it would be included in the information sent to the affected MS, since there is a responsibility on the Director of the Environment Department to ensure that relevant information reaches the affected public.

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

It is not usual, should translations be necessary, they will be charged.

Article 30 of the Cyprus Constitution provides that any person can go to court and is entitled to interpretation if unable to follow the language of the proceedings, but this applies to criminal and similar offences and only to individuals. In an administrative review, the department would probably concede to using English. Pleadings and hearings before the Administrative Court will be conducted in Greek. If the applicant requires translation or interpretation, this will be arranged privately and paid by the applicant. Since an NGO is a legal person, and can only be represented by an advocate, it will presumably be represented by an advocate who speaks the local language.

9) Any other relevant rules?

There are no other relevant rules.

[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, but outside the scope of the EIA and IED Directives

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

As already explained in Part 1, the legal rights of natural or legal persons to obtain an administrative or judicial review for an act/decision/omission are the same for an environmental issue as for any other claim. Access to justice is delineated in Articles 29 and 146 of the Constitution. Article 29 provides that every person (including non-Cypriots and legal persons) has a right individually or jointly with others to address any competent authority, to have their complaint attended to expeditiously and to receive a response within 30 days. (This refers to complaints addressed to civil service departments or other public authorities). Article 146 provides who may apply to the Court against a decision, act or omission of a public authority and this would, therefore, apply with respect to environmental issues. For such right to arise, the complainant must have an existing, personal and legitimate interest which has been directly affected by a decision, act or omission exercised by a public authority in a manner which is contrary to the Constitution or to any other law, or represents an abuse of power, and must be exercised within 75 days of the event being publicised.
Under current legislation and Cypriot case law, unless the interpretation were broadened, ENGOs would have no legal standing outside the provisions of the EIA, IPPC/IED and ELD Laws. So in effect, NGOs or individuals who do not live or own property in the vicinity of the offending act would have difficulty in challenging environmental decisions, even though this goes against ACCC guidance and the case law of the CJEU which requires national courts to interpret national procedural rules in light of the Aarhus Convention and in light of Article 47 of the EU Charter in order to grant wide access to justice. The CJEU case law on environmental issues is not known to have been quoted or referred to in court decisions, since, as already stated in Part 1 (1.1.), NGOs have seldom made judicial recourses after it was held by the Supreme Court in 1999 that they had no legal standing. Therefore, it could be said that CJEU decisions have not had a substantial effect. It has to be added that it is not just the absence of legal provisions or case law which has contributed to the cautionary approach of NGOs in utilizing legal measures. The lack of funding support, the uncertainty arising from the conservative court interpretation, and the consequent lack of experienced lawyers in this field of law, have all discouraged NGOs.

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?

An administrative review would cover all aspects of the issue under review. A recourse to the Administrative Court would normally review the procedural legality, unless there were an issue of error in law or violation of constitutional rights, in which case the substantive legality would also be reviewed.

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

There is a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures in cases where an administrative review is specifically required in the legislation. In such cases the 75-day time-limit for going to court will be suspended during the review.

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

In order to have standing before the national courts it is not necessary to participate in the public consultation phase of the administrative procedure. Legal standing derives from having a legitimate right of recourse under the Constitution.

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

The Administrative Court will base its decision on the files of the case regarding the decision/act/omission, which must be presented to the Court in full. Any factual matters other than those in the file cannot be introduced, unless in exceptional circumstances and with the leave of the court. See also response to 1.5.1

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

Both the Constitution and the Court Procedural Rules confirm that anyone can go to court. They are entitled to a fair trial and to interpretation if unable to understand the language of the court. Article 30 of the Constitution is the equivalent of Article 6 of the European Convention on Human Rights and is interpreted in much the same way. Article 30 applies to all types of cases, civil, criminal and administrative. Although there is no specific reference to 'equity of arms' as such in the Constitution, it is encapsulated in the concept of fair trial, and there is considerable case law on the matter, often with reference to ECHR decisions. The principles have been recently restated in a decision relating to a criminal appeal case delivered in 2020: Republic v. Stavrinou, no 266 /2018. The concept is based on the principle that neither party should be put at a disadvantage, and that this should be determined not by particular incidents during the trial or hearing, but by an overall assessment thereof. Nevertheless, in the case of Marangos v. Cyprus, 4.12.08, which related to an administrative appeal, the ECHR found that the complainant's rights had not been affected by a denial of legal assistance by the Cyprus government, nevertheless, three ECHR judges issued a concurrent decision expressing the view that limiting legal assistance to civil and criminal cases and excluding administrative cases amounted to a lack of equality of arms. Since that time, financial assistance has become available in administrative recourses filed by asylum seekers.

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

Timeliness also refers to the duration of a court case. If a hearing is completed and a decision is not delivered within six months, questions will be asked and the interested party may complain to the Supreme Court. In practice, all types of procedure take a very long time (except in Rent Tribunals and Family Courts concerning the interests of minors). There have been instances of recourse to the ECHR against the Cyprus Republic because of court delays, and it was held that such delays are in themselves a denial of justice and fines were imposed. Law N.2(1)/2010, based on Article 6 of the European Convention on Human Rights, provides a cause of action to seek compensation for an unreasonably delayed court decision. A Supreme Court decision of 2019, M.D. Cyprus Soya v Attorney General, case no. 1/2018, suggests that it would also apply to delays in adjudication on appeal.

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?

Unless provided in sectoral laws, there is no particular provision for granting injunctions in environmental matters. The normal judicial procedure would need to be followed and satisfied. In administrative recourses an application may be made for an interim judgment suspending the effect of the administrative decision. This may be granted only under exceptional circumstances, if there is flagrant illegality or irreparable damage. In general, such conditions apply that injunctions are more easily granted to a government department seeking to prevent an illegal act (e.g. to stop an individual from demolishing a building under preservation order). See also para 1.7.2.6 regarding guarantees.

There is an appeal against a decision to refuse an injunction which is made to the Supreme Court.

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 costs are principally the lawyer's fees and would be the same as for any other recourse to justice, around €1,500 plus stamps depending on the complexity. While there are no specific safeguards against prohibitive costs, the issue does not actually arise, because the costs awarded by the court against a party are determined on the basis of the established judicial scales and do not necessarily represent the full fee paid by the party to his/her lawyer. They represent what the courts consider appropriate, and quite often this is less than what has been agreed between a party and his/her lawyer. The losing side will normally be ordered to pay the costs of the other side according to the scales, or such part of them as the Court decides. In cases involving a private person or a non-profit organisation suing the state, Courts have decided that each side should pay its own costs. So, it is largely up to the court and will not be known in advance.

1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[1]

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

The SEA directive has been transposed to Cyprus law under Law No 102(1)2005. It makes no specific provision concerning rights of individuals or legal persons to challenge decisions/acts/omissions within the ambit of their constitutional rights (see 2.1.1. above re Article 146 of the Cyprus Constitution).
Whether such rights exist in law will depend on the form in which the plans have been adopted, and if such rights exist there is no need for them to be reiterated in sectoral laws. Therefore, any legal or natural person whose legitimate rights are affected can, within 75 days of publication of the offending event, request an administrative review or file a recourse to justice. As case law stands at present, however, this will not apply to NGOs unless a law specifically grants them the right to be included in the ambit of Article 146 of the Constitution (as applies with respect to the EIA, IPPC and ELD Laws). The recognition given to environmental NGOs in the SEA Law concerns the right to be invited to participate in a public consultation. The definition of ‘public’ at article 2 of the Law is a broad one involving natural or legal persons, organisations or groups, and article 15(b) specifies environmental NGOs amongst them. What has been known to happen is that ENGOs have gone directly to Brussels, to DG Environment, to express their disagreement with decisions taken at an SEA, or to call attention to the fact that an SEA process has not been implemented.

CJEU case law on environmental issues is not known to have received judicial notice in any deliberations before the court. So at this point it would be fair to say that it has had little effect. It should be clarified that although Common Law applies in Cyprus, in matters of Administrative and Constitutional Law we follow the theory and practice of Greece, so Greek case law is often quoted in administrative cases, even though it has only an advisory effect.

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?
An administrative review is not specifically provided for, but should it be granted it will examine both the procedural and substantive legality of a decision/act /omission. A judicial review in the Administrative Court will normally consider matters of procedural legality and competence of the offending executory organ, but also of substantive legality if the question refers to error in law, violation of the constitution etc., or to errors within the files.

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 under the SEA Law.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?
In order to have standing before the national courts it is not necessary to participate in the public consultation phase of the administrative procedure, the legal standing of an applicant is derived from meeting the Constitutional provisions.

5) Is injunctive relief available? If yes, what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?
There are no special rules, see comments under 2.1.8.

6) What are the costs 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 costs are principally the lawyer’s fees and would be the same as for any other recourse to justice, around €1,500 plus stamps depending on the complexity. While there are no specifically expressed safeguards against prohibitive costs, the issue does not actually arise because the costs awarded by the court against a party are determined on the basis of the established judicial scales and do not necessarily represent the actual costs paid by the party to his/her lawyer. The loser pays principle generally applies, but the losing side will pay the costs of the other side according to the scales, or such part of them as the Court decides. Nevertheless, in cases involving a private person or a non-profit organisation suing the state, Courts have decided that each side should pay its own costs. So, it is largely up to the court and will not be known in advance.

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 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?
Cyprus has adopted Article 7 of the Aarhus Convention by including a regulatory framework for public participation in a number of environmentally related laws dealing, e.g., with water pollution, wastes, industrial emissions, atmospheric waste, etc. The relevant provisions are quite similar and define the ‘public’ to be consulted or invited to comment as ‘natural or legal persons affected, or likely to be affected’ by the act or license issued, including environmental NGOs. If the legitimate rights of legal or natural persons are affected, the remedies are as stipulated under Article 29 of the Constitution concerning complaints to public authorities, in cases where the specific legislation does not provide for an administrative review. In cases of a legal challenge by recourse to justice the provisions of Article 146 of the Constitution apply. So far, defects in a consultation procedure have been raised by individuals with a legitimate interest to have a decision nullified. Whether an NGO would be legitimized to challenge the legitimacy of an action on the grounds of an improper participation procedure has not been tested. The government is currently taking measures to strengthen public participation, but the initiative concerns only consultations carried out under the EIA Law.
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?
An administrative review, if granted, will examine both the procedural and substantive legality of a decision/act/omission, and while the review is in process the 75-day deadline will be suspended, if so provided, or may be suspended by agreement between the parties. A judicial review in the Administrative Court will, as in all cases, consider matters of procedural legality and competence of the offending executory organ, but also of substantive legality if the question refers to error in law, violation of the constitution, etc.
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, unless the right for an administrative review is specifically provided in the legislation.
4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?
In order to have standing before the national courts it is not necessary to participate in the public consultation phase of the administrative procedure. Legal standing derives from having a legitimate right of recourse under the Constitution.
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?
Unless provided in sectoral laws, there is no general provision for granting injunctions in environmental matters. The normal judicial procedure would need to be followed and satisfied. In administrative recourses, an application may be made for an interim judgment suspending the effect of the administrative decision. This may be granted only in exceptional circumstances, if there is flagrant illegality or irreparable damage. Concerning guarantees please see para 2.1.8.
There is an appeal against a decision to refuse an injunction which is made to the Supreme Court.

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 costs are principally the lawyer’s fees and would be the same as for any other recourse to justice, around €1,500 upwards (plus stamps) depending on the complexity. While there are no specifically expressed safeguards against prohibitive costs, the issue does not actually arise, because the costs awarded by the court against a party are determined on the basis of the established judicial scales and do not necessarily represent the actual costs paid by the party to his/her lawyer. Thus, the losing side, according to the loser pays principle, will normally pay the costs of the other side according to the scales, or such part of them as the Court decides. Nevertheless, in cases involving a private person or a non-profit organisation suing the state, Courts have decided that each side should pay its own costs. So, it is largely up to the court and will not be known in advance.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[3]

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

There are no specific rules for challenging plans and programmes required to be prepared under EU legislation, so the general rules of standing would apply as described under the provisions for the SEA Law. The strongest position of any applicant would concern a denial of access to information or a denial to facilitate public participation in the process, since both of these rights are enshrined in a generally applicable legislation (concerning the right to environmental information) and in specific sectoral laws (concerning the right to participation), so they do not depend on demonstrating the existence of constitutional rights.

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)?
The form in which the plan or programme is adopted makes a difference in terms of legal standing, it can only be challenged if it is an administrative act.

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?

An administrative review would cover all aspects of the issue under review. A recourse to the Administrative Court would normally review the procedural legality, unless there were an issue of error in law or violation of constitutional rights, in which case the substantive legality would also be reviewed.

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

Only if specified in the legislation concerned.

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

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

6) Are there any grounds/arguments precluded from the judicial review phase?
The Administrative Court will base its decision on the files of the case regarding the decision/act/omission, which must be presented to the Court in full. Any factual matters other than those in the file cannot be introduced, unless in exceptional circumstances and with the leave of the court.

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

Both the Constitution and the Court Procedural Rules confirm that anyone can go to court. They are entitled to a fair trial and to interpretation if unable to understand the language of the court. Article 30 of the Constitution is the equivalent of Article 6 of the European Convention on Human Rights and is interpreted in much the same way. Article 30 applies to all types of cases, civil, criminal and administrative. Although there is no specific reference to ‘equality of arms’ as such in the Constitution, it is encapsulated in the concept of fair trial, and there is considerable case law on the matter, often with reference to ECHR decisions. The principles have been recently restated in a decision relating to a criminal appeal case delivered in 2020: Republic v. Stavriniou, no 266/2018. The concept is based on the principle that neither party should be put at a disadvantage, and that this should be determined not by particular incidents during the trial or hearing, but by an overall assessment thereof. Nevertheless, in the case of Marangos v. Cyprus, 4.12.08, which related to an administrative appeal, the ECHR found that the complainant’s rights had not been affected by a denial of legal assistance by the Cyprus government, nevertheless, three ECHR judges issued a concurrent decision expressing the view that limiting legal assistance to civil and criminal cases and excluding administrative cases amounts to a lack of equality of arms. Since that time, financial assistance has become available in administrative recourses filed by asylum seekers.

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

Timeliness with reference to the applicant means challenging a decision/act/omission within 75 days of its publication/authorisation or of becoming apparent. Timeliness also refers to the duration of a court case. If a hearing is completed and a decision is not delivered within six months, questions will be asked and the interested party may complain to the Supreme Court. In practice, all types of procedure take a very long time (except in Rent Tribunals and Family Courts concerning the interests of minors). There have been instances of recourse to the ECHR against the Cyprus Republic because of court delays, and it was held that such delays are in themselves a denial of justice and fines were imposed. Law N.2(1)/2010, based on Article 6 of the European Convention on Human Rights, provides a cause of action to seek compensation for an unreasonably delayed court decisions. A Supreme Court decision of 2019, M.D. Cyprus Soya v Attorney General, case no. 1/2018, suggests that it would also apply to delays in adjudication on appeal.

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?

General national rules would apply and an injunction is granted only in very exceptional circumstances (see 2.1.8).

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 costs are principally the lawyer’s fees and would be the same as for any other recourse to justice, around €1,500 depending on the complexity. While there are no specific safeguards against prohibitive costs, the issue does not actually arise, because the costs awarded by the court against a party are determined on the basis of the established judicial scales and do not necessarily represent the actual costs paid by the party to his/her lawyer. So the losing side will normally pay the costs of the other side according to the scales, or such part of them as the Court decides. In cases involving a private person or a non-profit organisation suing the state, Courts have decided that each side should pay its own costs. So, it is largely up to the court and will not be known in advance.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[4]
1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedure for adopting or the content of the decision, act or omission of the national regulatory act (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

Although the Aarhus Convention has been transposed into law, no specific piece of legislation has been passed regarding public participation, as has been the case with access to information. The practice of involving the public in law-making by enabling the participation of interest groups/NGOs in parliamentary discussion or at the administrative level of preparing legislation or regulations is less formal. There is a published guide on good public participation practice which is used by government departments, but it is not a legal document so it would not give rise to rights unless specifically provided by enabling legislation.

It could be argued that since the Aarhus Convention is part of the Cypriot legislation, the relevant articles concerning participation apply ipso facto. This position was argued by the complainants' lawyer in case no 746/2019 Demetriou et al v. Limassol municipality. However, the Administrative court considered the evidence conflicting and did not base its decision on this issue.

[1] The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.
[2] See findings under ACC/C/2010/54 for an example of a plan not submitted to SEA but subject to the public participation requirements of Article 7 of the Aarhus Convention.
[3] These fall within the scope of both Article 7 and Article 9(3) of the Aarhus Convention. See also relevant case-law of the Court of Justice of the European Union such as Case C-237/97, Janecek and cases such as Boxus and Solvay C-128/09-C-131/09 and C-182/10, as referred to under the Commission Notice C/2017/2616 on access to justice in environmental matters.
[4] Such acts come within the scope of Article 8 and Article 9(3) of the Aarhus Convention. An example of such an act concerns the decision of the national administration that featured in Case C-281/16, Vereniging Hoekschewaards Landschap, ECLI:EU:C:2017:774.
Since actions affecting the environment are usually controlled and authorized by administrative decisions, the main and most common instrument for environmental protection used by the public is gaining information about forthcoming or adopted administrative decisions, taking part in decision-making (usually during public participation), and submitting an appeal to the administrative authority and then a court if necessary. These possibilities are prescribed by the Environmental Protection Law setting a framework for environmental protection, and also in specific laws and regulations regarding particular areas of law related to environmental issues. The public may also apply to respective controlling authorities if other persons infringe norms protecting the environment, and to access administrative court subsequently, if necessary. [3]

In addition, the public has a right to access environmental information and be informed about the environmental conditions and to protect this right at the court.

A system of constitutional control and constitutional review exists in Latvia. This means that the Constitutional Court may evaluate whether the legal norms of lower legal rank (laws of the Parliament, Cabinet regulations, municipal regulations) contradict the Constitution or binding international norms, recognise them as incompatible, and invalidate them. The right to apply to the Constitutional Court is granted, among others, to general courts reviewing individual cases, and to individual persons to protect their fundamental rights if they have exhausted “ordinary” legal remedies, as well as to an Ombudsman, including in cases when legally binding norms might contradict the right to live in a benevolent environment as protected by the Constitution. [4] Courts of general jurisdiction, when reviewing an individual case, must evaluate possible contradictions of legal norms and apply norms of lower legal rank consistently with norms of superior legal rank, and, under certain conditions, apply to the Constitutional Court.

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

According to Art.115 of the Constitution, the state protects the right of everyone to live in a benevolent environment by providing information about environmental conditions and by promoting the preservation and improvement of the environment. This constitutional right includes:

the substantial aspect: a right to live in a benevolent environment and a corresponding obligation of the state to establish a system of environmental protection [5];
the procedural aspect as an integral part of the right to live in a benevolent environment: a right of the public to access environmental information, to participate in decision-making in environmental matters, to access the court in environmental matters. [6]

According to the case-law of the Constitutional Court, Art.115, as other human rights provisions of the Constitution, is a directly and immediately applicable norm. [7]

According to Art.111 of the Constitution, the state protects human health. The Constitutional Court found that the right to health also comprises the right to healthy environmental conditions [8]. This may include noise and other environmental pollution that influences the quality of environment in which a person resides.

Both aforementioned constitutional provisions (right to a benevolent environment and right to health protection) can be applied separately or in connection with each other.

Art.92 of the Constitution provides for the right of everyone to defend his or her rights and legal interests in a fair court, and the right to the assistance of counsel.

Constitutional provisions can be applied directly both in administrative procedures and at the court. Citizens can invoke the provisions at any stage in administrative or judicial procedures.

According to the jurisprudence of the Constitutional Court (Satversmes tesa), human rights enshrined in the Constitution should be applied and interpreted consistently with the binding international agreements, including on human rights. [9] This means that, for example, the European Convention on Human Rights and the case-law of the European Court of Human Rights can be used when arguing the case in administrative authority or at the court.

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

The framework law regarding environmental protection is the Environmental Protection Law. It defines the main concepts of environmental law (Sect.1), such as the environment, environmental information, states the principles of environmental protection (the “polluter pays” principle, the precautionary principle, the prevention principle and the assessment principle) (Sect.3), and sets out the rights of the public in the environmental field.

The latter includes:
the right to environmental information (Sect. 7),
the right to participate in the decision-making, including during the authorization procedures of developments that might affect the environment, as well as in the preparation of planning documents affecting the environment (Sect. 8), and also
the right to access the competent administrative authorities and the administrative court (a) in the event that the aforementioned rights are not observed, or
(b) to appeal the administrative act or actual measures of the public authority or local government if it does not comply with the environmental law or creates threats to environment, or
(c) if any other private person breaks legal provisions regarding environment (Sect. 9). Sect. 30 specifically provides for the right to address the State Environmental Service or other competent authority (and this administrative stage may be followed by appeal to the administrative court) with a request to perform the necessary activities if the public gets to know about the environmental damage or imminent threat of damage.

The concept of “the public” includes any private person, and also associations, organisations and groups of persons (Sect.6(1)).

As confirmed by the Supreme Court, these provisions of the Environmental Protection Law establish an exemption from the general rules on legal standing. [10] In contrast to the latter, the EPL does not require any “individualized” nexus authorizing members of the public to initiate a case against a public authority that may have breached environmental law.

In further sections, the Environmental Protection Law details the aforementioned rights and corresponding responsibilities of administrative authorities, in addition making it mandatory for the respective authorities to involve the public in the preparation and discussion of the laws and regulations regarding the environment, at as early a stage as possible (Sect.13).

The act Environmental Impact Assessment sets the principles and outlines the procedure of the initial environmental assessment (screening procedure) and the environmental impact assessment of the intended activities that might affect the environment. [11] Sect.3 provides for the right of the public to obtain the information and to participate in the decision-making on the EIA. More detailed rules on public participation and decision-making, including in transboundary cases, are contained in other sections of the law. During the environmental impact assessment procedure, any person has a right to complain to the competent administrative authority [12] if his/her rights to information or to participation have been infringed or ignored (Sect.26(2), 26(3)).

The final decision to accept the intended activity may be contested in the competent administrative authority and appealed to the administrative court, if the rights of the public to information or participation have been infringed or ignored (Sect.26(4)).

The act Pollution stipulates the procedures for permitting and controlling polluting activities and the allocation of greenhouse gas emission permits [13]. Sect.27 of the law prescribes the availability of information on submissions for permits for polluting activities, information on issued permits for polluting activities, the conditions of the issued permits, and the information regarding monitoring and control results, as well as the participation in decision-making on
permitting polluting activities. Sect.32.7 provides details on the right to the public to be informed about plans and decisions on allocation of greenhouse gas emission allowances, including the right to comment on planned allocations. The section also includes the obligations of the public authorities to provide information on plans and decisions allocating emission allowances (permits).

In Sect.50, there are more detailed rules on contesting administrative decisions and appealing them to the administrative court. According to these rules: persons may contest decisions in relation to A and B category permits for polluting activities, submit a complaint if the right to public participation and the right to environmental information have been ignored, contest conditions of a permit at any time while the relevant permit is in effect if the respective polluting activity may have a substantial negative impact on human health or the environment, or the environmental quality objectives specified in the law, contest decisions concerning a research on or remediation of polluted or potentially polluted site if the health, security, or property of a natural or legal person may be affected, a person that might be affected by a greenhouse gas emission permit may contest the permit. According to Sect.51(5), the final administrative decision can be appealed to the administrative court.

The Waste Management Law prescribes the procedures for waste management, including procedures for issuing waste management permits. According to Sect.13 of the law, a decision in relation to a waste management permit may be disputed in the Environment State Bureau (ESB), and a decision of the Bureau may be appealed to the administrative court. In addition, it is possible to dispute the conditions of such a permit throughout the period the permit is in effect if the polluting activities may cause significant negative impact on the environment or endanger human life or health.

The Water Management Law, Sect.26, includes provisions on administrative and judicial appeal of administrative decisions concerning permits specified in this law or conditions of such permits.

One of the instruments to implement environmental law and to ensure its effect is territorial (spatial) planning. In Latvia, the framework law regulating the spatial planning system is the Spatial Development Planning Law. Sect.4 of the law imposes the obligation to involve the public in the planning procedures. Sect.27 provides for the possibility to contest a spatial plan or local plan of the local government. The competent authority for reviewing such submissions is the ministry responsible for spatial development planning. After this administrative pre-trial stage, persons can submit a constitutional complaint (i.e., to the Constitutional Court) regarding the conformity of the local government binding regulations (approving a spatial plan or a local plan) with the norms of superior legal force. Sect.30, in its turn, provides for the possibility to appeal a detailed plan, which is an administrative act, to the administrative court.

The Construction Law sets out the framework for issuing construction permits which usually involves, among other things, considering the environmental impact of the intended construction. However, the procedures on the EIA and construction permits are not integrated into one but are regulated as two subsequent procedures. At the same time, rights on public participation are provided only in cases when: 1) neither the EIA has been applied nor a detailed plan elaborated (both require public participation) and 2) if the construction is proposed next to a residential or public building and may cause significant impact (smell, noise, vibration or pollution of another kind) (Sect.14(5)). Thus, if the EIA has been carried out or there is a detailed plan, no public participation is required during permission construction.

A municipality is authorized to extend the requirements on public participation requesting it on other occasions (for example, set in their legally binding norms type of activities when a public participation needs to be organized on construction permission, notwithstanding whether the EIA has been carried out. (Sec. 14(5)).

The decision regarding the proposed construction must be made public on a Construction Information System, and there are rules on informative measures regarding public discussions and submissions to change the initially proposed building design. In cases regulated by the Cabinet regulations, it is a responsibility of a developer to place a construction board on the respective plot of land. The law states that a developer also “may provide information to owners of immovable properties adjacent to the respective plot of land”. Sect.14 contains rules on contesting and appealing the decisions of the competent authority (usually to the construction board of the local government and then to the administrative court). It is specifically regulated in Sect.14(5) that the superior authority or the court must consider the violations of the right to public participation in decision-making.

Sect.6.1 of the Construction Law defines the competence of the State Construction Control Office. According to Sect.6.1(1)8, it lies within the competence of the Office to examine complaints on substantial violations of laws and regulations in the construction process or also in cases when a structure has caused or may cause danger or substantial harm to human life, health, property or the environment. It must be noted that the Office is an authority of general state control, and not a pre-trial administrative authority for administrative acts regarding the construction, for example, constructions permits.

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

The administrative courts have developed wide-ranging case-law regarding the rights of the public to access the court in environmental matters. Decisions of the administrative courts are available on the national portal of the court decisions. The Supreme Court (Senāts) as the cassation instance court interprets legal norms and is responsible for the unified application of law. This includes unified application of norms providing for the access to the court. On the website of the Supreme Court, there is an additional selection of the rulings of the Supreme Court. The search options in English make it possible to obtain a chronological overview, while the Latvian version of the database also provides quick access to subject-matter classified rulings, including chapters devoted to the environmental issues and building issues, as well systematization according to legal norms applied or interpreted by the Supreme Court. Moreover, the national database of legal acts has been complemented with additional indications and direct links to current case-law of the Supreme Court and the Constitutional Court on the norm associated with the case.

(i) Recognizing an actio popularis approach in environmental cases

The Senate has interpreted Sect. 9(3) of Environmental Protection Law giving a broad approach to legal standing in environmental matters admitting it as an actio popularis: if the person in his or her appeal to the court indicates a possible infringement of environmental law or damage to environment caused by construction, this person as a member of the public in the meaning of Environmental Protection Law has a right to contest the construction permit. In such a case, there is no need for an evaluation of any infringement (or potential infringement) of his/her individual rights or legal interests. Any appeal of any person showing reasons which form the basis to identify the respective application as submitted in accordance with Sect.9(3) of the Environmental Protection Law is permissible as an actio popularis appeal against administrative act or actual measures of the state or the local government. An actio popularis is the exception provided by environmental law from the dominant approach established by the Administrative Procedural Law where the legal standing rules are based on a “right-based” doctrine requiring proof of the infringement of an applicant’s (subjective) rights or legal interest to be entitled to sue.

(ii) Limitations on the actio popularis rule

The Supreme Court has established margins on the notion of “environmental interests”, thus, limiting the possibilities to sue aimed at eliminating dishonest and trivial applications. Accordingly, the Supreme Court has stated that a reference to the necessity of the protection of the environment and to the rights of
the public in environmental law need not be formal. Sect.9(2) and Sect.9(3) of Environmental Protection Law are to be interpreted as precluding the right to appeal to the court if it is established that the reference to the alleged denial of the participation in decision-making or to the infringements of environmental law only serves as an instrument for achieving other goals not related to environmental protection. [16]

The Supreme Court confirmed the limitation on admissibility of a case to avoid accepting applications based on an actio popularis where concerns about a threat to the environment are insignificant and formal, and arguments in the application do not indicate any considerable threat to the environment.

Otherwise, according to the Supreme Court, the possibilities of initiating a case would be open to “trivial” cases where there are no serious concerns on the threat to the environment. [17] Therefore, in deciding whether the application is admissible, the court has to assess “conditions that the applicant indicates to substantiate the infringement of the public interests in environmental protection.” [18]

Consequently, there are two limitations established by the Supreme Court with respect to admissibility of the case and thus, affecting the decision on accepting a case from a private person claiming a breach of environmental law. 1) limitation based on the theory of “trivial case;” [19] 2) limitation based on the “honesty test.” [20]

(iii) The right to information, public participation and access to justice in EIA cases

The Supreme Court has explained that the mandatory rules on informing the public about the public participation procedures (law On Environmental Impact Assessment, Sect.15(1) and Sect.17(1)) are not an-end-in-itself. The aim of those rules is to ensure that the information about the arrangements of the public participation reaches the public as far and wide as possible, thus encouraging the involvement of the public in decision-making. Taking into account this aim, the observance of those rules should not be considered formally. It should be evaluated whether the informative measures taking place have achieved their aim. [21]

“Environment” and cultural and historical heritage

According to the decision of the Supreme Court (23.04.2018., case No. SKA-989/2018, ECLI:LV:AT:2018:0423.SKA089818.S.L, the notion of environment also includes cultural and historical heritage. Any person may lodge an application before the court to protect environmental interests regarding cultural and historical heritage according to the Art.19(3) of the Environmental Protection Law.

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

Officially ratified international law, including the Aarhus Convention On Access To Information, Public Participation In Decision-Making And Access To Justice In Environmental Matters, can also be applied directly by administrative bodies and by the court; [22] If a conflict between a legal norm of international law and a norm of Latvian law of the same legal force is identified, the legal norm of international law must be applied.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

There is a three-level court system in Latvia.

The first level consists of 9 district courts of general jurisdiction for civil and criminal cases and one administrative district court, consisting of 5 courthouses in different cities and covering entire territory of Latvia, for administrative cases.

The second level consists of 5 regional courts of general jurisdiction for civil and criminal cases and one regional administrative court for administrative cases. The regional courts are courts of appeal for civil, criminal and administrative cases that have already been heard in district courts. The Administrative regional court has a jurisdiction as first-instance court in certain categories of cases mentioned in laws governing certain fields (for example, competition law).

The Supreme Court or the Senate is the third-level court. The Senate is divided in three departments and functions as a cassation instance for civil, criminal and administrative cases, respectively.

As a general rule, civil, criminal and administrative cases may be reviewed in all three court instances. However, only two court instances are allowed for certain categories of civil and administrative cases. Those exemptions are set out in Civil Procedure Law for small civil claims, as well as in several special laws determining administrative procedure, for example, concerning citizens’ information requests or public procurement. There are several types of issues dealt in only one instance (for example, cases of asylum seekers).

Under Latvian law, procedures concerning administrative offences (violations) exist. If a person commits a petty offence listed in a certain law or regulation, the Administrative Liability Law applies and a penalty is imposed by an administrative authority. The penalty imposed by administrative authority can be appealed to a superior administrative authority as a pre-trial institution and to the district (city) court – i.e., common court for civil and criminal cases. Cases adjudicated by the district (city) courts can be appealed to regional courts. The judgments of regional courts are final and cannot be appealed.

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)?

Before an initiating a court case, the court in administrative and civil procedure evaluates the admissibility of the lodged application or the civil action brought. If the court comes to a conclusion that the application or the action does not lie in its jurisdiction (administrative or civil), it makes a written decision of non-admissibility which can be appealed to a higher instance court. If the question of the jurisdiction is especially complex, the court may ask the Supreme Court (the Senate) for its opinion on jurisdiction. The jurisdiction of the court is then decided by the Chief justice and chairpersons of all departments of the Senate. If the court, during initiated and ongoing court proceedings, comes to the conclusion that the case is initiated contrary to the rules of the jurisdiction, it terminates the proceedings. Such a decision can be appealed to a superior instance court.

There is no possibility that the court of civil or administrative jurisdiction would hand over the application directly to the competent judicial branch: it is the responsibility of the applicant or plaintiff to apply to the respective court in accordance with procedural rules. In exceptional cases, the Supreme Court (i.e., the Chief justice and the chairpersons of the departments) has decided that particular proceedings may continue despite the wrongly determined jurisdiction, but it is then justified by individual circumstances, mainly very long ongoing proceedings and a possible negative consequences due to the change of the jurisdiction.

The court also decides on the competence of the given court among other courts of the same jurisdiction and may refuse to accept the application or the civil action if other court of the same jurisdiction is competent. In civil matters, the court refuses to initiate the proceedings if other court of first instance is competent (for example, the respective court is not the court of the defendant’s declared place of residence). In administrative matters, there is only one district court consisting of five courthouses; applications submitted to a particular courthouse may be transferred to the competent one if the applicant has erred in identifying the right courthouse. If the application lies in jurisdiction of different administrative court (i.e., when special rules state the Administrative regional court or the Supreme court as the first instance court), the court refuses to accept the application. In criminal matters, the court may transfer the case to the competent court if the case is submitted contrary to the rules defining the competence of the courts. Disputes between courts are forbidden.

There are no rules regulating conflicts of jurisdiction of different states. The general rules on accepting the application or the action apply.

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

There is no specialized court or quasi-court dealing with environmental matters.
If a person considers that an administrative decision or action, or omission, violates the law protecting the environment and nature, or could create the threat of damage or damage to the environment, he/she can apply to the administrative court. Since environmental issues on most occasions are settled by administrative decisions (building permits, water use permits, permits for polluting activities, etc.), those disputes are mostly reviewed by the administrative court. Exercising the right to apply to the court may not cause, in itself, any unfavourable consequences, including those falling under the private law, to the applicant. [23]

There are no expert judges dealing with environmental or technical issues. In the official case distribution plans of the administrative courts, some of the judges are specialized in environmental, spatial planning or construction cases, which reflects their expertise in the respective fields of law. In civil procedure, a citizen can seek damages caused by anyone, if this person has infringed, among other things, regulations concerning environmental issues and thus caused damage to the plaintiff. Public authorities, acting on behalf of the State, can claim damage caused to the environment. Citizens possessing information about criminal offences possibly causing damage to environment should inform any official or institution who is authorised to perform criminal proceedings (the police, the prosecutor’s office).

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

In administrative cases, the court has full jurisdiction over both factual and legal issues. This means that the court may review any question of facts or law. The exemption exists only where the administrative authority has a discretionary power (for example, where the authority decides on the means and scale of penalty) or has some scope for professional evaluation of facts (for example, the evaluation of the results in exams) or risk assessment, but the court must nevertheless check whether all relevant facts have been taken into account and whether all the legal considerations have been properly made by the administrative authority. If the court lacks technical or scientific knowledge, the assessment of facts can be done with the support of forensic expertise. In environmental cases initiated by an applicant based on an actio popularis approach (in order to defend public interests in environmental protection) the scope of a court review has been limited by the Supreme Court in its judgment delivered in 2018. The Court stated that when assessing a complaint that has been submitted to protect the environment, the legality of a decision (construction permit) must be assessed focusing only on the existence of a threat to the environment or a possible breach of the requirements of environmental legislation that might be directly linked to the development under the dispute, rather than any facts or illegality a claimant might refer to. [24] Accordingly, this statement of the Supreme Court indicates that the scope of review for appeals based on environmental exception clause might be restricted to the infringement of legal provisions that are related to the environment. This applies to both procedural and substantive issues.

The administrative procedure is conducted in accordance with the inquisitorial principle or the principle of investigation, i.e., the court may gather evidence and make relevant legal considerations on its own motion. But it is the responsibility of the applicant to identify the contested administrative decision and to state reasons for challenging this decision. The administrative court examines the case strictly within the boundaries set by the applicant. The court may not alter the claim or examine decisions not appealed in written form by the applicant on its own motion. Also, the applicant must submit all the relevant evidence he or she has in his/her possession.

1.3. Organisation of justice at administrative and judicial level

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

Administrative decisions (administrative acts) are issued by different state or local governments’ authorities according to their competence. The procedures and deadlines of appeal must be stated in the administrative act, otherwise the addressee of the decision enjoys longer terms for the appeal, i.e. one year instead of one month general deadline.

Generally, it is not possible to challenge the first level administrative decision directly before the court. As a general rule, an administrative act, actual measures or omission are subject to appeal to a superior administrative authority, which is a mandatory pre-trial stage. Exemptions exist only where there is no superior authority or the superior authority is the Cabinet of Ministers, then a person has the option of appealing the decision to the same administrative authority or to submit the application directly to the administrative court.

If the person contests the administrative act/measure/omission to a superior administrative authority, the complaint must be submitted to the same authority which issued the first decision, and it is the responsibility of this authority to transfer the complaint to a superior authority. Administrative procedures at the administrative authority are free of charge, including in environmental cases. Exemptions however are provided by law, e.g., in public procurement cases). A person can submit his/her complaint to the administrative authority both in written and in oral form. Oral complaints will be immediately written down by the civil servant of the institution. Written complaints and appeals, signed electronically, can be sent also by e-mail.

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

If a person is not satisfied with the decision of a superior administrative authority, he or she may submit an application to the administrative court within terms stated in the decision. The general time limit for lodging the appeal before the court is one month according to Sect. 188 of the Administrative Procedure Law. If the administrative authority has not explained the procedure of appeal (including time limits) in the written administrative decision, the deadline for appeal extends to one year.

A court fee must be paid. The applicant must formulate his/her pleading (what he or she wants to be done, i.e., to annul the decision, to make the authority to do something), to state main facts of the case, to identify the contested decision/measure/omission and to state the reasons for the contesting the decision/measure/omission. The applicant must attach all the relevant evidence and/or point to particular evidence that he/she wants the court to obtain from other sources. In environmental cases, an applicant must “appreciably substantiate” a claim demonstrating that there are well-founded concerns about a breach of environmental law in order to acquire standing based on the environmental exception clause (on an actio popularis rule).

The Administrative district court (consisting of five courthouses) is the first instance court. The exemptions are set out in law, for example, decisions of the Competition Council or the Financial and Capital Market Commission have to be appealed to the Administrative regional court.

Before initiating the court case, the judge will scrutinise the application to make certain the application lies within the jurisdiction of the court and there are no obstacles to initiating the proceedings.

If the judge accepts the application, the procedure at the Administrative district court usually lasts 6–9 months [25], in complex cases the procedure may last longer. The procedure in the first instance administrative court, as a default, is written, but the applicant has a right to ask for oral procedure. If the judgment or the decision of the Administrative district court is appealed to the Administrative regional court, the appeal proceedings may last approximately the same time as at the district court, 6–9 months except in complex cases. A state fee must be paid for the appeal. The proceedings are conducted in written procedure. The applicant – an applicant in the administrative case – may ask the court to hold an oral hearing if he or she can state reasons for the need of it. The decision on providing the oral or written procedure is left to the court’s discretion.

If a party to a case appeals the judgment of the Administrative regional court to the Supreme Court, a deposit must be paid for the cassation appeal. The cassation procedure at the Supreme Court will last about two years if the cassation complaint is admitted to the cassation proceedings. The Supreme Court may decide to refuse the initiation of the cassation proceedings if the appeal is ill-founded or if the judgment of the regional court is consistent with the judicature of the Supreme Court, or if there are no grounds to believe that the judgment of the regional court is wrong. There is written procedure at the
Supreme Court, except in cases where the Court, using its own discretion, decides to hold an oral hearing. Oral hearings are rarely held at the Supreme Court.

If the court of the first instance or the appellate instance decides procedural questions (on the admissibility of the application, pleadings, on injunctive relief or interim measures etc.) during the court proceedings, decisions may be appealed separately with an ancillary complaint to a higher instance court if Administrative Procedure Law provides for such ancillary appeal, and in a procedure according to this law. According to Sect.316 of Administrative Procedure Law, a time limit for lodging an ancillary appeal is 14 days starting from the day the court has issued the decision. Only in particular cases mentioned in Administrative Procedure Law will the term be counted starting from the moment the addressee of the decision has received the decision, usually it is when the addressee has not previously been informed about the date for the review of the issue.

The higher instance court will verify this procedural decision of the lower instance court.

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

There is no specialized court or quasi-court dealing with environmental matters.

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

The same general procedural rules apply for administrative and judicial procedures in environmental matters, as in other types of administrative cases (see 1.3.2).

At the administrative level, there should be at least one appeal level to a superior administrative authority as a mandatory pre-trial stage, except where there is no superior administrative authority or where the Cabinet of Ministers is the only superior authority to the given lower authority. Special laws may provide for more appeal levels. Taking into account that there are different administrative authorities issuing administrative decisions both in local and state level, it is not possible to give precise instructions as to which administrative authority is a superior administrative authority. It depends on the institutional structure of local and state administration. The administrative authority issuing the decision must state the appeal procedures in the same decision. The complaint must be submitted to the same, i.e., lower, administrative authority which will then itself forward the complaint to the respective, institutionally or functionally superior, administrative authority.

After the final administrative decision is issued, it can be appealed to the administrative court.

The court system provides for three possible levels of court proceedings: the Administrative district court and, consequently, the Administrative regional court will decide the matter on its merits and issue a judgment on the merits, while the Supreme Court (the Senate), as a cassation instance court, will decide on questions of law only. An exemption exists in relation to disputes regarding information requests: the case will be reviewed on two levels only, the Administrative district court and the Supreme Court.

The general time limit for lodging the appeal before the Administrative district court is one month according to Sect.188 of Administrative Procedure Law. If the administrative authority has not explained the procedure of appeal (including time limits) in the written administrative decision, the deadline for appeal extends to one year.

A court fee must be paid in the amount of 30 EUR. The applicant must formulate his/her pleading (what he or she wants to be done, i.e., to annul the decision, to make the authority to do something), state main facts of the case, identify the contested decision/measure/omission and state the reasons for the contesting the decision/measure/omission. The applicant must attach all the relevant evidence and/or point to particular evidence that he/she wants the court to obtain from other sources.

An appeal on the merits must be lodged before the Administrative regional court within one month after a full judgment of the Administrative district court has been issued. The court fee in the amount of 60 EUR applies to the appeal to the Administrative regional court. The applicant must clearly state the scope of the appeal, and it must not go beyond the initial scope of the appeal to the Administrative district court. Also, the merits of the appeal must be stated. If the appellant wants to attach new evidence or to ask the appellate court to gather new evidence, he/she must explain why such evidence was not submitted to the first instance court.

After the case is reviewed at the appellate instance court and the judgment of the Administrative regional court is issued, a cassation complaint to the Supreme Court is allowed regarding the points of law only. A cassation complaint must be lodged within one month after the issue of the judgment of the Administrative regional court, and a 70 EUR deposit must be paid. The Supreme Court, at first, will verify the content of the cassation complaint and decide whether to accept the complaint for the review on its merits. Cassation complaints lacking legal argumentation on the points of law will not be accepted to the cassation procedure. If such is the case, The Supreme Court will issue reasoned decision on the rejection of the complaint.

If the cassation complaint is accepted to the cassation procedure, the Supreme Court will not examine evidence. The judgment will include the arguments only regarding points of law, i.e., whether the appellate court has applied the law correctly. If the cassation complaint has been accepted to be reviewed on its merits and, afterwards, is successful and the case has been returned to the Administrative regional court for a new review, the complainant will recover the deposit.

Some more important procedural decisions (clearly mentioned in the Administrative Procedure Law) of the court may be appealed with ancillary appeals (for example, the decision not to accept the application to the court, or the decision on injunctive relief). Procedural decisions are reviewed on one appeal level only. If the procedural decision is subject to an appeal, an ancillary complaint must be lodged before a higher instance court within 14 days starting from the day the court issued the decision (Sect.316 of Administrative Procedure Law). Only in particular cases mentioned in Administrative Procedure Law will the term be counted starting from the moment the addressee of the decision received the decision, usually it is when the addressee has not been previously informed about the date for the review of the issue.

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

The law On Pollution, Sect.50, provides for a possibility to contest conditions of an A or B category permit for polluting activities at any time while the relevant permit is in effect. An appeal is allowed if the respective polluting activity could have a substantial negative impact on human health or the environment, or the environmental quality objectives specified in the law.

If the administrative court (any level of it) deciding the case acknowledges that a legal norm does not conform to the Constitution (Satversme) or international law, it has a competence to suspend court proceedings and to send an application to the Constitutional Court to annul the legal norm (Sect.104 of Administrative Procedure Law). Parties to the case may argue on the need to apply to the Constitutional Court. After the decision of the Constitutional Court, the administrative court proceedings will be renewed and the administrative court will base its decision or judgment upon the view of the Constitutional Court.

The administrative court (any level of it) may refer a question of EU law to the Court of Justice of the European Union (CJEU) for a preliminary ruling if it needs the interpretation or a decision on the validity of EU law to decide the case before it. The function of the preliminary reference procedure is to ensure uniform interpretation and validity of EU law across all the Member States. The administrative court will suspend the administrative court proceedings and send an application to the CJEU. Parties to the case may argue before the administrative court on the need for such a preliminary reference and give their views on how to draft the question.

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?
There are no specific rules for mediation in administrative procedure. The possibility to come to a settlement is left to the free will of the parties to the case. A person and an administrative authority can enter into an administrative agreement both during administrative procedure at the authority or during the court proceedings. The court or the judge does not in any way formally interfere with the conclusion of such an agreement and does not approve it by a court decision. The only way the court may influence the parties is to explain the possibility of entering an agreement and to make proposals for the conditions of the agreement. If the parties have started negotiations, the court may adjourn the hearing or postpone taking the final decision in the case.

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

Apart from the administrative and judicial review of decisions or omissions of administrative institutions, there are other means of remedies available in environmental matters.

The protection of human rights, including the right to live in a benevolent environment, falls under the competence of the Ombudsman Law (Tiesībsargs).

According to the Ombudsman Law the Ombudsman may:
- examine complaints and proposals of private individuals, investigate the circumstances;
- request that institutions clarify the necessary circumstances of the matter and inform the Ombudsman thereof;
- upon or after the examination, provide the institution with recommendations and opinions regarding the lawfulness and effectiveness of their activities, as well as the compliance with the principle of good administration;
- within the framework of law, resolve disputes between private individuals and institutions, as well as disputes in respect of human rights between private individuals;
- facilitate conciliation between the parties to the dispute;
- in resolving disputes, provide opinions and recommendations to private individuals regarding the prevention of human rights violations;
- provide the Parliament, the Cabinet, local governments or other institutions with recommendations on the issuance of or amendments to the legislation;
- provide persons with consultations regarding human rights issues;
- conduct research and analyse the situation in the field of human rights, as well as provide opinions regarding the topical human rights issues.

The prosecutor’s office is vested with a supervisory power, i.e., a prosecutor has a duty to take measures required to protect the rights and lawful interests of persons and the State. This may include environmental protection interests, too. A prosecutor may initiate a criminal investigation, as well as to take other actions. According to the Law on Prosecutor’s Office, the prosecutor may:
- issue a warning to the persons if their actions show the possibility of a violation of law;
- issue a protest to the Cabinet, ministries and other administrative institutions, local government institutions, inspections and state services, undertakings, institutions, organisations and officials, if their decisions do not comply with law; the particular institution or official must inform the prosecutor of the result of the protest within a 10-day period. The prosecutor may apply to the court if his protest is denied without basis or no reply to it is provided;
- submit a written submission to the relevant undertaking, authority, organisation, official, or person, if it is necessary to discontinue an illegal activity, rectify the consequences of such activity or to prevent a violation; if the requirements expressed in a submission are not complied with or no reply to it is provided, the prosecutor is entitled to submit to a court or any other competent institution an application requiring respective liability measures.

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)?

The so-called actio popularis (a right of access to justice in public interests) exists in environmental matters. This means that persons have access to administrative authorities and court not only to protect their own individual interests, but also to protect general interests of environmental protection. According to the Environmental Protection Law and the case-law of the Supreme Court, those rights are recognised for both natural and legal persons, and even interest groups (unregistered associations of persons). Legal persons may include any kind of non-governmental organization, commercial entities and even political parties. There are no specific conditions for non-governmental organizations to have a right to go to the administrative court.

The Supreme Court has established margins on the notion of “environmental interests”, thus limiting the possibilities to sue aimed at eliminating dishonest and trivial applications. Accordingly, the Supreme Court has stated that a reference to the necessity of the protection of the environment and to the rights of the public in environmental law need not be formal. Sect.9(2) and Sect.9(3) of Environmental Protection Law should be interpreted as precluding the right to appeal to the court if it is established that the reference to the alleged denial of the participation in decision-making or to the infringements of environmental law only serves as an instrument to achieve other goals not related to environmental protection. [26]

The Supreme Court confirmed the limitation of admissibility of a case to avoid accepting applications based on an actio popularis where concerns about a threat to the environment are insignificant and formal, and arguments in the application do not indicate any considerable threat to the environment. Otherwise, according to the Supreme Court, the possibilities of initiating a case would be open to “trivial” cases where there are no serious concerns on the threat to the environment. [27] Therefore, in deciding whether the application is admissible, the court has to assess “conditions that the applicant indicates to substantiate the infringement of the public interests in environmental protection.” [28]

Consequently, there are two limitations established by the Supreme Court with respect to admissibility of the case and thus, affecting the decision on acceptable case from a private person claiming a breach of environmental law. 1) limitation based on the theory of “trivial case;” [29] 2) limitation based on the “honesty test.” [30]

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

The same broad interpretation of legal standing for access to administrative and judicial appeal is recognized in all branches of environmental law.

According to the Environmental Protection Law stipulates the procedures for permitting and controlling polluting activities and the allocation of greenhouse gas emission permits. Sect.50 of this law contains detailed rules on contesting administrative decisions and appealing them to the administrative court. Among other decisions and omissions, a person may contest decisions concerning research on or remediation of a polluted or potentially polluted site if the health, security, or property of a certain natural or legal person may be affected. Also, a person may contest the issuing of a greenhouse gas emission permit, if a certain person may be affected by this decision (however, any person may appeal such decision if the right to an environmental information, right to participate in the decision-making and to have public’s opinions considered has been ignored or infringed). But there are no such conditions (to identify an individual infringement) to contest decisions in relation to Category A or B permits for the performance of polluting activities, to submit a complaint if the right of public participation and the right to environmental information have been ignored, or to contest the conditions of the permit during the entire period the permit is in effect.

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.)

See above 1.4.1. regarding actio popularis.
There are no specific rules for foreign non-governmental organizations or individuals, they enjoy the same access to the court in environmental interests if the contested decision or omission falls within the jurisdiction of Latvia. According to Art.91 of the Constitution and Sect.4 of Law on Judicial Power, all persons are equal before the law and the court. Cases are adjudicated irrespective of, among other things, the origin, nationality, language or place of residence of a person.

4) What are the rules for translation and interpretation if foreign parties are involved?
The language of the courts is Latvian. Participants lacking fluency in the official language can participate in proceedings with the aid of an interpreter. The court provides an interpreter, paid by the government, for natural persons or their representatives in order to get acquainted with documents of the case, and for the participation in the hearings. The court, at its own discretion, may also provide an interpreter for a legal person.

1.6. Legal professions and possible actors, participants to 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 an expert on its own motion?
When a person submits his/her appeal on a particular administrative decision or omission to the court, all the evidence available to the applicants and justifying the applicant’s objections should be attached to the written appeal. The administrative institution (the defendant) will, in turn, attach to its explanations all the evidence necessary to justify the institution’s decision. Participants to the procedure may ask the court to gather other evidence, including oral testimonies and expert opinions. The court is free to request evidence on its own motion since the court is bound by the principle of objective investigation (inquisitorial principle) and it is a duty of the court to evaluate the legality of the contested administrative decision. Participants to the procedure may also introduce new evidence from the court proceedings at the first instance court or even at the appellate court. The cassation instance court (the Supreme Court) does not accept new evidence since its task is to examine points of law only.

The administrative court may accept and evaluate all kind of evidence: testimonies of witnesses, documentary evidence (including written documents, audio, video and digital material), material evidence, expert opinions (usually produced during the court proceedings by experts selected by the court). As a specific means of acquiring information, the court may listen to the opinion of amicus curiae (“the friend of the court”): any association considered as representing the interests in a particular field and able to provide a competent opinion may ask the court to allow expressing its view on the factual or legal circumstances.

The court may refuse to accept evidence not relevant to the case. Assessing the accepted and lawful evidence, the court will make its conclusions in accordance with its own convictions which must be based comprehensively, completely and objectively on verified evidence, and in accordance with judicial consciousness based on laws of logic, findings of science and principles of justice.

2) Can one introduce new evidence?
Participants to the procedure may also introduce new evidence during the court proceedings at the first instance court or even at the appellate court. The cassation instance court (the Supreme Court) does not accept new evidence since its task is to examine points of law only.

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts.
If the participants to the court procedure have reasonable doubts about the facts on which the disputed administrative decision is based, they may ask the court to order an expert opinion, or the court may appoint an expert witness on its own motion. If the court is convinced of the necessity of the expert report, it will select one or more experts, taking into account the views of the participants to the procedure. The participants have a right to propose questions which, in their opinion, require the opinion of an expert, but questions will be finally determined by the court.

According to the Law on Forensic Experts, state forensic experts and private forensic experts are entitled to perform forensic expert examinations. Only in special circumstances may other persons having necessary knowledge perform expert examinations. The list of forensic experts may be found in the public Register of Forensic Experts.

Parties to the case may submit expert opinions to the court acquired on their own initiative. However, such expert opinions do not qualify as expert opinions in the meaning of the Administrative Procedure Law. The court may evaluate their credibility in the same way as a credibility of any other written evidence. According to the Law on the Conservation of Species and Biotopes, there exists a register of experts providing opinions on protected species and biotopes. An administrative authority, an individual person or a court may seek for opinions of experts in environmental administrative cases. More information and the register of experts: the Register of Forensic Experts.

3.1) Is the expert opinion binding on judges, is there a level of discretion?
The court will evaluate expert opinions in the same way as other evidence: the court is not bound by the opinion of the expert, but will make its own final conclusions after the evaluating the credibility of the opinion. In the judgment, the court is obliged to set out reasons why preference has been given to certain evidence in comparison with other, and why certain facts have been recognised as proven while other facts as not proven.

3.2) Rules for experts being called upon by the court
A person selected as an expert is obliged to attend the court when he or she is summoned. An expert has the right to become acquainted with the materials of the case file, to put questions to participants in the administrative proceeding and to witnesses, and to request the court to require additional materials. An expert must give an objective opinion in his or her own name and is personally liable for the opinion.
If the material provided for the expert’s investigation is not sufficient or if the questions asked are beyond the scope of expert’s knowledge, the expert must inform the court.
An expert may be held criminally liable for refusal to perform his or her duties without justified reason or for knowingly giving a false opinion.

The law provides for the possibility of withdrawal or removal of an expert if there is a reason to believe that he or she is biased.
An expert opinion has to be reasoned and substantiated. If the opinions of the experts conflict, each expert writes a separate opinion.

3.3) Rules for experts called upon by the parties
There is no possibility for parties to call their own experts to the court (see above). If the participants have obtained and submitted expert-opinions on their own initiative, the court may evaluate such opinions as any other written evidence.

3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?
No procedural fees are to be paid at the administrative court.
The State budget will cover the remuneration paid to experts assigned by the court’s decision. The parties to the proceedings do not have to pay any fees or cover any expenses. However, in both administrative and court procedures, the person has to cover payments to experts if that person has involved any on his/her own initiative.

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

As a rule, any person can go to the administrative institution or to the court personally, without a mandatory legal counsel. Taking into account that the administrative court is bound to the principle of objective investigation (inquisitorial principle), the court may also on its own motion clarify any possible ambiguities in the written appeal, or ask participants and other persons to submit the necessary evidence. This is a great advantage for persons defending their rights or environmental interests at the administrative court. Nevertheless, a person may involve another person, lawyer or any other person as his/her representative and/or legal counsel at the administrative or judicial procedures. There are no rules on mandatory legal counsel for judicial proceedings at the administrative court, not even at the Supreme Court.

Expenses related to legal aid or expert examinations are not regulated and will be dependent mainly on the market situation, the complexity of the case or the factual circumstances examined by experts.

The person in need of legal counsel may contact members of the Advocacy (sworn advocates) as well as other lawyers. They can provide legal consultations, prepare legal documents and perform other legal activities.

The list of sworn advocates
There is no list of specialized lawyers in the environmental field.

1.1 Existence or not of pro bono assistance
It is sometimes possible, on an individual basis, to receive pro bono legal assistance in administrative matters. For example, if the outcome of the case or the interpretation of the legal provisions could be significant, the lawyers are sometimes ready to provide legal advice free of charge. Law firms and lawyers can be contacted individually.

The legal clinic functioning at the University of Latvia is ready to provide legal advice to persons with a low income. Legal advice provided by law students usually covers such branches as employment, rent of dwelling premises, or maintenance allowance for children.

The Latvian branch of the Transparency International Delna provides legal aid for citizens in building and land use matters. Delna are prepared to handle the case in situations when the case is of public importance, i.e., when a substantial damage is caused or may be caused to environment, or when the case could serve as a precedent and contribute to the improvement of law or legal practice.

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.)?
See above 1.1.

1.3 Who should be addressed by the applicant for pro bono assistance?
See above 1.1.

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

Register of Forensic experts (forensic expertise ordered by the court)

The list of sworn advocates
According to the Law on the Conservation of Species and Biotopes, there is a register of experts providing opinions on protected species and biotopes. An administrative authority, an individual person or a court may seek the opinions of experts in environmental administrative cases. More information and the register of experts: the Nature Protection Agency website.

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

Baltic Environmental Forum (Baltijas Vides forums)
The Environmental Protection Club (Vides aizsardzības klubs) Participating in court proceedings.
Latvian Green Movement (Latvijas Zaļā kustība)
Society „Green Liberty“ (Biedrība „Zaļā brīvība“)
Society for protection of Jurmala (Jūrmalas aizsardzības biedrība) promotes civic involvement in decision-making in Jūrmala city, including environmental matters. This often involves spatial planning, land-use and construction in Jūrmala, impact on the Baltic Sea Coastal Protection Zone. Participating in court proceedings.
The Ornithology Society The main organization dealing with the birds’ protection. It has been both initiating administrative justice procedures and participating in court proceedings.
Society of Botanists
Society „Baltic Coasts“ (Biedrība „Baltijas krasti“)

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

WWF Latvian Branch
Transparency International Latvian Branch Delna Participating in court proceedings.
Foundation for Environmental Education Latvian Branch

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).
If the person is not satisfied with the environmental administrative decision of the competent administrative authority, he/she can appeal it to a superior administrative authority within one month after the decision comes into effect. The procedures and time limits for appeal must be stated in the administrative decision, otherwise the addressee of the decision enjoys longer terms (one year) for the appeal. An administrative decision comes into effect at the moment the addressee is notified of it, except when the decision or the law regulates otherwise. The Law on Notification contains detailed rules regarding notifying the addressee in different manners (mail, electronic mail etc.) and rules about when the document is deemed to have been notified.

Persons who are not the direct addressees of the administrative decision but whose rights or legal interests are affected by that decision may dispute the decision within a one-month period from the day when this person become informed of it, but no later than within a one-year period from the day the decision comes into effect. The same rule applies to persons contesting a decision in environmental interests (environmental claims) even if they are not individually affected by the respective decision.

Important special rules exist regarding construction permits. According to Sect.15(4) of the Construction Law, a decision on a construction permit must enter into effect from the moment it has been notified to the addressee, and at this moment the time limit for contesting the construction permit begins also for other persons (third parties), regardless of the moment those third parties acknowledged the existence of the permit. Only if the mandatory rules on informative measures have not been observed properly may the third parties rely on the time limits counting from the moment those persons become informed of the fact that the permit has been issued. The informative measures include making public the decision on a Construction Information System,
and there are also rules on informative measures regarding public discussions and submissions to change the initially proposed building design. In cases regulated by the Cabinet regulations, it is a responsibility of the initiator of the construction to place a construction board on the respective plot of land; a developer may provide an information to owners of immovable properties adjacent to the respective plot of land.

Some normative acts concerning environment issues prescribe specific rules for appealing particular environmental decisions. For example, persons can contest the conditions of the permit for polluting activities during the entire period of its validity, which significantly differs from the general rule to contest any decision within one month from the day of its coming into effect (Sect.50(3) of the law On Pollution). The administrative appeal should be submitted to the authority that issued (or had an obligation to issue) the decision concerning the original complaint. The appeal will then be forwarded for examination to a superior administrative institution.

A person can submit his/her complaint to the administrative authority both in written and in oral form. Oral complaints will be immediately written down by the civil servant of the institution. Written complaints and appeals, signed electronically, can also be sent by e-mail.  

2) Time limit to deliver decision by an administrative organ

Administrative authorities, including superior authorities when reviewing a complaint on the decisions of lower authorities, must deliver their decisions within one month from the day the person has lodged his/her application or complaint. In urgent cases, the person may request the authority to issue the decision immediately.

Due to objective reasons, the authority may extend the time limit for a period not exceeding four months. If there are objective difficulties in clarifying factual circumstances, the time limits may be extended for up to one year, with prior permission from a superior administrative authority. The decision of the authority to extend the time limit may be appealed to a superior administrative authority or, subsequently, to the court.

If there is a delay in delivering the decision of the superior authority, there are no immediate sanctions possible against the authority. However, the person is then allowed to lodge his/her appeal in the main matter immediately to the administrative court without waiting for a written response from the administrative authority.

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

Generally, it is not possible to challenge the first level administrative decision directly before court. As a general rule, an administrative act, actual measures or omission are subject to appeal to a superior administrative authority, which is a mandatory pre-trial stage. Exemptions exist only where there is no superior authority or the sole superior authority is the Cabinet of Ministers, then a person has a choice to appeal the decision to the same administrative authority or to submit the application directly to the administrative court.

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

There is no deadline set for the court to hear a case and to decide on the merits. The judge (the court) examines cases in the order of the waiting list, but the duration of the proceedings depends on the complexity of the case and the procedural choices made by parties. The Law on Judicial Power allows a Chief judge of the court to ask a judge for an explanation for the work organisation, to issue orders related to work organisation and to take appropriate measures to ensure the examination of the case within a reasonable time period. For example, the law allows the Chief judge to assign the judge to determine a time period for performing necessary actions or to re-allocate the cases according to the allocation plan of the court-cases.

After the case is heard (or examined in written procedure) on its merits at the district court of the regional court, the court must deliver its written judgment within 21 days. This term may be extended to two additional months. At the Supreme Court, the court must deliver its written judgment within one month after the oral or written review of the case, and this term may be extended to two additional months.

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

The general time limit for appealing the administrative decision of a superior administrative authority before the administrative court is one month. If the superior administrative authority has failed to clarify the procedure for appealing its decision, the time limit extends to one year. Also, if the superior administrative authority has not issued its decision at all after the person has filed the complaint regarding a decision or an omission of a lower administrative authority, the person may file his/her appeal to the administrative court within one year after addressing the superior administrative authority.

The time limit for filing appeals against court judgments is one month. The general time limit for filing ancillary complaints against procedural decisions of the court (for example, decision not to accept the application to the court due to the lack of jurisdiction, or decision on injunctive relief) is 14 days.

During the stage of the preparation of the case for review, the judge sets time limits for submitting arguments, evidence and procedural pleas and petitions.

1.7.2. Interim and precautionary measures, enforcement of judgments

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

Submitting a complaint against an administrative decision, generally, suspends its effect from the moment the complaint is received at the administrative authority. Sectoral law may provide for exemptions, for example, the law On Pollution, Sect.50(4) states that contesting amendments to an existing permit does not suspend the effect of that existing permit. For more detailed information on exemptions see 1.7.2.4.

The suspensive effect lasts until the day the time limit for appealing the decision of a superior administrative authority ends and no appeal has been lodged before the administrative court.

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

There is no possibility to ask for injunctive relief during the administrative appeal, the only provisional protection is the suspensive effect of administrative decisions.

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?

See above 1.7.2.2.

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

The Administrative Procedure Law, Sect.80 and Sect.360, provides for exemptions when there is no suspensive effect during administrative appeal procedure:

when special law requires immediate enforcement (execution) of the decision (for example, appeal against a construction permit for structures of national interest does not have suspensive effect);

when the administrative authority itself has specifically provided for immediate enforcement of the given decision;

when the administrative decision is issued orally, or disregarding other formal requirements, in the event of an emergency, or in accordance with special legal norms, or in some trivial matters;

if administrative decisions of the police, the border guards or the fire service are issued to prevent immediately threats to national security, public order, the environment, the life and health, and property of individuals, those decisions are to be enforced immediately and there is no suspensive effect;

if the contested administrative decision is favourable to the addressee, and this addressee asks for more favourable decision;

if the contested administrative decision is of general nature, i.e., it concerns many persons not mentioned as addressees but who it is possible to identify taking into account their relation to the situation (for example, if the decision is addressed to the users of some particular facility, or some other specific group of persons not directly identified in the decision).
5) Is the administrative decision suspended once challenged before court at the judicial phase?

When an administrative decision is appealed to the administrative court, the action submitted to the court generally has a suspensive effect, i.e., the operation of the administrative act is suspended from the day the application is submitted. For example, if a person submits an action against a building permit, the construction of the disputed building is not allowed.

However, Administrative Procedure Law, Sect.185(4), like during the administrative appeal, sets out several exemptions when the contested administrative decision may be executed notwithstanding the appeal to the court. The main exemptions are as follows:

- the administrative act imposes a duty to pay tax, duties or another payment to the State or a local government budget, except penalties;
- it is provided for by other laws, for example, if a person has submitted an appeal against the conditions of the permit for polluting activities after the general deadline of one month for appealing administrative decisions, the appeal will not suspend the operation of the permit;
- the institution, setting out grounds for urgency of execution in respect of the specific matter, has specifically provided in the administrative act that it must be executed immediately; or
- an administrative act of the police, border guard, national guard, fire-fighting service and other officials authorised by law is issued to prevent direct threats to national security, public order, or the life, health or property of individuals;
- the contested administrative decision establishes, amends or terminates an institution's legal relations with a civil servant;
- the contested administrative decision is favourable to the addressee, and this addressee asks for a more favourable decision;
- the contested decision is of a general nature, for example, is addressed to users of some particular facility, or restricts the use of a municipal road;
- the contested administrative act annuls or suspends a licence or other special permit.

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?

The participants to the court procedure may ask the court for the provisional protection (injunctive relief):

- if the appeal has had a suspensive effect, the addressee of the contested decision may ask the court to resume the enforcement (the execution) of the decision, for example, to allow to begin the construction works or the operation of the power plant;
- if the appeal has not had a suspensive effect, the person submitting an action against the decision may ask the court to suspend the operation of the contested decision.

In either of the above-mentioned cases, the court will decide the provisional protection, considering both the lawfulness of the decision (in a rapid manner, without any prejudice to the final judgment) and possible damage to the interests involved.

If there is a reason to believe that the contested administrative decision or consequences of the non-issue of an administrative decision (omission) might cause significant harm or damage, the prevention or compensation of which would be considerably encumbered or would require incommensurate resources, and if examination of information at the disposal of the court reveals that the contested decision is _prima facie_ illegal, the court may, pursuant to the reasoned request of an applicant, take a decision on injunctive relief. As a means of injunctive relief, the court may issue:

- a court decision which, pending judgment of the court, substitutes the requested administrative decision or actual measures of the institution, a court decision which imposes a duty on the relevant institution to carry out a specific action within a specified time period or prohibits a specific action, a court decision which assigns the Land Register to register restrictions on the owner's right of disposal with real property.

The participants to the proceedings may request injunctive relief at any stage of the procedure, also in the appellate court instance and cassation court instance, when they consider the provisional protection urgently needed. No formal deadlines are applied. The exercising of the rights to request a provisional protection may not, in itself, cause any unfavourable consequences, including those falling under the private law. This means that the person will not be liable for financial loss caused to another person by the court's decision.

The participant to the proceedings requesting provisional protection (injunctive relief) must pay a deposit payment to the State budget in the amount of 15 EUR defined by law. A natural person may ask the court to relieve him/her from paying the deposit fully or partially. The deposit payment is returned if the request for provisional protection is successful.

The court's decision regarding injunctive relief can be appealed. Also, the participant to the proceedings may request to replace or to revoke the imposed injunctive relief.

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.

Administrative procedures in administrative institutions are free of charge.

If the person submits an appeal to the administrative court, he/she should take account of state fees. Both in administrative and court procedures the person to have to cover his/her own expenses:

- remuneration to a representative or legal advisor (if the person has involved any); if the administrative institution (or the court subsequently) finds that the person (addressee of the decision, natural person only) is in a difficult financial situation and that the particular administrative matter is complicated, it may decide that remuneration to a representative of this person, within regulated frameworks, will be paid from the State budget.
- payment to private experts (if the person has involved any on his/her own initiative); the State budget will cover the remuneration paid only to experts assigned by the court's decision; the participant to the proceedings also bears his/her own expenses related to obtaining or producing any of other evidence (copying, requesting from institutions etc.) if obtained by the participant himself/herself.
- State fees. When submitting an appeal to the first instance administrative court, the applicant should pay a state fee in the amount of 30 EUR. The state fee for the appeal of the first court instance's judgment is 60 EUR. A deposit payment for submitting a cassation complaint to the Supreme Court is 70 EUR. The deposit payment for requesting injunctive relief or to ancillary complaints on procedural decisions is 15 EUR. The deposit payment for matters de novo in connection with newly-discovered facts is 15 EUR.

The amount of the state fee is the same for all categories of administrative cases. An exemption exists for asylum seeker cases which are free of charge.

The court, taking into account the financial situation of a natural person, may decrease the amount of the fee or exempt the person from the obligation to pay the fee.

Administrative Procedure Law does not prescribe any other fees or deposit payments.

Expenses related to legal aid or expert examinations are not regulated and will be dependent mainly on the market situation, the complexity of the case or the factual circumstances examined by experts.

In the judgment, the court will order a reimbursement of the state fee: if the appeal against the administrative decision or omission has been fully or partially successful, the court will order the defendant (the State or municipality thereof) to reimburse the state fee to the claimant; if the appeal is not successful, the claimant will not recover the state fee paid. The same principle applies to deposit payments: the claimant will get back the deposit payment if his/her cassation complaint (or request for injunctive relief, ancillary complaint or de novo review) is successful.
The court’s decision on the reimbursement of expenses does not cover other kinds of expenses. Thus, any other expenses, except state fees and deposit payments, incurred to the participants, are not recovered. But, if the appeal against the administrative decision is successful, the claimant may subsequently claim to recover all damages caused by the unlawful decision from the defendant, and this may include previous payments to legal advisors or experts.

2) Cost of injunctive relief/interim measure, is a deposit necessary?
Only a deposit payment of 15 EUR applies and must be paid to the State budget. It is reimbursed if the request for interim measures/injunctive relief is successful and the court has decided in favour or the participant requesting the measures.

There is no system applied for financial deposits as guarantees for other participants to the proceedings for any losses incurred due to the provisional measures.

3) Is there legal aid available for natural persons?
A natural person contesting an administrative decision to a superior administrative authority may ask the administrative authority to pay the remuneration to his/her representative. If the authority finds that the person (addressee of the decision, natural person only) is in a difficult financial situation and that the particular administrative matter is complicated, it may decide that remuneration to a representative of this person, within regulated frameworks, should be paid from the budget of this administrative authority.

If a natural person lodges an appeal to the administrative court, he/she may ask:
for a decrease in the amount of the state fee or exemption from the obligation to pay the fee. The court will take into account this person’s financial situation; for state legal aid to be arranged. The court may decide to grant state legal aid to a natural person in difficult financial situation if the particular administrative matter is complicated. The practical arrangements (assignment of the particular lawyer, amounts and kinds of legal aid, remuneration) are administered by Court Administration.

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?
No state legal aid is available for legal persons.
It is sometimes possible, on an individual basis, to receive pro bono legal assistance in administrative matters. For example, if the outcome of the case or the interpretation of the legal provisions could be significant, the lawyers are sometimes ready to provide legal advice free of charge. Law firms and lawyers can be contacted individually (see also above 1.6.1.1.).

5) Are there other financial mechanisms available to provide financial assistance?
There is no financial mechanism provided by the state on regular or systemic basis but there has been support available on a project basis, for example, the Environmental Protection Fund [31] and the Society Integration Foundation. [32] In recent years, however, the former has not been available to address environmental cases through legal remedies.

6) Does the “loser pays” principle apply? How is it applied by courts, are there exceptions?
The “loser pays” principle only partially applies. In the judgment, the court will order a reimbursement of the state fee in successful applications of the applicant: if the appeal against the administrative decision or omission is fully or partially successful, the court will order the defendant (the State or municipality thereof) to reimburse state fee to the claimant; if the appeal is not successful, the claimant will not need to reimburse the state fee paid. The same principle applies to deposit payments: the claimant will get back the deposit payment if his/her cassation complaint (or request for injunctive relief, ancillary complaint or de novo review) is successful.
The court’s decision on the reimbursement of expenses does not cover other kinds of expenses. Thus, any other expenses, except state fees and deposit payments, incurred to the participants, are not recovered. But, if the appeal against the administrative decision is successful, the claimant may subsequently claim to recover all damages caused by the unlawful decision from the defendant, and this may include previous payments to legal advisor or experts.

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?
The court may decrease the amount of the state fee or exempt a natural person from the obligation to pay the fee. The court will take into account this person’s financial situation. The participant to the proceedings must bear his/her own other procedural expenses (for obtaining evidence, obtaining private expert opinions etc. according to his/her own willingness to submit such evidence).

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?
The [Internet site of the State Environmental Bureau](#) provides general information about EIA procedure, as well as detailed information on all on-going and past EIA procedures. However, there is no information about access to justice rules.
The [Internet portal to the judiciary](#) provides information on administrative and civil litigation and criminal procedure.

A free online database of national legislation is available [here](#). However, there is no specific information disseminated through official webpages of the authorities that reflects the rules on environmental access to justice.

2) During different environmental procedures how is this information provided? From whom should the applicant request information?
There are no particular rules on providing information about access to justice in environmental procedures. Every written administrative decisions and court decisions or judgments must include a precise indication of a procedure of appeal to a superior administrative authority or to the court.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?
Regarding IPPC/IED procedure, Cabinet Regulation No. 1082 (30.11.2010), Sect.71.6 provides for the obligation of the operator to include information on contesting the permit for polluting activities in the notice to the public.

4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment?
Every written administrative decision and court decision or judgment must include a precise indication of a procedure of appeal to a superior administrative authority or to the court. The deadline for appealing an administrative decision extends from one month to one year if this rule is not observed.

5) Is translation, interpretation provided to foreign participants? What are the rules applicable?
The language of administrative authorities and courts is Latvian.
Administrative authorities accept documents in Latvian, with the exemption of documents received from foreign countries. In all other occasions, documents in foreign languages must be translated into Latvian to submit them to administrative authorities. Persons may address authorities in foreign language in the event of an emergency (police, medical emergency etc.).

Participants to court proceedings lacking fluency in the official language can participate in proceedings with the aid of an interpreter. The court provides an interpreter, paid by the government, for natural persons or their representatives in order to get acquainted with documents of the case and for the participation in the hearings. The court, at its own discretion, may provide an interpreter also for a legal person.
Procedures of environmental impact assessment (EIA) are regulated by the Law on Environmental Impact Assessment and by Cabinet regulations issued in accordance with this law.

An EIA screening decision declaring that an EIA is necessary can be contested to a superior administrative authority and, subsequently, appealed to the court by the person planning to perform the intended activity. The general time limits for administrative and judicial appeal apply (one month).

An EIA screening decision declaring than an EIA is unnecessary cannot be contested to a superior administrative authority or appealed immediately to the court, but may be examined within the reviewing of the final decision authorizing the intended project (for example, the construction permit). [33] In this case, any person alleging an infringement of the rights to environmental information or to the rights to participate in environmental decision-making, or alleging an infringement of the environmental law, may contest and appeal the decision. This means that actio popularis (the right to access the court for the protection of general environmental interests) applies. For example, if a person argues that because of the lack of the EIA the public was unjustifiably precluded from participating, or substantial environmental norms are allegedly broken, this person may contest the construction permit for a municipality road.

During the environmental impact assessment (EIA) procedure, any person may submit a complaint to a competent administrative authority (Environmental State Bureau) against the person planning to undertake the intended activity if this person ignores or infringes the right of the public to environmental information or public participation. If the decision of the competent authority does not satisfy the person, he/she may submit a complaint to the Ministry of Environmental Protection and Regional Development.

EIA scoping decisions and the competent authority's reasoned opinion regarding an EIA report cannot be contested to a superior administrative authority or appealed to the court directly and immediately. The final authorization (accepts) of the development may be appealed and, within this framework, a court is free to examine objections against the EIA procedure, report and competent authority's statement on the EIA report.

The public can challenge final decisions authorizing the intended activity. As a final authorization is taken by a municipality (in some cases by the Government), and there is no superior authority, it can be appealed to the administrative court. The time limit for judicial appeal is one month from the notification. If a person is not an addressee of the decision and has not been involved in administrative procedure, the time limit for this person is either one month from the notification of the addressee (in the case of construction permits) or one month from the moment a person obtained the information about the authorization but no later than one year after the act came into force. The procedure and time limits must be clarified in the decision.

A person can challenge the final authorization of the intended activity, and complain also about all procedural and material infringements, including EIA screening and scoping decisions, and final EIA decision. Actio popularis applies, this means any person (natural or legal) may lodge a complaint. For procedure, see 1.8.1.3.

The court will revise both procedural and substantive legality of EIA decisions:

- whether the essential procedural rules are followed in relation to persons affected and persons having an interest in environmental issues, with special emphasis on the access to the environmental information and rights to participate in the decision-making, including the possibility to submit information, to express views and proposals, and sufficiently serious attitude of the institution towards those views and proposals;
- whether EIA has been conducted in a way which provides a sufficient possibility to gather all the relevant information on the possible impact of the intended activity to the environment;
- whether the final EIA decision is based on correct findings and whether it lays down sufficient and clear written reasons. Expert opinions may be used as an evidence to clarify scientific and technical issues.

In administrative cases, the court has full jurisdiction over factual and legal issues. This means that the court may review any question of facts or law. The court cannot decide and declare its own statements about the impact of the intended activity instead of the administrative institution; however, the court can find factual errors and consideration errors which have led, or may have led, to an erroneous final decision. Such findings may lead to an annulment of the final authorization of the intended activity.

In environmental cases initiated by an applicant based on an actio popularis approach (in order to defend public interests in environmental protection) the scope of a court review has been limited by the Supreme Court in its judgment delivered in 2018. The Court stated that for assessing a complaint that has been submitted to protect the environment, the legality of a decision (construction permit) must be assessed focusing only on the existence of a threat to the environment or a possible breach of the requirements of environmental legislation that might be directly linked to the development under the dispute, rather than any facts or illegality a claimant might refer to. [34] Accordingly, this statement of the Supreme Court indicates that the scope of review for appeals based on environmental exception clause might be restricted to the infringement of legal provisions that are related to the environment. This applies to both procedural and substantive issues.

The administrative procedure is conducted in accordance with the inquisitorial principle or the principle of investigation, i.e., the court may gather evidence and make relevant legal considerations on its own motion. But it is the responsibility of the applicant to identify the contested administrative decision and to state reasons for challenging this decision. The administrative court examines the case strictly within the boundaries set by the applicant. The court may not alter the claim or examine decisions not appealed in written form by the applicant on its own motion.

If an EIA has been carried out: the public can challenge the final decision authorizing the intended activity. See 1.8.1.3. for procedure. The procedure and time limits must be clarified in the decision.

If an EIA has not been required: a final administrative decision allowing the activity can be contested according to the general rules, taking into account which authority has given the permit and whether there is a superior administrative authority (see 1.3.4. for more detailed information).

When lodging an administrative complaint or a judicial appeal to the court, a person may contest any procedural or material infringements of law, including any omissions during EIA procedure and issuing of the final authorization.

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

A person must exhaust an administrative review procedure lodging his/her complaint to a superior administrative authority if one exists (pre-trial stage). The administrative appeal is mandatory before appealing to the court.

If the final authorization has been made by a local authority, i.e., the council of local government, there is usually no superior administrative authority and the appeal must be lodged directly before the Administrative district court. The same applies where the final authorization is given by the Cabinet of Ministers. In other cases, a superior administrative authority exists and a mandatory pre-trial appeal must be made to a superior administrative authority.
It is not a prerequisite for a court action in administrative court. [35]

9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
The principle of procedural fairness is recognised as a general principle of law and a prerequisite of fair trial. It is mentioned, inter alia, as one of the general principles applied in administrative authorities and administrative courts according to the Administrative Procedure Law. As explained in Art.14.1 of the Administrative Procedure Law, an administrative authority and the court issuing decisions are impartial and must give proper opportunities to every participant to proceedings to explain their opinion and to submit evidence.

10) How is the notion of "timely" implemented by the national legislation?
As in other administrative law sectors, every administrative authority must observe time limits set in the law for taking decisions, unless otherwise regulated in special norms.
The Law on Environmental Impact Assessment does not provide for different time limits for administrative review procedure if persons have contested a decision authorizing the intended activity. This means that a superior administrative authority must deliver a decision within one month from receiving the administrative appeal from the person. In urgent cases, the person may request the institution to issue the decision immediately. Due to objective reasons, the authority may extend the time limit for a period not exceeding four months. If there are objective difficulties in clarifying factual circumstances, the time limits may be extended for up to one year. The decision of the superior authority to extend the time limit may be appealed to the court.
If there is a delay in delivering the decision of the superior authority, there are no immediate sanctions possible against the authority. However, the person is then allowed to lodge his/her appeal in the main matter immediately to the administrative court without waiting for a written response from the administrative authority.
There are no time limits set for hearing the case at the court. Cases are administered according to the case load of the specific court. Environmental matters and, specifically, EIA matters are not an exceptional category and are reviewed in consecutive order. Injunctive relief is decided according to the urgency, but no later than within a month after a proper application has been received at the court.

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?
As a general rule, when an appeal is submitted to a superior administrative institution or to the administrative court, it has a suspensive effect on the appealed decision. I.e., it is forbidden to begin operation of the intended activity, to begin construction works, or to issue new decisions based on the contested one. The law On Environmental Impact Assessment does not provide any exemptions to this. A person who wants to begin the intended (now suspended) activity has a right to ask the court for a summary of the operational force of the decision. The court will decide the provisional protection, considering both the lawfulness of the decision (in a rapid manner, without any prejudice to the final judgment) and possible damage to the interests involved, including environmental. [36] The participants to the proceedings may request injunctive relief at any stage of the procedure, also in the appellate court instance and cassation court instance, if they consider that provisional protection is urgently needed. No formal deadlines are applied. The exercising of the rights to request provisional protection may not cause, in itself, any unfavourable consequences, including those falling under the private law. This means that the person will not be liable for financial loss caused to another person by the court’s decision.
The participant to the proceedings requesting provisional protection (injunctive relief) must pay a deposit payment to the State budget, in the amount of 15 EUR defined by law. A natural person may ask the court to relieve him/her from paying the deposit fully or partially. The deposit payment is returned if the request for provisional protection is successful.

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
Procedures for granting permits for pollutants activities, or for substantial changes in the conditions of those polluting activities, are regulated by the law On Pollution and Cabinet regulations issued in accordance with this law.
Procedures for granting permits for pollutants activities are regulated and conducted separately from the environmental impact assessment (EIA). If the EIA is necessary for the intended polluting activities, the operator must itself initiate the EIA procedure and submit the findings of the EIA to the administrative authority competent for issuing permits for polluting activities, the State Environmental Service. Requirements for informing and involving the public are integrated into both EIA procedure and decision-making on environmental permits.
The Law on Pollution regulates publication of information about intended polluting activities (initiated procedures), the involvement of the public in the decision-making, and publication of the information about granted permits. Information is publicly available on the Internet site of the State Environmental Service.

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?
The law On Pollution provides rules for contesting administrative decisions and appealing them to the administrative court. According to those rules, persons may contest decisions regarding Category A or B permits for polluting activities, or decisions to change conditions of the polluting activities; submit a complaint if the right to public participation and the right to environmental information have been ignored; in cases of possible substantially negative impact, contest the conditions of the permit during all the period while the permit is in effect. The final administrative decision can be appealed to the administrative court.
Actio popularis (a right of access to justice in public interests) exists in environmental matters, and this also includes sectoral regulation of permits for polluting activities, if not regulated otherwise in specific occasions. This means that persons have access to administrative authorities and the court not only to protect their own individual interests, but also to protect general interests of environmental protection. According to Environmental Protection Law and the case-law of the Supreme Court, those rights are recognised both to natural and legal persons, and even interest groups (unregistered associations of persons). Legal persons may include any kind of non-governmental organization, commercial entities and even political parties. There are no specific conditions for non-governmental organizations to have a right to go to the court.
There is no requirement to identify an individual infringement to contest the decisions in relation to Category A or B permits for polluting activities, to submit a complaint if the right to public participation and the right to environmental information have been ignored, or to contest the conditions of the permit during all the period while the permit is in effect. This means, the contesting can be based on public interests of environmental protection.

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)
There is no screening decision phase during the procedure for granting a permit for polluting activities since EIA is a separate procedure.

4) Rules on standing relating to scoping (conditions, timeframe, public concerned)
There is no scoping decision phase during the procedure for granting a permit for polluting activities since EIA is a separate procedure.

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?
The law On Pollution provides rules for contesting administrative decisions to a functionally superior administrative authority, the Environmental State Bureau, and appealing them to the administrative court.
According to those rules, during the permit procedure, persons may submit a complaint if the right to public participation and the right to environmental information have been ignored. This is an immediate measure to rectify errors in public participation or dissemination of information. Persons may contest final decisions regarding Category A or B permits for polluting activities, or decisions to change conditions of the polluting activities. In this case, a complaint to a functionally superior administrative authority, the Environmental State Bureau, must be submitted within a month from the notification.

A specific mechanism exists for persons to contest conditions of the permit even beyond the regular appeal measures against a permit. If the permit allows for polluting activities which might have substantially negative impact on human health or the environment, or the environmental quality objectives, persons may contest the conditions of the permit during all the period while the permit is in effect. If a person is not satisfied with the decision of the superior administrative authority, he/she may appeal the decision to the administrative court within a month from the notification.

Can the public challenge the final authorisation?
Yes, see above 1.8.2.5.

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 court will revise both the procedural and substantive legality of a permit granted for polluting activities:
whether the essential procedural rules are followed in relation to persons affected and persons having an interest in environmental issues, with special emphasis on the access to the environmental information and rights to participate in the decision-making, including the possibility to submit information, to express views and proposals, and sufficiently serious attitude of the administrative authority towards those views and proposals,
whether the permit procedure has been conducted in a way which provides a sufficient possibility to gather all the relevant information for assessment of the intended polluting activity and necessary conditions,
whether the final decision on granting the permit is based on correct findings and whether it lays down sufficient and clear written reasons. Expert opinions may be used as evidence to clarify scientific and technical issues.

In administrative cases, the court has full jurisdiction over factual and legal issues. This means that the court may review any question of facts or law. The court is free to verify the facts justifying the issuance of the permit, for example, the court may verify data on the planned industrial activity, characteristics of the facilities, and data on existing environmental conditions. The court cannot decide and declare its own statements about the impact of the intended activity instead of the administrative institution; however, the court can find factual errors and consider errors which have led, or may have led, to an erroneous final decision. Such findings may lead to an annulment of the final authorization of the intended activity.

In environmental cases initiated by an applicant based on an actio popularis approach (in order to defend public interests in environmental protection), the scope of a court review has been limited by the Supreme Court in its judgment delivered in 2018. The Court has stated that to assess a complaint that has been submitted to protect the environment, the legality of a decision (construction permit) must be assessed focusing only on the existence of a threat to the environment or a possible breach of the requirements of environmental legislation that might be directly linked to the development under the dispute, rather than any facts or illegality a claimant might refer to. Accordingly, this statement of the Supreme Court indicates that the scope of review for appeals based on environmental exception clause might be restricted to the infringement of legal provisions that are related to the environment. This applies to both procedural and substantive issues.

It is worth noting that the stage of the environmental permit is viewed as a separate procedure rather than an integral part of EIA and a final decision – acceptance of a development – within it. Thus, if one has missed or lost a lawsuit on the effects of a project assessed during the EIA, it will not be reconsidered during the dispute on environmental permit (which usually take place after an installation/plant/farm/other structure has been built). In accordance with the recent practice of the administrative court, the same would be true with respect to the stage of a construction permit, if there is a court decision on the competent authority’s decision to accept a development following the EIA procedure.

The administrative procedure is conducted in accordance with the inquisitorial principle or the principle of investigation, i.e., the court may gather evidence (including expert opinions) and make relevant legal considerations on its own motion. But it is the responsibility of the applicant to identify the contested administrative decision and to state reasons for challenging this decision. The administrative court examines the case strictly within the boundaries set by the applicant. The court may not alter the claim or examine decisions not appealed in written form by the applicant on its own motion.

At what stage are these challengeable?
As a general rule, the administrative court will review final decisions of any particular procedure. This means that all the alleged procedural or substantial violations of law will be reviewed within the proceedings regarding this final decision. Since EIA is a separate procedure and is followed by separate final authorization, the review of the final decision of IPPC/EID (permit) does not involve the review of EIA and its respective decision. However, as is explained above in 1.8.2.5., the sectoral regulation on permit procedures for polluting activities provides also for the possibility to contest and, subsequently, to appeal to the court conditions of the permit during the entire period while the permit is in effect. Such recourse to a superior administrative authority and the court is allowed if the permit allows for polluting activities which might have a substantially negative impact on human health or the environment, or environmental quality objectives etc.

Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
There is a mandatory pre-trial appeal to the Environmental State Bureau.

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?
It is not a prerequisite for a court action in the administrative court.

11) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
The principle of procedural fairness is recognised as a general principle of law and a prerequisite of a fair trial. It is mentioned, inter alia, as one of the general principles applied in administrative authorities and administrative courts according to the Administrative Procedure Law. As explained in Art.14.1 of the Administrative Procedure Law, an administrative authority and the court issuing decisions are impartial and give proper opportunities to every participant to a proceedings to explain their opinion and to submit evidence.

12) How is the notion of "timely" implemented by the national legislation?
As in other administrative law sectors, administrative authorities must observe time limits set in the law for taking decisions, i.e. one month as a general term. The law On Pollution does not provide for different time limits. In the case of an administrative appeal against a permit for polluting activities, a superior administrative authority must deliver its decision within one month from the receiving of the appeal of the person. In urgent cases, the person may request the institution to issue the decision immediately. According to Administrative Procedure Law, due to objective reasons, the authority may extend the time limit for a period not exceeding four months. If there are objective difficulties in clarifying factual circumstances, the time limits may be extended for up to one year. The decision of the superior authority to extend the time limit may be appealed to the court.
If there is a delay in delivering the decision of the superior authority, there are no immediate sanctions possible against the authority. However, the person is then allowed to lodge his/her appeal in the main matter immediately to the administrative court without waiting for a written response from the administrative authority.

There are no time limits set for hearing the case at the court. Cases are administered according to the case load of the specific court. Environmental matters are not an exceptional category and are reviewed in consecutive order. Injunctive relief is decided according to the urgency, but no later than within a month after a proper application has been received at the court.

**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?**

As a general rule, when an appeal is submitted to a superior administrative institution or to the administrative court, it has a suspensive effect on the appealed decision. I.e., it is forbidden to begin operation of the intended activity, to begin construction works, or to issue new decisions based on the contested one.

The law On Pollution provides for a possibility for the Environmental State Bureau to decide not to suspend the operation of the permit if the suspension could cause a substantively negative effect on the environment.

Also, there is an exemption regarding polluting activities requiring a category A or B permit. According to the Law on Pollution, any person can submit an appeal regarding the conditions of the permit at any time while the relevant permit is in effect. This kind of appeal is allowed when the polluting activity may substantially negatively affect human health or the environment, or the environmental quality objectives specified in environmental law, or other requirements of normative acts. In this case, the appeal of the decision will not suspend the on-going operation of the permit.

Regarding the suspensive effect of an appeal to the court, the law On Pollution states that the appeal does not have a suspensive effect on the decision of a superior authority, the State Environmental Bureau.

Persons appealing the permit to the court may ask the court to suspend the operational effect of the decision if there has been no suspensive effect on its operation. On the other hand, the operator may ask the court for an injunctive relief if the operation of the activity has not been granted or fully granted by the decision of the superior administrative authority. The court will decide the provisional protection, considering both the lawfulness of the decision (in a rapid manner, without any prejudice to the final judgment) and possible damage to the interests involved, including environmental.

The participants to the proceedings may request the injunctive relief at any stage of the procedure, also in the appellate court instance and cassation court instance, when they consider the provisional protection urgently needed. No formal deadlines are applied. Exercising the rights to request a provisional protection may not, in itself, cause any unfavourable consequences, including those falling under the private law. This means that the person will not be liable for financial loss caused to another person by the court’s decision.

The participant to the proceedings requesting provisional protection (injunctive relief) must pay a deposit payment to the State budget, in the amount of 15 EUR defined by law. A natural person may ask the court to relieve him/her from paying the deposit fully or partially. The deposit payment is returned if the request for provisional protection is successful.

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

The Internet site of the State Environmental Bureau provides general information about the procedure of issuing permits for polluting activities, as well as detailed information on all issued A and B category permits.

The Internet portal to the judiciary provides information on administrative and civil litigation and criminal procedure. A free online database of national legislation is available here.

### 1.8.3. Environmental liability

**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?

If a person considers that any other private individual or legal person causes environmental damage or an imminent threat of such damage, she/he can act in the following ways:

- if the respective activity causing environmental damage or imminent threat of damage is carried out in accordance with the decision of an administrative authority, the person can appeal the decision to a superior administrative authority and, subsequently, to the administrative court, or,
- submit an application to the administrative authority competent to protect the environment and to enforce appropriate actions to interrupt damage to the environment. If the competent administrative authority refuses to act, its decisions or omissions can be appealed to a superior administrative authority and, subsequently, to the administrative court.

In this case, the person may require the court to oblige the competent administrative authority to take a decision aimed at the protection of environment. For example, if an individual has unlawfully, without a prior permit, built a road in the protected natural area, the person may require the competent administrative authority to oblige the person responsible to tear down the construction, to restore the previous situation and to compensate material damage caused to the environment.

A person can submit his/her complaint to the administrative authority both in written and in oral form. Oral complaints will be immediately written down by the civil servant of the institution. Written complaints and appeals, signed electronically, can be sent also by e-mail.

If the person is not satisfied with the decision or omission of the competent institution, he/she can appeal it to a superior administrative authority. Generally, the decisions of regional environmental boards can be appealed to a superior administrative authority, which is the State Environmental Bureau. The appeal should be submitted to the authority that has issued (or had an obligation to issue) the decision concerning the original complaint. The appeal will be forwarded for examination to a superior authority. An appeal to a superior administrative authority is mandatory before going to the administrative court.

If the appeal to the administrative court is justified with environmental interest, it is sufficient to have standing in the court. (see 1.4.1. for more detailed information on legal standing). The written appeal stating the objections should be submitted to the Administrative district court, with all available evidence attached.

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

General deadlines apply: one month for each administrative and judicial appeal.

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

According to Sect.30(2) of the Environmental Protection Law, the application or appeal should include information, as precise as possible, on the alleged environmental damage.

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

There are no special legal requirements regarding “plausibility” of the allegations. Any evidence and data will increase the possibility to scrutinize the facts.

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)?
General time limits for responding to any administrative appeal apply, i.e., one month; although the competent authority must respond or take respective measures as fast as possible according to the Sect.30(3) of the Environmental Protection Law.

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?
The Environmental Protection Law entitles persons in both cases, environmental damage and imminent threat of damage, to submit an application to a competent administrative authority and an appeal to the court.

7) Which are the competent authorities designated by the MS?
The State Environmental Service (SES) is the competent authority carrying out the state control of the environment protection and natural resources use. It exercises its duties through 7 territorially situated regional environmental boards and the Radiation Safety Centre. The decisions of the SES can be appealed to functionally higher administrative authority, which is the Environmental State Bureau.

Other administrative authorities are competent within limits of their field or operation, for example local governments are generally responsible for construction permits, which means they are also competent administrative authorities if persons allege environmental damage caused by construction permits.

The State Plant Protection Service (SPPS) is the only competent authority controlling the activities that fall under Annex III of the ELD covering: “Manufacture, use, storage, processing, filling, release into the environment and onsite transport of... plant protection products as defined in Article 2(1) of Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market.” (Annex III (7) (c)).

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?
Pre-trial administrative appeal is mandatory if there is any superior administrative authority except the Cabinet of Ministers.

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?
According to Law on Judicial Power all persons are equal before the law and the court. Cases are adjudicated irrespective of, among other things, the origin, nationality, language or place of residence of a person. This means that administrative authorities and courts apply the same rules to all persons irrespective of their nationality or place of residence.

Taking into account the existence of cross-border impact of some environmental decisions and some activities having an environmental impact, environmental law provides for pro-active measures aimed at involving foreign states and citizens. Latvia is a participant in the Espoo Convention on Environmental Impact Assessment, and respective obligations are embodied in environmental law.

In the EIA procedure, other countries are notified about the intended activity if the screening decision has identified possible cross-border impact. Notifying takes place before the intended activity is announced to the public in Latvia. Following the notification procedure, foreign citizens and other institutions are given a possibility to submit their opinions if the respective government has announced its intention to participate in the EIA. All procedures are coordinated between competent authorities of the countries involved, with a help of the Ministry of Foreign Affairs. Competent authorities of the respective foreign countries are consulted during the EIA. The administrative authority deciding on final authorization must consider opinions received from foreign citizens and institutions, as well as the results of inter-institutional consulting.

The procedure for granting permits for polluting activities also contains specific a regulation regarding the cross-border impact of polluting activities. If the information in the application for a permit gives reason to conclude that there will be a cross-border impact, or if the respective foreign country requests information regarding the intended activity, the operator must prepare and submit a translated application and necessary information about the activity to the competent administrative authority which forwards it to the country concerned. It is then the decision of the country concerned whether to organise a public participation procedure regarding the intended activity. The competent administrative authority deciding on the granting of the permit must consider opinions received from the competent authorities and public of the other countries. The competent authority of the country concerned also receives information on granted permits.

The sectoral regulation does not provide for specific rules for the contesting and appealing of environmental decisions involving cross-border issues. General rules for the contesting and appealing decisions apply.

2) Notion of public concerned?
Environmental law does not differentiate between Latvian and other public. It might be concluded that the same broad notion of actio popularis (see above 1.4.1.) applies in both cases. This means that persons have access to administrative authorities and the court to protect general environmental interests. Those rights are recognised both to natural and legal persons, and even interest groups (unregistered associations of persons). Legal persons may include any kind of non-governmental organization, commercial entities and even political parties. To date, there is no confirming case law on this.

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)?

Any person, including NGOs, has equal standing to apply to administrative authorities and the court in environmental matters.

General rules to administrative and judicial appeal apply (see above 1.7.1.1. and 1.7.1.5.).

After the mandatory pre-trial appeal to a superior administrative authority, the person may lodge their appeal before the Administrative District Court.

Pro bono assistance is available only when the NGO has arranged it individually on its own initiative. Law firms and lawyers can be contacted individually.

The Latvian branch of the Transparency International Delna provides legal aid for citizens in building and land use matters. Delna are prepared to handle the case in situations when the case is of public importance, i.e., when a substantial damage is caused or may be caused to environment, or when the case could serve as a precedent and contribute to the improvement of law or legal practice.

Foreign NGOs are entitled to the same procedural guarantees as other participants to the administrative and court proceedings, including provisional protection (injunctive relief) (see above 1.7.2.).

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 may contest an administrative decision to a superior administrative authority and appeal to the court according to the same provisions as individuals residing in Latvia.

The same procedural rules apply to natural persons as to NGOs (see above 1.8.4.3.).

In addition, there are mechanisms of legal aid for natural persons, although there is no known case law on granting legal aid to foreign nationals in environmental matters. Generally, a natural person contesting an administrative decision to a superior administrative authority may ask the administrative authority for the remuneration to his/her representative. If the authority finds that the person (addressee of the decision, natural person only) is in a difficult financial situation and that the particular administrative matter is complicated, it may decide that remuneration to a representative of this person, within regulated frameworks, should be paid from the budget of this administrative authority.

If a natural person lodges an appeal to the administrative court, he/she may ask:

- for a decrease in the amount of the state fee or exemption from the obligation to pay the fee. The court will take into account this person’s financial situation;
for state legal aid to be arranged. The court may decide to grant state legal aid to a natural person in a difficult financial situation if the particular administrative matter is complicated. The practical arrangements (assignment of the particular lawyer, amounts and kinds of legal aid, remuneration) are administered by Court Administration.

5) At what stage is the information provided to the public concerned (including the above parties)?
In the EIA procedure, other countries are notified about the intended activity if the screening decision has identified possible cross-border impact. Notification takes place before the intended activity is announced to the public in Latvia. Following the notification procedure, foreign citizens and other institutions are given a possibility to submit their opinions if the respective government has announced its intention to participate in the EIA. The administrative authority deciding on the final authorization must consider opinions received from foreign citizens and institutions.
During the procedure for granting permits for polluting activities, if the information in the application for a permit gives reason to conclude that there will be a cross-border impact, or if the respective foreign country requests information regarding the intended activity, the operator must prepare and submit a translated application and necessary information about the activity to the competent administrative authority which forwards it to the country concerned. The competent authority of the country concerned must be informed at least two months before the final decision is delivered. It is then the decision of the country concerned whether to organise a public participation procedure regarding the intended activity. The competent administrative authority deciding on granting the permit must consider opinions received from the competent authorities and public of the other countries.

6) What are the timeframes for public involvement including access to justice?
Only the law On Environmental Impact Assessment contains special provisions regarding the duration of public involvement in other countries concerned: the deadline for submitting opinions should be at least 30 days from the day the notification is sent to the competent authority of the country concerned.
If foreign nationals and NGOs participate in administrative and judicial appeal they must meet the same time limits for submitting complaints and appeals, which is generally one month from the notification of the addressee of the decision. For more detailed information see above 1.7.1.5.

7) How is information on access to justice provided to the parties?
Every written administrative decision and court decision or judgment must include precise indication of a procedure of appeal to a superior administrative authority or to the court.
The Internet site of the Environmental State Bureau provides general information about procedure of issuing permits for polluting activities, as well as detailed information on all issued A and B category permits.
The Internet portal to the judiciary provides information on administrative and civil litigation and criminal procedure. A free online database of national legislation is available here.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?
There are no provisions providing for particular language assistance for foreign participants to administrative or court procedures. Both in administrative and judicial appeal procedure, the official language is Latvian. Administrative authorities accept documents in Latvian, with an exemption from documents received from foreign countries. In all other occasions, documents in foreign languages must be translated to Latvian to submit them to administrative authorities. Persons may address authorities in foreign language in the event of an emergency (police, medical emergency etc.). The official language of the court is Latvian, and all the documentation must be submitted in Latvian. Generally, legal persons are not entitled to court interpreters paid by the government. The court, at its own discretion, may provide an interpreter also for a legal person.

9) Any other relevant rules?

[2] E.g. Supreme Court, decision of the of 31.03.2010, case No. SKA-325/2010 (A42938509) applying the notion of „any person" to a political party.
[3] See: Sect.9(4) of the Environmental Protection Law, entitling "any person" and requiring the submission of „substantiated information.”
[4] See seminal case in this respect: Constitutional Court of Latvia, judgment of 19.12.2017, case No. 2017-02-03, against the Regulation of the Cabinet of Ministers to increase the permissible noise level that the Constitutional Court ruled as contradicting the right to a healthy and benevolent environment.
[5] Constitutional Court, judgment of 19.12.2017, case No. 2017-02-03, para. 16. In addition, according to the Constitutional Court (see judgment of 14.02.2003, case No. 2002-14-04, para. 1; judgment of 08.02.2007, case No. 2006-09-03, para. 11) other normative acts detail the right to a benevolent environment embodied in Art.115 of the Constitution: accordingly, a review of the contested legal norms to substantial provisions contained in other normative acts such as Environmental Protection Law, Law on Protective Zones etc., as well as to principles of environmental law. See e.g.: Constitutional Court, judgment of 08.02.2007, case No. 2006-09-03, para. 11 for a reference to Law on Protective Zones and a restriction to construct buildings within protective zones of lakes.
[10] Supreme Court, judgment of 05.03.2015, case No. SKA-22/2015.
[11] See: Sect. 4 on the conditions for a mandatory EIA; Sect.32 on the requirements for a screening procedure.
[13] It is the implementing legislation of ex-IPPC Directive and now IED, thus covering these activities, as well as regulation on greenhouse gas emissions.
[17] Supreme Court, decision of 18.06.2015, case No. SKA-912/2015 (A420237615).
[18] Supreme Court, decision of 18.06.2015, case No. SKA-912/2015 (A420237615).
[19] Supreme Court, decision of 18.06.2015, case No. SKA-912/2015 (A420237615).
[20] Supreme Court, decision of 25.10.2016, case No. SKA-824/2016 (A420241114), taken in joint meeting of all judges (full panel).
[22] Constitutional Court, judgment of 29.11.2007, case No. 2007-10-0102, para. 75.2; judgment of 17.01.2008, case No. 2007-11-03, para. 12, directly applying the Aarhus Convention in assessing legal standing of environmental NGO.
[23] Taking into account the principle embedded in Art. 3(8) of the Aarhus Convention, the Administrative Procedure Law establishes the norm aimed at protecting applicants exercising their rights including environmental procedural rights (See: Sect.4(4) of the Administrative Procedure Law).

[24] Supreme Court, decision of 25.03.2019, case No. SKA-796/2019 (A420358914) referring as well to the judgment of the Supreme Court of 27.06.2018. in case No. SKA-306/2018 (A4201811715).

[25] An approximate assumption, taking into account the situation in 2020. There are no precise terms for reviewing the case; mostly it depends on the complexity of the case and the workload of the court.


[27] Supreme Court, decision of 18.06.2015, case No. SKA-912/2015 (A420237615).

[28] Supreme Court, decision of 18.06.2015, case No. SKA-912/2015 (A420237615).

[29] Supreme Court, decision of 18.06.2015, case No. SKA-912/2015 (A420237615).


[31] See information: [project initiative supporting NGOs](https://www.vraa.gov.lv/lv/latvijas-vides-aizsardzibas-fonds)

[32] See information on project initiative supporting NGOs

[33] Supreme Court, judgment in case No.SKA-139/2012.

[34] Supreme Court, decision of 25.03.2019, case No. SKA-796/2019 (A420358914) referring as well to the judgment of the Supreme Court of 27.06.2018. in case No. SKA-306/2018 (A4201811715).


[36] For example, Supreme Court, decision of 30.09.2013., case No. SKA-984/13 (A420374412), where environmental interests (threat to environment) was among considerations taken into account.

[37] Supreme Court, decision of 25.03.2019, case No. SKA-796/2019 (A420358914) referring as well to the judgment of the Supreme Court of 27.06.2018. in case No. SKA-306/2018 (A4201811715).

[38] Judgment of the Regional administrative court of 26.06.2018 in case No A420358914, confirmed by the decision of the Supreme Court of 25.03.2019. in case No SKA-796/2019 (A420358914), para. 5.


[40] See also case C-529/15

[41] Administrative District Court, judgment of 01.07.2014., case No. A42689508. The case was incited by the NGO requesting the action from the competent authority to issue an administrative act to ensure that illegally deposited waste is removed. The Court confirmed this request as well as entitlement of the NGO to request the action.

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Access to justice falling outside of the scope of EIA, IPPC/IED, access to information and ELD Directives [1]

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?

Administrative environmental decisions falling outside the scope of the EIA [2] and IED [3] directives are subject to general administrative procedure rules included in the [Administrative Procedure Law], except where special sectoral rules provide for different regulations.

Regarding standing, as in other environmental law sectors, actio popularis applies. This means that persons have access to administrative authorities and courts not only to protect their own individual interests, but also to protect general environmental interests. According to Environmental Protection Law and the case-law of the Supreme Court, those rights are recognised both to natural and legal persons, and even interest groups (unregistered associations of persons). Legal persons may include any kind of non-governmental organization, commercial entities and even political parties. There are no specific conditions for non-governmental organizations to have a right to go to the court. The only prerequisite for standing is a genuine environmental interest (see 1.4.1. for more detailed information on legal standing).

If the person is not satisfied with the environmental administrative decision of the competent administrative authority, he/she can appeal it to a superior administrative authority within one month after this decision comes into effect. The procedures and time limits for appeal must be stated in the administrative decision, otherwise the addressee of the decision enjoys longer terms (one year) for the appeal. An administrative decision comes into effect at the moment the addressee is notified of it, except when the decision or the law regulates otherwise. The Law on Notification contains detailed rules regarding notifying the addressee in different manners (mail, electronic mail etc.) and rules about when the document is deemed to have been notified.

Persons who are not the direct addressees of the administrative decision but whose rights or legal interests are affected by that decision, may dispute the decision within a one-month period from the day when this person becomes informed of it, but not later than within a one-year period from the day the decision comes into effect.

Important special rules exist regarding construction permits. According to Sect.15(4) of the Construction Law a decision on a construction permit must enter into effect from the moment it has been notified to the addressee, and at this moment the time limit for contesting the construction permit begins, also for other persons, regardless of the moment those third parties acknowledged the existence of the permit. Only if the mandatory rules on informative measures have not been observed properly may the third parties rely on the time limits counting from the moment those persons become informed of the fact that the permit has been issued. The informative measures include making public the decision on a [Construction Information System], and there are also rules on informative measures regarding public discussions and submissions to change the initially proposed building design. In cases regulated by the Cabinet regulations, it is a responsibility of the initiator of the construction to place a construction board on the respective plot of land and to provide information to owners of immovable properties adjacent to the respective plot of land.

The general time limit for appealing administrative decision of a superior administrative authority before the administrative court is one month. If the superior administrative authority has failed to clarify the procedure for appealing its decision, the time limit extends to one year. Also, if the superior administrative authority has not issued its decision at all after the person has filed the complaint regarding a decision or an omission of a lower administrative authority, the person may file his/her appeal before the administrative court within one year after the addressing the superior administrative authority.
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?

A superior administrative authority is entitled to perform a full review of the contested administrative decision including the efficiency of the decision using the discretionary power of administration. The only exemption exists in cases where a superior administrative authority carries out a supervision in a form which includes the review of the legality but does not include a right to review the discretionary decisions on efficiency. The court will revise both procedural and substantive legality of administrative decisions:

whether the essential procedural rules are followed in relation to persons affected and persons having an interest in environmental issues, with special emphasis on the access to the environmental information and rights to participate in the decision-making, including the possibility to submit information, to express views and proposals, and sufficiently serious attitude of the institution towards those views and proposals,

whether the administrative procedure has been conducted in a way which provides a sufficient possibility to gather all the relevant information, whether the decision is based on correct findings and whether it lays down sufficient and clear written reasons. Expert opinions may be used as evidence to clarify scientific and technical issues.

In administrative cases, the court has full jurisdiction over factual and legal issues. This means that the court may review any question of facts or law. An exemption exists only where the administrative authority has a discretionary power (for example, where the authority decides on the means and scale of penalty) or has some space for professional evaluation of facts (for example, the evaluation of the results in exams) or risk assessment, but the court must nevertheless check whether all relevant facts have been taken into account and whether all the legal considerations have been properly made by the administrative authority. If the court lacks technical or scientific knowledge, the fact assessment can be done by the support of forensic expertise.

The court cannot replace the decision of an administrative authority or issue a decision itself; however, the court can find factual errors and consideration errors which have led, or may have led, to an erroneous final decision, and to annul unlawful decisions. Also, the court can impose an obligation on the respective administrative authority to issue a decision with a certain operative part or pointing to certain considerations to be taken into account. The court can impose an obligation on the respective administrative authority to carry out certain actual measures or to stop any ongoing activities and measures.

In environmental cases initiated by an applicant based on an actio popularis approach (in order to defend public interests in environmental protection) the scope of a court review has been limited by the Supreme Court in its judgment delivered in 2018. The Court stated that to assess a complaint that has been submitted to protect the environment, the legality of a decision (construction permit) must be assessed focusing only on the existence of a threat to the environment or a possible breach of the requirements of environmental legislation that might be directly linked to the development under the dispute, rather than any facts or illegality a claimant might refer to.[4] Accordingly, this statement of the Supreme Court indicates that the scope of review for appeals based on environmental exception clause might be restricted to the infringement of legal provisions that are related to the environment. This applies to both procedural and substantive issues.

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

Generally, it is not possible to challenge the first level administrative decision directly before court. As a general rule, an administrative act, actual measures or omission are subject to appeal to a superior administrative authority, which is a mandatory pre-trial stage. Exemptions exist only where there is no superior authority or the superior authority is the Cabinet of Ministers, then a person has a choice to appeal the decision to the same administrative authority or to submit the application directly to the administrative court.

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

It is not a prerequisite for a court action in the administrative court. [5]

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

As is explained in 2.1.2., an exemption to a full review only exists where the administrative authority has a discretionary power (for example, where the authority decides on the means and scale of the penalty) or has some scope for professional evaluation of facts (for example, the evaluation of the results in exams) or risk assessment, but the court must nevertheless check whether all relevant facts have been taken into account and whether all the legal considerations have been properly made by the administrative authority, as far as it concerns environmental interests.

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

The principle of procedural fairness is recognised as a general principle of law and a prerequisite of fair trial. It is mentioned, inter alia, as one of the general principles applied in administrative authorities and administrative courts according to the Administrative Procedure Law. As explained in Art.14.1 of the Administrative Procedure Law, an administrative authority and the court issuing decisions are impartial and give proper opportunities to every participant to proceedings to explain their opinion and to submit evidence.

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

As in other administrative law sectors, administrative authorities must observe time limits set in the law for taking decisions, i.e. one month as a general term. Specific provisions may exist in sectoral regulations.

In case of an administrative appeal against environmental decision, a superior administrative authority must deliver its decision within one month from the receipt of the appeal of the person. In urgent cases, the person may request the institution to issue the decision immediately. According to Administrative Procedure Law, due to objective reasons, the authority may extend the time limit for a period not exceeding four months. If there are objective difficulties in clarifying factual circumstances, the time limits may be extended for up to one year. The decision of the superior authority to extend the time limit may be appealed to the court.

If there is a delay in delivering the decision of the superior authority, there are no immediate sanctions possible against the authority. However, the person is then allowed to lodge his/her appeal in the main matter immediately to the administrative court without waiting for a written response from the administrative authority.

There are no time limits set for hearing the case at the court. Cases are administered according to the case load of a specific court. Environmental matters are not an exceptional category and are reviewed in consecutive order. Injunctive relief is decided according to the urgency, but no later than within a month after a proper application has been received at the court.

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?

As a general rule, when an appeal is submitted to a superior administrative institution or to the administrative court against any administrative decision, it has a suspensive effect on the appealed decision. I.e., it is forbidden to begin operation of the intended activity, to begin construction works, or to issue new decisions based on the contested one.

The same general rule applies to the appeal to the court (see above 1.7.2. for more detailed explanation of suspensive effect and exemptions to this).

Persons appealing an administrative decision to the court may ask the court to suspend the operational effect of the decision if there has been no suspensive effect on its operation. On the other hand, the addressee of the decision (for example, a person carrying out environmentally hazardous activity) may ask the court for an injunctive relief if the operation of the decision has not been granted or fully granted by the decision of the superior administrative authority. The
court will decide the provisional protection, considering both the lawfulness of the decision (in a rapid manner, without any prejudice to the final judgment) and possible damage to the interests involved, including environmental.

The participants to the proceedings may request the provisional protection at any stage of the procedure, also in the appellate court instance and cassation court instance, when they consider that provisional protection is urgently needed. No formal deadlines are applied. The exercising of the rights to request provisional protection may not cause, in itself, any unfavourable consequences, including those falling under the private law. This means that the person will not be liable for financial loss caused to another person by the court's decision.

The participant to the proceedings requesting provisional protection (injunctive relief) must pay a deposit payment to the State budget, the amount 15 EUR defined by law. A natural person may ask the court to relieve him/her from the paying of deposit fully or partially. The deposit payment is returned if the request for provisional protection is successful.

9) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court?

What are the safeguards against the costs being prohibitive, and do these include express statutory reference to a requirement that costs should not be prohibitive?

General rules of administrative appeal procedures apply.

Administrative procedures in administrative institutions are free of charge.

If the person submits an appeal to the administrative court, he/she should take account of state fees.

If submitting an appeal to the first instance in administrative court, the applicant should pay a state fee in the amount of 30 EUR. The state fee for the appeal of the first court instance’s judgment is 60 EUR. A deposit payment for submitting a cassation complaint to the Supreme Court is 70 EUR. The deposit payment for requesting injunctive relief or to ancillary complaints on procedural decisions is 15 EUR. The deposit payment for matters de novo in connection with newly-discovered facts is 15 EUR. The amount of the state fee is the same for all categories of administrative cases. The court, taking into account the financial situation of a natural person, may decrease the amount of the fee or exempt the person from the obligation to pay the fee.

Administrative Procedure Law does not prescribe any other fees or deposit payments.

Both in administrative and court procedures, the person has to cover his/her own expenses: remuneration to a representative or legal advisor (if the person has involved any); payment to private experts (if the person has involved any on his/her own initiative) and his/her own expenses related to obtaining or producing of any other evidence (copying, requesting from institutions etc.) if obtained by the participant himself/herself. Expenses related to legal aid or private expert examinations are not regulated and will be dependent mainly on the market situation, the complexity of the case or the factual circumstances examined by experts.

In the judgment, the court will order a reimbursement of the state fee: if the appeal against the administrative decision or omission is fully or partially successful, the court will order the defendant (the State or municipality thereof) to reimburse the state fee to the claimant; if the appeal is not successful, the claimant will not recover the state fee paid. The same principle applies to deposit payments: the claimant will get back the deposit payment if his/her cassation complaint (or request for injunctive relief, ancillary complaint or de novo review) is successful.

The court’s decision on the reimbursement of expenses does not cover other kinds of expenses. Thus, any other expenses, except state fees and deposit payments, incurred to the participants, are not recovered. But, if the appeal against the administrative decision is successful, the claimant may subsequently claim to recover all damages caused by the unlawful decision from the defendant, and this may include previous payments to legal advisor or experts. Accordingly, the overall process at both levels (public authority and administrative court) is not expensive with respect to state fees and other statutory payments. The principle protecting an applicant from paying other party expenses (state or municipality) functions as a safeguard against excessive costs. The legislation does not include express statutory reference to a requirement that costs should not be prohibitive.

1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[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 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 law [8] on Environmental Impact Assessment stipulates for strategic environmental assessment (SEA) of planning documents concerning the environment if the expected impact of the proposed plan on the environment is substantial. The expected impact of the planning document is considered to be substantial if it is mentioned as such in the Cabinet Regulation (Regulation No. 157 of 23.03.2004.) or is considered to be substantial on an individual basis by the Environmental State Bureau.

The law on Environmental Impact Assessment includes a regulation on involving the public in the decision-making, the obligation to take into account the opinions expressed, and also on informing measures regarding the final decision. Sectoral regulation (for example, the Spatial Development Planning Law) contains specific rules regarding the procedures where final planning, normative or administrative decisions are taken according to the results of the SEA procedure.

The possibilities of contesting and appealing any final plan and decision which is based (or should be based) on the SEA depends on the type of document and its legal status. As a rule, planning documents lacking individual legal settlement are not considered to be administrative acts, and there is no possibility to contest such documents in the administrative court. Planning documents embodied in normative legal acts (regulations, and this is the case also for spatial plans of local government) may be contested in the Constitutional Court only (see 2.5.1. on constitutional complaint for further information). Only decisions having direct legal consequences to individual persons (or individual objects) may be considered to be administrative acts contestable in the administrative court. Detailed spatial plans are the most common planning documents having legal status of a general administrative act and as such involving a possibility to lodge an appeal against it before the administrative court.

If the appeal to the administrative court is allowed, the same rules apply as with other environmental decisions. This means, actio popularis (a right of access to justice in public interests) is applied regarding the standing of a person. This means that persons have access to administrative authorities and court not only to protect their own individual interests, but also to protect general environmental interests.

The same general procedural rules apply to administrative and judicial procedures as in other types of administrative cases (see above 1.3.2). A general one-month time limit applies to both administrative and judicial appeal. The time limit for appealing a detailed spatial plan of the local government is one month from a public notification about the final decision on the adoption of the plan.

In addition, there is a special mechanism, an immediate measure to rectify errors in public participation or dissemination of information during any SEA procedure regardless of the form of the final decision (Sect.26(2) of the law on Environmental Assessment). During the SEA procedure, any person may
submit a complaint to a competent administrative authority (Environmental State Bureau) against the person developing the plan, if this person ignores or infringes the right of public to environmental information or public participation. If the decision of the competent authority does not satisfy the person, he/she may submit a complaint to the Ministry of Environmental Protection and Regional Development.

The courts apply EU law and the case law of the Court of Justice of the European Union. Participants to the procedure can argue their case with references to both the EU law and the CJEU case law, as well as international law (Aarhus Convention, for example). The court is free to use EU law and the CJEU case law as much as it seems possible also on its own motion. Participants can also plead for reference for a preliminary ruling to be submitted to the CJEU.

Taking into account the existence of *actio popularis* and its broad application in Latvian courts, and also the wide application of the EU law and thorough review of the administrative decisions, the Latvian court system provides for rather effective access to the court in environmental matters. Still, the overall length of court proceedings, especially in the cassation instance court, could be improved.

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 court reviewing the lawfulness of the appealed final administrative planning decision will revise both procedural and substantive legality of the final decision involving the SEA:

- whether the essential procedural rules are followed in relation to persons affected and persons having an interest in environmental issues, with special emphasis on the access to the environmental information and rights to participate in the decision-making, including the possibility to submit information, to express views and proposals, and sufficiently serious attitude of the institution towards those views and proposals;
- whether the SEA has been conducted in a way which provides a sufficient possibility to gather all the relevant information on the possible impact of the intended activity to the environment,
- whether the final decision is based on correct findings and whether it lays down sufficient and clear written reasons.

If the planning decision is embodied in a normative act, the Constitutional Court is also competent to review both the procedural and substantive legality of the normative act.

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

Procedures regarding spatial plans.

Sect.27 of the *Spatial Development Planning Law* specifically addresses the procedure for contesting spatial plans or local plans of the local government. Since such plans are adopted as local governments regulations (normative acts), the competent court in this case is the Constitutional Court. Before lodging a constitutional complaint, a person must address the competent administrative authority, i.e., the ministry responsible for spatial development planning (at the moment – the Ministry of Environmental Protection and Regional Development). The appeal must be submitted within two months after the respective regulation comes into effect. After this administrative pre-trial stage, a person can submit a constitutional complaint (i.e., to the Constitutional Court) regarding the conformity of the local government regulations with the norms of superior legal force. A constitutional complaint must be lodged before the Constitutional Court within six months after the respective regulation comes into effect (Sect.19.3(2) of the Constitutional Court Law).

Detailed spatial plans are adopted as administrative acts according to Sect.30 of the Spatial Development Planning Law. In this case, the respective detailed plan may be appealed to the administrative court. Since there is no superior administrative authority for local government, an appeal must be lodged before Administrative district court, and the time limit is one month after the local government has published a notice on the adoption of the plan. The appeal to the administrative court suspends the effect of the detailed plan, but the operative effect can be renewed by injunctive relief. Procedures for contesting plans adopted are as for other normative acts. A person may contest normative acts (other than spatial plans and local plants) in the Constitutional Court. See 2.5.1. for a detailed information on the procedure.

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.?

It is not a prerequisite for a court action in administrative court. In the case of a constitutional complaint, it is worth mentioning that the Constitutional Court has developed autonomous criteria for legal standing, involving a prerequisite of being a participant to planning procedure (see 2.5.1. for a detailed information).

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?

In the case of detailed plans: the appeal to the administrative court suspends the effect of the detailed plan, but the operative effect can be renewed by injunctive relief (Sect.30 of Spatial Development Planning Law). A request for injunctive relief may be submitted at any stage of the procedure, also in the appellate court instance and cassation court instance. No formal deadlines are applied. In case of planning documents adopted in the form of normative acts, for spatial and local plans, the competent ministry receiving administrative appeals (see 2.2.3.a) will decide on the possibility to give operational effect on all or part of the plan according to the appeals received; the operational effect will be renewed if the appeals continue to be considered unfounded (Sect.27 of Spatial Development Planning Law).

no provisional protection exists in the procedure of the Constitutional Court, and this applies to any plan (normative act) contested in the Constitutional Court.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court?

What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

General rules of administrative appeal procedures apply.

Administrative procedures in administrative institutions are free of charge.

If the person submits an appeal to the administrative court, he/she should take account of state fees.

When submitting an appeal to the first instance administrative court, the applicant should pay a state fee in the amount of 30 EUR. The state fee for the appeal of the first instance court’s judgment is 60 EUR. A deposit payment for submitting a cassation complaint to the Supreme Court is 70 EUR. The deposit payment for requesting injunctive relief or to ancillary complaints on procedural decisions is 15 EUR. The deposit payment for matters de novo in connection with newly-discovered facts is 15 EUR.

The amount of the state fee is the same for all categories of administrative cases. The court, taking into account the financial situation of a natural person, may decrease the amount of the fee or exempt the person from the obligation to pay the fee.

The Administrative Procedure Law does not prescribe any other fees or deposit payments.

Both in administrative and court procedures the person has to cover his/her own expenses: remuneration to a representative or legal advisor (if the person has involved any), payment to private experts (if the person has involved any on his/her own initiative) and his/her own expenses related to obtaining or producing of any other evidence (copying, requesting from institutions etc.) if obtained by the participant himself/herself.

Expenses related to the legal aid or private expert examinations are not regulated and will be dependent mainly on the market situation, the complexity of the case or the factual circumstances examined by experts.
In the case of a constitutional complaint, it is worth mentioning that the Constitutional administrative decision, it has a suspensive effect on the appealed decision (see above 1.7.2. for more detailed explanation of suspensive effect and suspension). As a general rule in administrative procedure, when an appeal is submitted to a superior administrative institution or to the administrative court against any normative act (laws, regulations), the Constitutional Court is competent to review both the procedural and substantive legality of the respective sectoral regulation. For example, according to the Spatial Development Planning Law and the respective Cabinet regulations, a detailed spatial plan of the local government might include the proposed development having a substantial impact on the environment, but still relates to the environment; the drafting of the planning document or programme must follow procedural rules incorporated in the respective sectoral regulation. In case of spatial plans involving a possibility to lodge an appeal against it before the administrative court.

In cases where the planning decision is embodied in a normative act, the Constitutional Court is also competent to review both the procedural and substantive legality of the normative act (see 2.5.1. for information). Planning documents embodied in normative legal acts (laws, regulations) may be contested in the Constitutional Court only (see 2.5.1 for more detailed information about the procedure). Only decisions having a direct legal effect on individual persons (or individual objects) may be considered to be administrative acts contestable at the administrative court. Detailed spatial plans are the most common planning documents having legal status of a general administrative act and as such involving a possibility to lodge an appeal against it before the administrative court.

If the appeal to the administrative court were allowed, the same rules would apply as with other environmental decisions. This means, actio popularis (a right of access to justice in public interests) is applied regarding the standing of a person, and the same general procedural rules apply for administrative and judicial procedures as in other types of administrative cases (see above 1.3.2). Administrative courts apply EU law and the case law of the Court of Justice of the European Union. Participants to the procedure can argue their case with references to both the EU law and the CJEU case law, as well as international law (Aarhus Convention, for example). The court is free to use EU law and the CJEU case law as much as it deems possible also on its own motion. Participants can also plead for a reference for a preliminary ruling to be submitted to the CJEU.

If a plan is adopted in the form of a normative act, the scope of the administrative review is the same as in other administrative cases. The court would revise both procedural and substantive legality of the final decision confirming the planning document. If the planning decision is embodied in a normative act, the Constitutional Court is also competent to review both the procedural and substantive legality of the normative act (see 2.5.1. for information).

In general, there should be at least one level appeal to a superior administrative authority as a mandatory pre-trial stage in case of an administrative decision, except where there is no superior administrative authority or where the Cabinet of Ministers is the only superior authority to the given lower authority. Since, usually, the local government would be the authority adopting the plan as an administrative decision (detailed spatial plans), there is no superior administrative authority and an appeal must be submitted directly to administrative court. The administrative authority issuing the decision must state the appeal procedures in the same decision.

In cases where the planning document is adopted as a normative act, a person must exhaust general remedies before the submitting a constitutional complaint. In cases where there are any (for example, contesting an administrative act based on the respective normative act, if this was the case). In case of spatial plans and local plans, a person must address the Ministry of Environmental Protection and Regional Development before submitting a constitutional complaint. A constitutional complaint must be lodged before the Constitutional Court within six months after the respective regulation comes into effect.

A constitutional complaint has developed autonomous criteria for legal standing, involving a prerequisite of being a participant to planning procedure (see above 1.7.2. for more detailed explanation of suspensive effect and suspension).
4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

The participants to the proceedings may request the provisional protection at any stage of the procedure, also in the appellate court instance and cassation court instance. No formal deadlines are applied.

There is no provisional protection in the Constitutional Court procedure.

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?

There is no provisional protection in the Constitutional Court procedure.

What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

General rules of administrative appeal procedures apply if the decision adopting a plan is an administrative act and thus subject to the jurisdiction of administrative courts.

Administrative procedures in administrative institutions are free of charge.

If the person submits an appeal to the administrative court, he/she should take account of state fees.

When submitting an appeal to the first instance administrative court, the applicant should pay a state fee in the amount of 30 EUR. The state fee for the appeal of the first court instance’s judgment is 60 EUR. A deposit payment for submitting a cassation complaint to the Supreme Court is 70 EUR. The deposit payment for requesting injunctive relief or to ancillary complaints on procedural decisions is 15 EUR. The deposit payment for matters de novo in connection with newly-discovered facts is 15 EUR.

The amount of the state fee is the same for all categories of administrative cases. The court, taking into account the financial situation of a natural person, may decrease the amount of the fee or exempt the person from the obligation to pay the fee.

The Administrative Procedure Law does not prescribe any other fees or deposit payments.

Both in administrative and court procedures the person has to cover his/her own expenses: remuneration to a representative or legal advisor (if the has person involved any); payment to private experts (if the person has involved any on his/her own initiative) and his/her own expenses related to obtaining or producing of any other evidence (copying, requesting from institutions etc.) if obtained by the participant himself/herself.

Expenses related to the legal aid or private expert-examinations are not regulated and will be dependent mainly on the market situation, the complexity of the case or the factual circumstances examined by experts.

In the judgment, the court will order a reimbursement of the state fee: if the appeal against the administrative decision or omission is fully or partially successful, the court will order the defendant (the State or municipality thereof) to reimburse the state fee to the claimant; if the appeal is not successful, the claimant will not recover the state fee paid. The same principle applies to deposit payments: the claimant will get back the deposit payment if his/her cassation complaint (or request for injunctive relief, ancillary complaint or de novo review) is successful.

The court’s decision on the reimbursement of expenses does not cover other kinds of expenses. Thus, any other expenses, except state fees and deposit payments, incurred to the participants, are not recovered. But, if the appeal against the administrative decision is successful, the claimant may subsequently claim to recover all damages caused by the unlawful decision from the defendant, and this may include previous payments to legal advisor or experts.

Regarding the procedure of constitutional complaint, it does not involve state fees.

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

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

The possibilities of contesting and appealing any plan or programme having an impact on the environment depend on the type of the planning document and its legal status.

The possibilities of contesting and appealing any final plan and decision having an impact on the environment depend on the type of the planning document and its legal status. As a rule, planning documents lacking individual legal settlement regarding individual person or object (direct effect on a person or an object) are not considered administrative acts, and there is no possibility to contest such documents at the administrative court. Usually, a plan as such will not have such binding nature (direct effect) on any individual. In this case, it is not contestable in any court.[11]

Planning documents embodied in normative legal acts (laws, regulations) may be contested in the Constitutional Court only (see 2.5.1. for a detailed information about the procedure).

Only decisions having direct legal effect on individual persons (or individual objects) may be considered to be administrative acts contestable in the administrative court. Detailed spatial plans are the most common planning documents having legal status of a general administrative act and as such involving a possibility to lodge an appeal against it before the administrative court.

If the appeal to the administrative court were allowed, the same rules would apply as with other environmental decisions. This means, actio popularis (a right of access to justice in public interests) is applied regarding the standing of a person, and the same general procedural rules apply for administrative and judicial procedures as in other types of administrative cases (see above 1.3.2).

Administrative courts apply EU law and the case law of the Court of Justice of the European Union. Participants to the procedure can argue their case with references to both the EU law and the CJEU case law, as well as international law (Aarhus Convention, for example). The court is free to use EU law and the CJEU case law as much as it seems possible also on its own motion. Participants can also plead for the reference for a preliminary ruling to be submitted to the CJEU.

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)?

As explained in 2.4.2., only planning decisions embodied in administrative decisions directly effecting individuals, or into normative acts, are possible to contest in the administrative or the Constitutional Court. Plans and programs lacking direct legal effect (individual or normative) are not possible to challenge in the court.

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

If a plan is adopted in the form of an administrative act, the scope of the administrative review is the same as in other administrative cases. The court would revise both procedural and substantive legality of the final decision confirming the planning document.

If the planning decision is embodied in a normative act, the Constitutional Court is also competent to review both the procedural and substantive legality of the normative act (see 2.5.1. for a detailed information).

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
In the case of a constitutional complaint, it is worth mentioning that the Constitutional
Court has developed autonomous criteria for legal standing, involving a prerequisite of being a participant to planning procedure (see 2.5.1. for a detailed
information).

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

In administrative procedure, an exemption to a full judicial review exists only where the administrative authority has a discretionary power or has some scope
for professional evaluation of facts (for example, the evaluation of the results in exams) or risk assessment, but the court must nevertheless check whether
all relevant facts have been taken into account and whether all the legal considerations have been properly made by the administrative authority.

It is not clear how far the Constitutional Court will look into considerations of the legislator. As it can be inferred from the judgments of the Constitutional
Court, there is a margin of appreciation reserved for the legislator. The Constitutional Court uses opinions of professionals to have an insight into planning
considerations.

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

In the administrative court, the principle of procedural fairness is recognised as a general principle of law and a prerequisite of a fair trial. It is mentioned, inter
alia, as one of the general principles applied in administrative fairness and administrative courts according to the Administrative Procedure Law. As
explained in Art.14.1 of the Administrative Procedure Law, an administrative authority and the court issuing decisions are impartial and give proper
opportunities to every participant to a proceedings to explain their opinion and to submit evidence.

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

Regarding administrative procedure, administrative authorities must observe time limits set in the law for taking decisions, i.e. one month as a general term.
Specific provisions may exist in sectoral regulations.

In the case of an administrative appeal against an environmental decision, a superior administrative authority must deliver its decision within one month from
receiving the appeal of the person. In urgent cases, the person may request the institution to issue the decision immediately. According to Administrative
Procedure Law, due to objective reasons, the authority may extend the time limit for a period not exceeding four months. If there are objective difficulties in
clarifying factual circumstances, the time limits may be extended for up to one year. The decision of the superior authority to extend the time limit may be
appealed to the court.

If there is a delay in delivering the decision of the superior authority, there are no immediate sanctions possible against the authority. However, the person is
then allowed to lodge his/her appeal in the main matter immediately to the administrative court without waiting for a written response from the administrative
authority.

There are no time limits set for hearing the case at the court. Cases are administered according to the case load of a specific court. Environmental matters
are not an exceptional category and are reviewed in consecutive order. Injunctive relief is decided according to the urgency, but no later than within a month
after a proper application has been received at the court.

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?

As a general rule, when an appeal is submitted to a superior administrative institution or to the administrative court against any administrative decision, it has
a suspensive effect on the appealed decision (see above 1.7.2. for more detailed explanation of suspensive effect and exemptions to this). Persons
appealing an administrative decision to the court may ask the court to suspend the operational effect of the decision in case there has been no suspensive
effect on its operation. The court will decide the provisional protection, considering both the lawfulness of the decision and possible damage to the interests
involved, including environmental.

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?

In the case of administrative procedure, general rules of administrative appeal procedures apply.

Administrative procedures in administrative institutions are free of charge.

If the person submits an appeal to the administrative court, he/she should take account of state fees.

When submitting an appeal to the first instance administrative court, the applicant should pay a state fee in the amount of 30 EUR. The state fee for the
appeal of the first court instance’s judgment is 60 EUR. A deposit payment for submitting a cassation complaint to the Supreme Court is 70 EUR. The deposit
payment for requesting injunctive relief or to ancillary complaints on procedural decisions is 15 EUR. The deposit payment for matters de novo in connection
with newly-discovered facts is 15 EUR.

The amount of the state fee is the same for all categories of administrative cases. The court, taking into account the financial situation of a natural person,
may decrease the amount of the fee or exempt the person from the obligation to pay the fee.

Administrative Procedure Law does not prescribe any other fees or deposit payments.

Both in administrative and court procedures the person has to cover his/her own expenses: remuneration to a representative or legal advisor (if the person
has involved any); payment to private experts (if the person has involved any on his/her own initiative) and his/her own expenses related to obtaining or
producing of any other evidence (copying, requesting from institutions etc.) if obtained by the participant himself/herself.

Expenses related to legal aid or private expert examinations are not regulated and will be dependent mainly on the market situation, the complexity of the
case or the factual circumstances examined by experts.

In the judgment, the court will order a reimbursement of the state fee: if the appeal against the administrative decision or omission is fully or partially
successful, the court will order the defendant (the State or municipality thereof) to reimburse the state fee to the claimant; if the appeal is not successful, the
claimant will not recover the state fee paid. The same principle applies to deposit payments: the claimant will get back the deposit payment if his/her
cassation complaint (or request for injunctive relief, ancillary complaint or de novo review) is successful.
The court's decision on the reimbursement of expenses does not cover other kinds of expenses. Thus, any other expenses, except state fees and deposit payments, incurred to the participants, are not recovered. But, if the appeal against the administrative decision is successful, the claimant may subsequently claim to recover all damages caused by the unlawful decision from the defendant, and this may include previous payments to legal advisor or experts.

A constitutional complaint procedure does not involve state fees.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[13]

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?

Normative legal acts or legislative acts (legislation) implementing EU environmental legislation usually take the form of laws enacted by the Parliament (the Saeima) or Cabinet regulations. On the basis of laws and Cabinet regulations, local government regulations also include rules according to the EU law.

There are two ways in which individuals can manage to verify if the national legislative acts are consistent with the Constitution or the EU law:

- Direct application to the Constitutional Court strictly on the condition that it is allowed by the Constitutional Court Law and according to the provisions of this law;
- Submitting arguments and plea to the administrative or general jurisdiction court reviewing a certain case to submit an application to the Constitutional Court or to make a referral for a preliminary ruling to the Court of Justice of the European Union (the CJEU).

A constitutional complaint (application) may be submitted to the Constitutional Court by any person who considers his/her fundamental rights infringed by norms of law, Cabinet regulations or regulations of local government. The Constitutional Court has maintained an approach under which an alleged infringement of rights guaranteed by the Constitution is a prerequisite to have legal standing in the court, including in environmental matters. On the other hand, since Art.115 of the Constitution guarantees a right to a benevolent environment, and this right is quite broadly characterized by the Constitutional Court[14], it does not preclude individuals and environmental NGOs from bringing actions in environmental interests. The case law of the Constitutional Court shows that applications protecting general environmental interests are allowed from NGOs and also from individuals (see, for example, the judgment of 06.10.2017. in case No. 2016-24-03 as an example of challenging spatial plan in environmental interests).

However, this approach, unlike that taken by administrative courts, has led to setting criteria for legal persons to have a legal standing. To conclude that the right to a benevolent environment of a certain legal person has been infringed it must be seen that (a) the objective of the legal person's activities is environmental protection, (b) the legal person is founded according to the law,[15] (c) the legal person has participated in the development and adopting of the contested normative act as far as such participation has been granted by law and has been practically feasible.[16]

A constitutional complaint is allowed only after ordinary legal remedies are exhausted (recourse to the competent administrative authorities, courts of general jurisdiction or the administrative court). For example, if an administrative decision is based on the respective normative act, a person should at first appeal the administrative decision to the administrative court where the court may consider the constitutionality of the legal norm and submit an application to the Constitutional Court. If a person has exhausted ordinary legal remedies, or there are no such remedies available, the constitutional complaint must be lodged before the Constitutional Court within six months after the last decision in the case has come into effect. Only in exceptional individual cases may the recourse to ordinary legal remedies be skipped, i.e., if the reviewing of the constitutional complaint is generally important or if the ordinary legal remedies cannot prevent substantial damage to the complainant.

However, special procedural rules exist for contesting spatial plans and local spatial plans of local governments (as they are enacted in the form of local government's regulations). An application to the Constitutional Court has to be submitted within six months after the respective regulation of the local government has come into effect. In addition, a person must exhaust the specific administrative review procedure: to submit an appeal to the Ministry of local jurisdiction or the administrative court). For example, if an administrative decision is based on the respective normative act, a person should at first appeal the administrative decision to the administrative court where the court may consider the constitutionality of the legal norm and submit an application to the Constitutional Court.

There are two ways in which individuals can manage to verify if the national legislative acts are consistent with the Constitution or the EU law:

- Direct application to the Constitutional Court strictly on the condition that it is allowed by the Constitutional Court Law and according to the provisions of this law;
- Submitting arguments and plea to the administrative or general jurisdiction court reviewing a certain case to submit an application to the Constitutional Court or to make a referral for a preliminary ruling to the Court of Justice of the European Union (the CJEU).

If a person has exhausted ordinary legal remedies, or there are no such remedies available, the constitutional complaint must be lodged before the Constitutional Court within six months after the last decision in the case has come into effect. Only in exceptional individual cases may the recourse to ordinary legal remedies be skipped, i.e., if the reviewing of the constitutional complaint is generally important or if the ordinary legal remedies cannot prevent substantial damage to the complainant.

The Constitutional Court reviews the complaints taking into account EU law and ratified international law. This means the case law of the Court of Justice of the European Union is also relevant. Participants to the procedure can argue their case with references to both the EU law and the CJEU case law, as well as international law (Aarhus Convention, for example). Participants can also plead for a reference for a preliminary ruling to be submitted to the CJEU.

Taking into account the broad legal standing of natural and legal persons in environmental matters, stemming from the rather broad scope of Art.115 of the Constitution, and also the approach of the Constitutional Court to interpret the Constitution in tune with international and EU law, the recourse to the Constitutional Court can be regarded as an effective legal remedy. The judgment is usually delivered in about one year after the complaint is submitted to the Court.

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

Administrative review (applicable if the spatial plans or local spatial plans of local governments are contested) and constitutional review cover both procedural and substantive legality of the contested legal act:

- If, in the given case, there is a specific procedure involving public consultations, the competent administrative authority and, subsequently, the Constitutional Court will verify whether the essential procedural rules are followed in relation to persons affected and persons having an interest in environmental issues, with special emphasis on the access to the environmental information and rights to participate in the decision-making (if applicable in the given situation), including the possibility to submit information, to express views and proposals, and sufficiently serious attitude of the administrative authority towards those views and proposals;
- Whether the procedure has been conducted in a way that guarantees sound legislative decisions;
- Whether the legislative act is based on correct fact-findings.

The Constitutional Court may request expert opinions.

The Constitutional Court will always scrutinise the contested legal norms in the light of their conformity with the Constitution, EU law and international law, taking into account the borders of claim set in the constitutional complaint.

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

As explained in 2.5.1., a constitutional complaint is allowed only after ordinary legal remedies are exhausted (recourse to the competent administrative courts, courts of general jurisdiction or the administrative court). The application (complaint) must be lodged before the Constitutional Court within six months after the last decision in the case has come into effect. Only in exceptional individual cases may the recourse to ordinary legal remedies be skipped, i.e., if the reviewing of the constitutional complaint is generally important or if the ordinary legal remedies cannot prevent substantial damage to the complainant.

However, special procedural rules exist for contesting spatial plans and local spatial plans of local governments (if they are enacted in the form of local government's regulations). An application to the Constitutional Court has to be submitted within six months after the respective regulation of the local
government has come into effect. Besides, a person must exhaust specific administrative review procedure: to submit an appeal to the Ministry of Environmental Protection and Regional Development within two months after the spatial plan or local spatial plan of the local government has come into effect. An administrative appeal is a mandatory pre-trial stage in this case.

4) In order to have standing before the national courts it is necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.? The Constitutional Court has set criteria for legal persons to have legal standing. To conclude that the right to a benevolent environment of a certain legal person has been infringed, it must be seen that, inter alia, that the legal person has participated in the development and adopting of the contested normative act as far as such participation has been granted by law and has been practically feasible. [17]

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 procedure of constitutional review does not provide for suspensive effect of the constitutional complaint. The Constitutional Court Law allows the Court to decide to suspend the effect of the judgment of the general (or administrative) jurisdiction court if the constitutional complaint is related to one. According to the case law of the Constitutional Court, the legislator has not allowed other measures of provisional protection in the case of constitutional complaint (the 8th decision of the Constitutional Court of 04.02.2015 in case No. 2015-03-01). The only occasion when administrative review exists, i.e., if the spatial plan or local spatial plan of the local government is contested to the Ministry of Environmental Protection and Regional Development, the Ministry has discretionary power to impose restrictions for execution of the contested plan until the final administrative decision is delivered. No other means of provisional protections exist against legislative acts.

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? Administrative appeal against spatial plans or local plans of local governments is free of charge. There is no state fee for submitting a constitutional complaint to the Constitutional Court. The participants to the procedure bear their own expenses, including hiring of an interpreter if one is needed at the court. The Constitutional Court does not decide on the reimbursement of those costs. A natural person may ask for legal aid financed from the state budget according to the State Increased Legal Aid Law. The court administrator will grant and administer legal aid if the Constitutional Court has already refused to accept a person’s complaint due to manifestly insufficient legal grounds as the sole reason. Within the time limits set for submitting the constitutional complaint, the person may then again apply to the Constitutional Court with the aid of state financed lawyer.

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? In the same way as it is possible to plead for a referral for a preliminary ruling on the interpretation of EU law. There are no obstacles to raise the issue of the validity of acts of the institutions of the EU, as is provided in Art.267 of the TFEU, and to request a preliminary ruling of the CJEU. To date, the Constitutional Court has not exercised this possibility and has requested preliminary rulings only on the interpretation of EU law.

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[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.
[6] The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.
[8] See, for example, the order of the Cabinet of 16.04.2020 No. 197 „On the plan of the decreasing of the air pollution for 2020-2030“.
[10] 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.
[11] See, for example, the order of the Cabinet of 16.04.2020 No. 197 „On the plan of the decreasing of the air pollution for 2020-2030“.
[13] 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 Hoekscheaards Landschap, ECLI:EU:C:2017:774.
[14] The infringement of the right to a benevolent environment is to be broadly interpreted so as to include activities actually taking place and creating an imminent threat to human health or to the environment, as well as activities expected to take place in the future.* The Constitutional Court, judgment of 17.01.2008. in case No. 2007-11-03, para. 13.1.
[16] Ibid, para. 13.2.
[17] Ibid, para. 13.2.
[18] For an example of such a preliminary reference see Case C-281/16, Vereniging Hoekscheaards Landschap, ECLI:EU:C:2017:774.

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

Besides the appeal against administrative environmental decisions, there are other legal remedies.

Remedies against the silence of the administration (the administrative passivity).

Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters provides for each party (state) to ensure that members of the public have access to administrative or judicial procedures to challenge, *inter alia*, omissions by public authorities which contravene provisions of its national law relating to the environment. According to the case law of the Supreme Court, Aarhus Convention and Art.115 of the Constitution grant a right to the public to demand from the competent state authorities to really carry out measures lying within the competence of those authorities and a right to request it at the court. Such omissions may include the silence of the institution (for example, failure to take decision when such decision would be expected), but also insufficiently effective measures, for example, a failure to properly enforce any decision already delivered before[1].

This is the only measure that can be used also if an individual aims to prevent or to rectify damage to the environment made by other private individuals or entities, i.e., a person may request the competent supervising administrative authority to issue an administrative decision against another private person, to bring an action before the administrative court if the competent authority does not issue any decision or the decision is not effective, and to ask for real enforcement of any issued decision. To the extent that complaints are grounded in environmental law and allege a damage or imminent threat to the environment in the case of a further lack of action, any natural or legal person has standing at the competent administrative authority and at the court since *actio popularis* applies in environmental law (see above 1.4.1. about *actio popularis*).

If the competent authority does not respond to a submitted application for effective measures, a person has a possibility to appeal to a superior administrative authority and to the administrative court. General rules of administrative procedure apply (see above 1.3.1.–1.3.4. for more information about the system of administrative and judicial appeals, and 1.7.1. for information about applicable time limits).

If the appeal is accepted by the court, a person may ask for injunctive relief within the boundaries of the appeal. For example, an applicant may plead for immediate measures to prevent possible harm to the environment.

Measures for effective enforcement of administrative and judicial environmental decisions.

Administrative Procedure Law provides for measures that could be used to achieve full enforcement of administrative decisions, and decisions or judgments of the court, i.e., the rules on compulsory execution. The law regulates both the compulsory measures used by administrative authorities and by bailiffs, as well as by the police.

There are different compulsory measures used by administrative authorities (Sect. 367, 368 of the Administrative Procedure Law): executive orders, replacing measures carried out by the institution at the addressee’s expense, pecuniary penalties (applied repeatedly if needed), direct force. The court may impose pecuniary penalties to the officials responsible for the enforcement of the court’s decision, and those pecuniary penalties also may be applied repeatedly (Sect. 374 of the Administrative Procedure Law).

If, taking into account the content of the decision, a court bailiff can execute the decision, all the usual measures may be used according to the Civil Procedure Law.

A person in whose interests the administrative decision or judicial decision has been delivered has a right to appeal against omissions or inaccuracies regarding the execution. Also, a person against whom the administrative or judicial decision has been delivered has a right to appeal against inaccuracies regarding the execution.

Criminal liability may be applied in the event of severe environmental offences, and also for avoidance of enforcement of judicial decisions requiring certain actions.

During the court proceedings, the administrative court may also impose procedural sanctions to succeed in guaranteeing fair procedure and fair decisions. Such measures include warning, expulsion from the courtroom, pecuniary penalties, and forced conveyance. Pecuniary penalties may be applied (also repeatedly), for example, against state officials not complying with a court’s requests for information, and to any party to the case not complying with requests for evidence.

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**Access to justice in environmental matters - Lithuania**

**Constitutional Foundations**

**Judiciary**

**#II**

Access to Information Cases

Access to Justice in Public Participation

Access to Justice against Acts or Omissions

Other Means of Access to Justice

Legal Standing

Legal Representation

Evidence

Injunctive Relief

Costs

Financial Assistance Mechanisms

Timeliness

Other Issues

Being a Foreigner
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I. Constitutional Foundations

There is no right to a clean, healthy, favorable, etc. environment directly enshrined in the Constitution. But this right can be derived from other Articles of the Constitutions. The concept of environmental protection is mentioned in several Articles of the Constitution: "The State and each individual must protect the environment from harmful influence" (Article 53 (3)); "The State shall concern itself with the protection of the natural environment, its fauna and flora, separate objects of nature and particularly valuable districts, and shall supervise the moderate utilization of natural resources, as well as their restoration and augmentation. The exhaustion of land and elements of the earth, water and air pollution, the production of radiation, as well as the impoverishment of fauna and flora, shall be prohibited by law" (Article 54). The Constitution guarantees access to justice: "Any person whose constitutional rights or freedoms are violated shall have the right to appeal to court" (Article 30 (1)). Citizens can initiate administrative or judicial procedures because of the environmental violations. But they cannot directly invoke the constitutional right to environment. The international treaties ratified by the Parliament (Seimas) are a constituent part of the legal system (Article 138 (3)). In the case of conflict, international agreements have primacy over national law (Article 11 (2) of the Law on International Treaties). Parties can rely directly on international law. The Aarhus Convention is effective without any additional national legislation. Administrative bodies and courts have to implement this treaty.

II. Judiciary

Lithuania has a dual judicial system with ordinary courts of general jurisdiction and administrative courts of special jurisdiction. The courts of general jurisdiction, dealing with civil and criminal matters, are the Supreme Court of Lithuania (1), the Court of Appeal of Lithuania (1), and, at the first instance level, the regional courts (5) and the district courts (54). District courts also hear some cases of administrative offenses from within their jurisdiction by law. The regional courts, the Court of Appeal and the Supreme Court of Lithuania have a civil division and a criminal division. The Supreme Court of Lithuania is the court reviewing judgments, decisions, rulings and orders of the other courts of general jurisdiction. It develops a uniform court practice in the interpretation and application of laws and other legal acts. The Supreme Administrative Court of Lithuania (1) and the regional administrative courts (5) are courts of special jurisdiction hearing disputes arising between citizens and administrative bodies from administrative legal relations. The Supreme Administrative Court is a first and final instance court for administrative cases assigned to its jurisdiction by law. It is an appeal instance court for cases concerning decisions, rulings and orders taken by regional administrative courts, as well as for cases involving administrative offenses decided by district courts. The Supreme Administrative Court is also an instance Court for hearing, in cases specified by law, petitions on the reopening of completed administrative cases, including administrative offences. The Supreme Administrative Court develops a uniform practice of administrative courts in the interpretation and application of laws and other legal acts. There are no specialized courts competent to hear specific types of administrative disputes. Some specialization exists only at the level of pre-trial investigation institutions (e.g. the Commission on Tax Disputes). The special pre-trial investigation institutions are the municipal administrative disputes commissions (savivaldybių visuomeninės administracinių ginčų komisijos) and the Chief administrative disputes commission (Vniausioji administracinų ginčų komisija). Applications to Administrative dispute commissions or to the Commission on tax disputes prior to bringing a case to an administrative court is not compulsory, save for the matters provided by laws. There are no special courts, tribunals, or environmental boards in Lithuania. Administrative dispute commissions and administrative courts carry out full review of all administrative acts including acts in environmental matters. District courts of general jurisdiction are dealing with environmental damage cases. Some state institutions under the authority of the Ministry of Environment can act as a pre-trial investigation institution in environmental matters in cases foreseen by the law (e.g. the State Inspectorate for Territorial Planning and Construction, and the State Service for Protected Areas). Only administrative courts can hear administrative disputes in environmental matters. There is no possibility to apply to another court. There is only the possibility to apply to an administrative dispute commission prior bringing the case to an administrative court. There is no general rule, that administrative acts must be challenged before a higher administrative authority or an independent dispute body before applying to a court. The internal control of administrative acts/omission is compulsory only in certain kinds of administrative disputes (e.g. in social security disputes, or tax disputes). Applications to Administrative dispute commissions or to the Commission on tax disputes prior bringing a case to an administrative court can be selected on a voluntary basis. Only in the matters provided by laws this special pre-trial procedure is compulsory. Every interested person can apply to a court for the protection of his/her own infringed or contested right or interest protected under law (Article 5 of the Law on Administrative Proceedings (LAP)). Every applicant who challenges an administrative act has to demonstrate a particular interest in the annulment of this act. Only an application to an administrative court as an individual in order to protect his/her own infringed or contested right or interest is admissible (Article 5 LAP). It is possible to bring a complaint to protect the State or other public interest laid down for the prosecutor, entities of administration, state control officers, other state institutions, agencies, organizations or natural persons, but only in the cases prescribed by law (Article 56 LAP). A complaint/petition may be filed with the administrative court, within one month from the day of publication of the contested act, the day of delivery of the individual act to the party concerned, the notification of the party concerned of the act (or omission), within two months from the day of expiry of the time limit set by a law, or any other legal act for the compliance with the demand. If the public or internal administration entity delays the consideration of a certain issue and fails to resolve it within the due date, a complaint about the failure to act (in such delay) may be lodged within two months from the day of expiry of the time limit set by a law or any other legal act for the settlement of the issue. No time limits shall be set for the filing of petitions for the review of the lawfulness of administrative legal acts by the administrative courts. The decision taken by an administrative disputes commission or any other institution for preliminary extrajudicial investigation of disputes, adopted after investigating an administrative dispute in accordance with the extrajudicial procedure, may be appealed to an administrative court within 20 days after the receipt of the decision (Article 33 LAP).

If it is recognized that the time limit for filing a complaint has not been observed for a good reason, at the claimant's request, the administrative court may grant restoration of the status quo ante. The petition for the restoration of the status quo ante shall indicate the reasons of failure to observe the time limit and present the evidence confirming the reasons of failure to observe the time limit. There are no special screening procedures before administrative courts. Only the compliance of the complaint with the formal requirements and the time limits for lodging a complaint are verified in order to decide whether a complaint is acceptable. The Article 23 of the LAP sets minimal standards of the complaint to administrative courts. Except for cases provided for by law, complaints /petitions shall be received and heard by the administrative courts only after the payment of the stamp duty. The assistance of a lawyer is not compulsory in administrative courts. The parties to the proceedings can defend their interests in court themselves or through their representatives. The administrative court can quash the contested administrative act (sometimes part thereof). The court can also obligate the appropriate entity of administration to remedy the committed violation or carry out other orders of the court (Article 88 LAP). The administrative court can't change the administrative act but it can obligate the state institution to elaborate (pass) a new administrative act. The decision of the court may contain this new administrative act. There are no special rules in the Law on Administrative Proceedings about cases in environmental matters. There is a possibility of petition for the protection of the State or other public interests, including environmental matters. The right to bring a case to a court in environmental matters is enshrined by the Aarhus Convention. There is no limitation for natural or legal persons to bring a case before an administrative court. There is a possibility to bring a complaint in order to protect state or another public interest laid down for the prosecutor, entities of administration, state control officers, other state institutions, agencies, organizations or natural persons, but only in the cases prescribed by law (Article 56 LAP). And that is also possible in the field of environmental matters. Administrative courts can also decide cases relating to disputes between public administrations, which are not subordinated to one another, concerning competence or breaches of
laws, except for civil litigation cases assigned to the courts of general jurisdiction. Public entities are not entitled to challenge their own administrative acts before administrative courts. If an unlawfulness of an administrative act violates public interest, only the prosecutor or other persons, in the cases prescribed by law, may bring this case before a court. Normally judges do not have the right to initiate a case. But if a judge has information about a criminal action, he has the obligation to inform the prosecutor (Article 109 LAP). Once the case is ongoing, the court can „actively” participate in the proceeding by asking for evidence, appointing witnesses, experts, etc.

III. Access to Information Cases

An applicant who considers that his request for environmental information has been ignored, wrongfully refused or inadequately answered has access to a review procedure before an administrative disputes commission. The commission may be appealed within a month after the receipt of the information or within a month from the date of the information has been made available. The decision of the commission may be appealed to the administrative court within 20 days after the day of the receipt of the decision. In the case of refusal, the public administration entity must adopt an individual administrative act, which must contain, clearly formulated, all rights and duties and the specific appeal procedure (Article 6 and 8 of the Law on Public Administration). The reasons for a refusal should be provided to the applicant within 14 days after the receipt of this demand by the public authority (Article 19 Order on Public Access to Environmental Information, Approved by Government Resolution Number 1175). The request can be written or oral. The information can be given oral if the applicant doesn’t ask for a written answer. The requirements for the written request are:

- the name,
- the contact data,
- the requested information,
- the form of giving the information.

The applicant doesn’t have to state an interest. When an applicant requests to make information available in a specific form (including in the form of copies), the public authority shall make it so available (there are some exceptions foreseen in the Article 9 of the Order on Public Access to Environmental Information). The information shall be made available to an applicant within 14 calendar days after the receipt by the public authority. This term can be extended to at least 14 calendar days. An Application to an administrative dispute commissions prior to applying to an administrative court is compulsory in this case. All information must be provided to the court if the court requests it. This information can influence the court decision. One of the types of judgments in administrative courts is to meet the complaint (grant the application) and rescind the contested act (or a part thereof), or to obligate the appropriate entity of administration to rectify the committed violation or to comply with any other order of the court (Article 88 (2) LAP). Courts can order information to be disclosed.

IV. Access to Justice in Public Participation

The administrative procedure is regulated by the Law on Public Administration for all matters of administrative law including environmental matters. The main law in environmental matters is the Law on Environmental Protection. Other laws and legislative acts regulating the environmental protection are adopted on the basis of this law. The Law on Environmental Protection foresees the main principal for the economic activities – the permit. There are a lot of kinds of permits (construction permit, EIA permit, IPPC permit and others) which are regulated in special laws and other legislative acts (in these acts are written the requirements for such permit, the institutions who are responsible for that, sometimes specific rules concerning the procedure) but the basic rules for the administrative procedures are written in the Law on Public Administration. The appeal to a superior administrative authority against an administrative decision can be an obligation (only if the cases foreseen in the law) or an alternative (the person can choose between the appeal to an authority or to the court). There is a possibility to apply to an administrative dispute commission prior to bringing the case to an administrative court. First instance administrative decision can be taken by a court directly. Applications to administrative dispute commissions prior to bringing a case to an administrative court is not compulsory, save for the matters provided by laws. In the absence of specific rules provided by law about the necessity of an administrative claim prior to bringing a case to an administrative court, administrative decisions can be brought to an administrative court directly. The administrative courts review the procedural legality and also the substantive legality of all administrative decisions. The courts study the material, technical findings and calculations when they are considered belonging to the decision. The legality of administrative planning is controlled by the administrative courts. The conditions regarding legal standing, rules of evidence, rules on hearing or extent of review by the court are not specific for the cases in environmental matters. Natural or legal persons have the right to lodge a complaint (application) concerning an administrative act when their rights have been infringed upon. In the cases prescribed by law it is possible to bring a complaint in order to protect the state or another public interest (including environmental interest). Agencies, organizations, and groups may lodge an appeal against the measures affecting their own interests (existence, estate, activity, operating conditions) as well as asking for damages for the material and moral damage they suffer. But they also may go to court to defend the public interest of those they represent, insofar as the regulatory or individual disputed measure harms this public interest. In administrative litigation, as in private legal proceedings, the burden of proof bears on the plaintiff. However, this principle sees mitigation in administrative litigation, notably when the elements of proof are in the hands of the administration or, in the case of liability, in the hypothesis of presumptions exempting the petitioner from establishing the fault he/she alleges and obliging the administration to prove that it committed no error. Considering the inquisitorial nature of the proceeding, the administrative judge, who has significant investigatory powers, actually contributes significantly in establishing the facts. If need be, he/she may impose the communication of documents or proceed by him/herself to certain investigations by directly examining acts or documents, by visiting locations, by attending hearings or expert assessments. Judges must actively participate in the collection of evidence. Article 8 (1) of the Law on Administrative Proceedings enshrines the principle that proceedings shall be held in a public hearing. The administrative judge has full control of an administrative act. An administrative act (part thereof) must be rescinded if it is:

- illegal per se, i.e., contradicts by its contents the legal acts of higher order;
- illegal by reason of having been adopted by an incompetent entity of administration;
- illegal because it was adopted in violation of the principal established procedures, especially in breach of the rules intended to ensure an objective evaluation of all circumstances and the validity of the decision. A contested act (part thereof) may also be rescinded on other grounds recognized as material by the administrative court (Article 89 LAP).

The EIA screening and scoping decisions are administrative decisions and can be reviewed by courts. The conditions regarding legal standing, rules of evidence, rules on hearing or extent of review by the court are not specific for these cases. The EIA final decision is also an administrative decision and can be reviewed by courts. The administrative courts review the procedural legality and also the substantive legality of all administrative decisions. The courts study the material, technical findings and calculations when they are considered as belonging to the decision. The Environmental Impact Study is controlled because it is the main aspect of the procedural legality. The requirement of a necessary interest to have the power to act is at the very head of the conditions for an appeal’s admissibility. It is not necessary to participate in the public consultation phase of the EIA procedure or to make comments to have a standing before administrative courts. The public concerned has the right to lodge a complaint (application) concerning an EIA administrative act in order to protect the public interest (Article 15 of Law on Environmental Impact Assessment of the Proposed Economic Activity). There are no special rules applicable to EIA procedures. The injunction relief is available in administrative cases in all matters. According to the Article 71 of the Law on Administrative Proceedings, the court or the judge may, upon a motivated petition of the participants in the proceedings or upon his/its own initiative, take measures with a view to securing a
claim. The claim may be secured at any stage of the proceedings if failure to take provisional measures to secure a claim may impede the enforcement of the court decision or render the decision unenforceable. There are no special rules applicable to EIA procedures. All administrative decisions can be reviewed by administrative courts. IPPC decisions and other decisions concerning authorizations can be reviewed by administrative courts too. The conditions regarding legal standing, rules of evidence, rules on hearing or extent of review by the court are not specific for these cases. The administrative courts review the procedural legality and the substantive legality of IPPC decisions as well as the legality of all administrative decisions. They have also to study the material, technical findings, calculations and the IPPC Documentation if these elements are considered to belong to the decision. It is not necessary to participate in the public consultation phase of the IPPC procedure or to make comments to have a standing before administrative courts. The public concerned has the right to lodge a complaint (application) concerning an IPPC administrative act in order to protect the public interest (Article 87 of Rules on issuance, renewal and cancellation on IPPC permits, Approved by Ministry of Environment of Lithuania Order Number 80 in 2002). According to the Article 71 of the Law on Administrative Proceedings, the court or the judge may take measures with a view to securing a claim. There are no special rules applicable to IPPC procedures.

V. Access to Justice against Acts or Omissions
According to Article 7 (8) of the Law on Environmental Protection the public concerned, one or more natural or legal persons, have the right to bring a claim before courts and:

- to insist upon the punishment of persons guilty of endangering the environment, and of officers, whose decisions have infringed their rights or interests;
- to take the appropriate action to avoid or minimize environmental damage or to restore the original state of the environment.

Legal and natural persons who cause damage to the environment must compensate all losses, and, if possible, must restore the environmental state (Article 32 Law on Environmental Protection). The right to make claims for damages belongs to:

- legal and natural persons whose health, property or interests have been damaged;
- officers of the Ministry of Environment or other officers when damage has been done against the interests of the state (Article 33 (1) Law on Environmental Protection).

Legal entities are subject to civil liability, regardless of their guilt, for any environmental damage or actual threat thereof, resulting from their economic activities (Article 34 (2) Law on Environmental Protection). Claims for the protection of the environment can be submitted directly to the administrative courts against decisions or omissions of public bodies (the state or local public authorities). The administrative court can revoke the contested administrative act (part thereof), or obligate the public body to remedy the committed violation, or carry out other orders of the court. The administrative court can satisfy the complaint (the application) and an order for damages caused by illegal actions from public bodies. The state administration of environmental protection shall be carried out by the Government of the Republic, the Ministry of Environment, the Environmental Protection Agency, the Regional Environmental Protection Departments, other special state authorities (e.g. State Territorial Planning and Construction Inspectorate, General Forest Enterprise, State Protected Areas Service, National Parks Directorates) and the local governments. The administrative procedure is regulated by the Law on Public Administration for all matters of administrative law. There are no specific rules for environmental matters. The administrative procedure shall be completed and the decision on the administrative procedure shall be adopted within 20 working days from the beginning of the procedure. This term can be extended for a period not longer than 10 working days (Article 31 Law on Public Administration). A person shall have the right to appeal against a decision on the administrative procedure adopted by an entity of public administration, at his own choice, either to an administrative disputes commission or to an administrative court in accordance with the procedure set forth by laws (Article 36 Law on Public Administration). The administrative court can revoke the decisions made by competent authorities (part thereof) or obligate the competent authority to remedy the committed violation or carry out other orders of the court (Article 88 LAP). There are no specific rules concerning environmental liability matters for the procedure before administrative courts. The ordinary courts are dealing with cases concerning the environmental liability. The possibility to claim for compensation of damage is foreseen in the article 32-34 of the Law on Environmental Protection. There are several possibilities to enforce the environmental liability. Each possibility is based on specific conditions. The person can ask the competent authority to act if the environment is damaged. The decision made by competent authority can be appealed before the administrative court. Legal and natural persons whose health, property or interests have been damaged can make direct claims for damages before ordinary courts. Competent officers can make such claims when damage has been done against the interests of the State.

VI. Other Means of Access to Justice
All general court proceedings, administrative, civil or criminal are likely to be applied in environmental matters. There are no specific rules in this area. The Seimas of the Republic appoints the Seimas Ombudsman, a state official who protects human rights and freedoms, investigates the complainants’ complaints about abuse of office by or bureaucracy of officials and seeks to upgrade public administration. The complainant has the right to file a complaint with the Seimas Ombudsman about the abuse of office by bureaucracy of officials if s/he believes that his rights and freedoms have been violated thereby (Article 5, 13 (1) Law on the Seimas Ombudsman). Having completed the investigation the Seimas Ombudsman shall decide to:

- recognize or declare the complaint as justified;
- dismiss the complaint;
- discontinue the complaint investigation (Article 22 (1) Law on the Seimas Ombudsman).

The institution and agency or official, to whom this proposal (recommendation) is addressed must investigate the proposal (recommendation) of the Seimas Ombudsman and inform the Seimas Ombudsman about the results of the investigation (Article 20 (3) Law on the Seimas Ombudsman). According to the Law on the Prosecutor, the public prosecutor's office is a state institution headed by the Prosecutor General. The public prosecutor's office is comprised of the Prosecutor General's Office and territorial prosecutor's offices (regional prosecutor's offices and district prosecutor's offices). All prosecutors' offices shall defend the public interest, including environmental matters. Article 19 of the Law on the Prosecutor comprehensively regulates the defense of the public interest. The state institutions responsible for the environmental protection including the Ministry of Environment, the Environmental Protection Agency, the Regional Environmental Protection Departments, and other special state authorities (e.g. State Territorial Planning and Construction Inspectorate, General Forest Enterprise, State Protected Areas Service, National Parks Directorates and the local governments) can initiate the case in the administrative court for the defense of public interest. Some territorial police bodies have special departments for the environmental violations (e.g. in the capital in Vilnius). Other territorial police bodies have police officers responsible for investigating environmental violations. They have competence for criminal matters and administrative violations. The Code of Criminal Procedure provides cases under the Criminal Code of Republic of Lithuania, when criminal proceedings can be initiated, when there is a complaint of the victim or his legitimate representative (Article 407 of the Code of Criminal Procedure). In these cases pre-trial investigation is not conducted. There are no example cases in environmental matters. There are several possibilities of claims before the administrative courts in cases of administrative inaction or inappropriate action:

- for annulment against an unlawful administrative decision;
- for damages against a public authority when it is shown that this inaction or inappropriate action caused a damage. 
There is a possibility to bring a complaint in order to protect the State or other public interest laid down for the prosecutor, entities of administration, state control officers, other state institutions, agencies, organizations or natural persons, but only in the cases prescribed by law (Article 56 of the Law on Administrative Proceedings).

VII. Legal Standing
According to the Law on Administrative Proceedings every interested person can apply to a court for protection of his/her infringed right, contested right, or interest protected under law. Every applicant who challenges an administrative act has to demonstrate a particular interest in the annulment of this act. Only applications to protect an individual’s infringed or protective right to an administrative court is admissible (Article 5 of the Law on Administrative Proceedings). These main rules are applicable for different types of procedures and different actors. However, it is possible to bring a complaint in order to protect the State or other public interest. The actors for this possibility include the prosecutor, entities of administration, state control officers, other state institutions, agencies, organizations or natural persons. But this possibility can be used only in the cases prescribed by law (Article 56 of the Law on Administrative Proceedings). E.g. according to Article 7 (8) of the Law on Environmental Protection the public concerned, one or more natural or legal persons, have the right to bring a claim before courts. So if there was a complaint in order to protect the public interest connected with the protection of environment this complaint should be admissible because it is prescribed by Law on Environmental Protection. This rule is used for all matters (not only for environmental matters). Sometimes additional rules of law provide whom and in which cases there is access to the court e.g. cases concerning EIA and IPPC. Article 15 of Law on Environmental Impact Assessment of the Proposed Economic Activity provides the possibility for the public concerned to bring a claim before courts in the case of EIA. Article 87 of Rules on issuance, renewal and cancellation on IPPC permits, Approved by Ministry of Environment of Lithuania - Order Number 80 in 2002 provides the possibility for the public concerned to bring a claim before courts in the case of IPPC. There are additional rules regarding the possibility for the public concerned to bring a claim before courts in the case of EIA (Article 15 of Law on Environmental Impact Assessment of the Proposed Economic Activity) and IPPC (Article 87 of Rules on issuance, renewal and cancellation on IPPC permits, Approved by Ministry of Environment of Lithuania - Order Number 80 in 2002). There is no “actio popularis” in Lithuania. The Ombudsman cannot bring a claim before the administrative court against the individual administrative decision. But he can apply to the administrative court with a request to investigate the legality of the legal statutes adopted by the entities of state administration or municipal administration. He can recommend that the prosecutor apply to the court according to the procedure prescribed by law for the protection of public interest. The public prosecutors can defend the public interest before administrative courts. Other state institutions have legal standing to act against administrative courts either when it is in their own interest to claim or to defend, or when they defend the public interest. There are additional rules for legal standing of individuals/NGOs and access to justice for environmental matters in the fields of EIA and IPPC procedures.

VIII. Legal Representation
Parties can represent their interests in administrative courts themselves or through representatives. In administrative courts, the participation of lawyer is compulsory in judicial procedures (including in environmental matters). A lawyer is also compulsory before the cassation court (Supreme Court of Lithuania) (e.g. in the cases of environmental damage or in the criminal cases). Parties and/or their representatives must have a degree in law before the Court of Appeal. Generally, compulsory participation is required in criminal proceedings in all courts of general jurisdiction. There are specialized law offices in environmental matters (usually the biggest law offices). It is possible to find the lists of the lawyers in the following websites:

- http://www.advoco.lt/
- http://www.infolex.lt/

There are several NGOs whose aim is to defend the public interest in environmental matters, such as the Lithuanian Fund For Nature and Lithuanian Green Movement. The Lithuanian Environmental Coalition was established in 2004. There are 9 members in this Coalition at the moment.

IX. Evidence
Parties and other persons present the evidence for the proceedings. The parties must prove the circumstances on which they base their claims and responses. In administrative and civil proceedings the evidence includes: explanations of the parties and third parties (given directly or through representatives), witness evidence, written evidence, real evidence, statements of examination, expert evidence. The parties and other participants submit evidence to the court. If necessary, the court can allow those persons to submit additional evidence on the person's request or, on its own initiative, may demand the necessary documents, or request submissions from the officials. In civil proceedings the court has the right to collect evidence on its own initiative only in exceptional cases prescribed by the law, such as in family cases and labor cases. The court may also demand and obtain evidence from the other party or third parties at another party’s request. No evidence before the Courts has a predetermined value. The court evaluates the evidence according to its own inner criterion based on a thorough, comprehensive, and objective examination of the facts in accordance with the law, as well as justice and reasonableness criteria. In administrative proceeding parties can introduce new evidence until the end of the hearing on merits. Judges must actively participate in the collection of evidence, in the establishment of all significant circumstances of the case, and must make a comprehensive and objective examination thereof. In civil proceedings parties can introduce new evidence until the end of the preparation for hearing on the merits. In civil proceedings the court has the right to collect evidence on its own initiative only in exceptional cases prescribed by the law, such as in family cases or labor cases. Parties can submit expert opinions with other evidence to the court. Specialist explanations, opinions or conclusions gathered by the parties to the proceedings on their own initiative are not admitted as expert evidence. They are regarded as pieces of written evidence. The court decides either on its own initiative or at the request of the parties whether to order an expert examination in the proceedings. Usually an expert is ordered to examine certain issues arising in the case when the Court needs special scientific, medical, artistic, technical or professional knowledge. Expert opinions, as other evidence, do not have a predetermined value for the court. They are not binding on judges.

X. Injunctive Relief
The appeal or the action submitted to the court against the administrative decision does not have a suspensive effect. Only the court might suspend the administrative decision in the way of applying interim measures. Usually administrative decisions can be immediately executed after their adoption (enforcement), irrespective of an appeal. Only the court can apply interim measures. When the administrative decision in the form of the legislative act was adopted by the government or the municipality the enforcement is connected with the publication in the official journal or other date which can be foreseen in the legislative act. There are no specific rules for the injunctive relief in judicial procedures in environmental matters. The claim may be secured at any stage of the proceedings if failure to take provisional measures to secure a claim may:

a) impede the enforcement of the court decision; or
b) render the decision unenforceable.

The request for the interim measures must be filed prior to the commencement of the hearing of the case on the merits. According to the practice of the Supreme Administrative Court of Lithuania, the court, while deciding on the interim measures (in Lithuanian administrative process they are called “measures securing the claim”), must preliminarily take into account the nature of the claim (that is requested to be secured), the indicated factual basis for the claim, the rights, granted by the contested act, and actual realization of these rights. Only then the court can decide whether the requirement for interim measures under the circumstances of the application would be adequate to the purpose and whether the principle of proportionality and the balance of the interests of the parties and the public interest wouldn't be violated. According to the principle of fairness, when considering the requirement of interim measures, the
court has to answer the question whether interim measure would actually help to restore the previous legal position if the main claim would be satisfied. The petition for securing the claim might be accepted only if the main complaint is accepted. There is no possibility of asking for interim measures, without asking for challenging the administrative act or omission. There is no cross-undertaking in damages prior to granting interim relief. There is the appeal against the decision of the court regarding injunction possible. But it has not the suspensive effect and the court can continue the proceeding (Article 71 (5) LAP).

**XI. Costs**

In administrative courts, the applicant should pay a court fee. There are exemptions, however, in cases about complaints in order to protect the State or other public interests, in cases concerning compensation for material and moral damages inflicted by unlawful acts or omission in the sphere of public administration, for example. Other litigation-related costs include:

- costs paid to witnesses, experts, and expert organizations;
- costs relating to the publication of hearing time and place in the press;
- transport costs;
- costs for the rental accommodation in the place of the court;
- other necessary and reasonable expenses.

In civil courts applicants have to pay a court fee. There are exemptions in the cases concerning compensation for material and moral damage in relation to a physical personal injury, death, in the cases concerning the defense of the public interest under the claim of the prosecutor, public institutions or other persons. Other litigation-related costs include:

- costs paid to witnesses, experts, authorities and expertise of interpreters and the costs associated with on-site inspections;
- costs for the searching for the defendant;
- costs associated with the service of delivery of documents;
- costs related to enforcement of judgments;
- costs related to the salary of the curator;
- costs for the lawyers or lawyer’s assistants;
- costs associated with the application for interim relief;
- other necessary and reasonable expenses.

Under the Law on Administrative Proceedings, each complaint (application) in administrative court is subject to a stamp duty in the amount of LTL 100 (excluding the exceptions). An appeal for the review of a court judgment must be subject to a stamp duty at the 50% rate payable upon the lodging of the complaint (application) with the first instance court. Under the Code of Civil Procedure, stamp-duties in pecuniary disputes are as follows:

<table>
<thead>
<tr>
<th>Amount of the claim</th>
<th>Stamp-duty</th>
</tr>
</thead>
<tbody>
<tr>
<td>for claims up to LTL 100 000</td>
<td>3% of claimed amount + indexation (The minimum stamp-duty - LTL 50)</td>
</tr>
<tr>
<td>for claims up to LTL 300,000</td>
<td>LTL 3,000 plus 2% of claimed amount exceeding LTL 100,000 + indexation</td>
</tr>
<tr>
<td>for claims over LTL 300,000</td>
<td>LTL 7,000 plus 1% of claimed amount exceeding LTL 300,000 + indexation (The maximum stamp-duty - LTL 30,000)</td>
</tr>
</tbody>
</table>

For appeals, cassation appeal, and applications for renewal of the proceedings shall be paid the same amount of stamp duty. An estimation of expert fees and other litigation-related fees, except from lawyer fees and costs, associated with the application for interim relief are regulated by Government Resolution Number 344 from 2002. There is a recommendation from Minister of Justice and the Chairman of Bar concerning lawyer fees (Ministry of Justice Order Number 1R-85 from 2004). Recommended maximum remuneration sizes are calculated using the coefficients which are based on the Lithuanian Government approved the minimum monthly salary. The minimum monthly salary (MMS) from 1st August 2012 is LTL 850. E.g. the coefficient for one hour for representation in court is 0.15. An estimation of lawyer fees in the case of the legal aid is regulated by Government Resolution Number 60 from 2001. The remuneration for lawyers constantly providing secondary legal aid is 8.18 MMS per month. Working hour salary for lawyers who are not constantly providing secondary legal aid equal to 0.05 MMS. There are differences between administrative and civil proceedings. In the administrative proceedings, in the case of an injunctive relief or interim measure a deposit (cross-undertaking in damages) is not needed (it is not foreseen in the Law on Administrative Proceedings).

In the civil proceeding the request for application of interim measure shall be taxable only when it is claimed before filing a lawsuit. In this case the applicant must pay half of the stamp-duty payable for this prospective claim. The Code of Civil Procedure establishes the court’s right to require a deposit for applying the interim measures from the applicant. The deposit is intended to secure the defendant against losses of the interim measures applied to him. The deposit could also be the bank guarantee. The amount of the deposit depends on the case and it is quite difficult to evaluate it generally. The general rule is that the losing party has to bear all costs, including stamp duties and costs related to initial court proceedings. The party shall be also obliged to reward the costs of the winning party. The stamp-duty, expenses for correspondence, expert costs, and other costs usually are paid in full. But the legal costs for legal representation during the court proceeding are reduced as recommended by the Minister of Justice and the Chairman of Bar. However these amounts are only recommended and depend on the complexity of the court proceeding, case material, and other factors. Nevertheless, in the absolute majority of civil and administrative cases, state courts reduce parties’ requested legal expenses for their legal assistance according to the recommended amounts and reasonableness.

**XII. Financial Assistance Mechanisms**

There are no specific rules concerning litigation costs of proceedings in environmental matters. Complaints/petitions shall be received and heard by the administrative courts only after the payment of the stamp duty prescribed by the law. Several exemptions from the stamp duty are foreseen in Article 40 of Law on Administrative Proceedings:

- complaints/petitions relating to the delay by the entities of public administration to perform the actions assigned within the remit of their competence, awarding of or refusal to award pensions,
- violations of election laws and the Law on Referendum,
- petitions by state servants and municipal employees when they concern legal relations in the Office,
- compensation for damage inflicted upon a natural person or organization by unlawful acts/omission in the sphere of public administration, and
- complaints relating to the protection of public interests and some other complaints/petitions.

There is a legal aid available in Lithuania. The current legal aid scheme is governed by the Law on Legal Aid. Legal aid is divided into primary and secondary legal aid. Primary legal aid includes legal information and legal consultations outside the judicial procedure and is accessible to all citizens, EU citizens, and foreigners, irrespective of their financial resources. Secondary legal aid includes preparation of procedural documents, representation in courts, waiver of the stamp duty and other procedural costs. Access to secondary legal aid depends on the level of estate and income and covers 50 or 100 percent of all
procedural costs. Some groups of persons (i.e. recipients of social allowance) can receive legal aid independent of their income. Legal aid is granted through special services, which are accountable to the Ministry of Justice. The refusal to grant legal aid is subject to appeal before administrative courts. Legal aid is also available in environmental matters without any specific rules. Legal aid is subject to requirements as to resources, nationality, residence and admissibility. You are entitled to primary or secondary legal aid if you are a Lithuanian national, a citizen of the EU, or a foreigner who is lawfully residing in Lithuania or in another EU state. Legal aid is given if the action is not manifestly inadmissible or devoid of substance. The additional condition for secondary legal aid is that the party’s property value and annual income does not exceed the property value and income levels set by the Government of the Republic of Lithuania. Legal aid for NGOs is not foreseen. Law firms do not provide pro bono legal assistance in Lithuania. All legal clinics deal with environmental cases. There are no specific environmental legal clinics. These legal clinics are:

Legal clinic of Vilnius University: http://www.teisesklinika.lt
Legal clinic of Mykolas Romeris University: http://www.mruni.eu/lit/universitetas/fakultetai/teises_fakultetas/teisines_pagalbos_centras/apie_centra/

The legal clinics are responsible for primary legal aid. The primary legal aid is also given by the municipalities and by Ministry of Justice Information Bureaus in several cities (Kaunas, Klaipėda, Šiauliai, Druskininkai and other).

The secondary legal aid is granted through 5 special services (in Vilnius, Kaunas, Klaipėda, Panevėžys and Šiauliai), which are accountable to the Ministry of Justice. There are environmental organizations responsible for the defense of the environment in Lithuania. They are available for the public. There are some other organizations that give free legal advice via internet. There are no specific environmental lawyers who would be available for the public for free.

XIII. Timeliness

An administrative organ shall complete the administrative procedure and adopt the decision of the administrative procedure within 20 working days from the beginning of the procedure. The public entity initiating the administrative procedure may extend the period up to 10 extra working days where, due to objective reasons, the administrative procedure cannot be completed within the set time limit. A person shall be notified about the extension of the time limit for the administrative procedure in writing or by e-mail (where the complaint has been received by e-mail) and the reasons for the extension (Article 31 of the Law on Public Administration). An administrative court may initiate responsibility of a public authority when the administrative organ does not adopt the decision during the time limit and it has resulted in damage to the claimant. In several fields, the law established a regime of tacit acceptance. The silence of the administration causes the appearance of a tacit acceptance within the period fixed by law. There are no special time limits set by law for judicial procedures in environmental matters. The general rules apply. Usually, the preparation of administrative cases before the court must be completed no later than one month after the date of the complaint (application). The proceedings before the administrative court must be completed and a decision made in the first instance no later than two months after the order for the case to the court hearing date, if the law doesn’t provide shorter duration.

Where appropriate, the trial period may be extended up to one month. In cases concerning the legality of normative acts of the administration the time period may be extended up to three months. The judgment shall be drawn up and communicated to the public generally on the same day after hearing the case. Judgments relating to the legality of administrative acts and other complex cases may be passed and announced later than but not more than 10 days upon the completion of the hearing of the case (in the practice, it’s used in almost all cases). When the right to a judicial decision within a reasonable time has caused damage, the person can obtain compensation for the damage. This possibility is foreseen in the Law on Compensation of Damage caused by Public Authorities.

XIV. Other issues

Every applicant who challenges an administrative act must demonstrate a particular interest in the annulment of the act. An action for the annulment of an administrative act shall only be admissible if it produces legal effects – when it infringes the rights and obligations of applicant. A writ that only occurs in the context of a procedure for developing a subsequent main decision or simple information does not create rights or obligations for the person and cannot be challenged before an administrative court. All these general rules are applicable in environmental matters. The right of access to environmental information is ruled by general principle issued by the Law on Environmental Protection and the implementing Order on Public Access to Environmental Information, Approved by Government Resolution Number 1175 from 1999. Alternative Dispute Resolution currently is not prevalent in administrative litigation in Lithuania. But the newest jurisprudence of the administrative courts indicates an intention to use the peace treaty to settle disputes (also in environmental matters). Mediation is not really used in the practice; but, this idea is slowly getting value in Lithuania.

XV. Being a Foreigner

Article 29 of the Lithuanian Constitution proclaims the principle of equality before the law for all citizens regardless of gender, race, nationality, language, origin, social status, belief, convictions, or views. Many laws have extended this article of the Constitution. Article 6 of Law on Administrative Proceedings provides that justice in administrative cases is implemented only by the courts, according to equality before the law and the court, regardless of gender, race, nationality, language, origin, social status, religion, beliefs or attitudes, activities and nature, residence and other circumstances. Only the Lithuanian language should be used in the courts. Article 9 of Law on Administrative Proceedings provides that in the process of administrative cases, decisions are made and published in the Lithuanian language. All documents submitted to the court must be translated into Lithuanian. Persons who do not speak Lithuanian shall be guaranteed the right to use the services of an interpreter. The interpreter is paid from the state budget (Article 9 of Law on Administrative Proceedings).

XVI. Transboundary Cases

Article 32 Law on Environmental Protection provides that disputes between legal and natural persons of the Republic of Lithuania and foreign states shall be settled in the manner established by law of the Republic of Lithuania, unless international agreements of the Republic of Lithuania provide otherwise. The admissibility of an action before a Lithuanian court is possible under conditions in Law on Administrative Proceedings or in Civil Proceedings Code. The concept of public interest is not specific in a transboundary context. The general rules are applicable (especially about the admissibility of requests through the concept of legal interest). The Lithuanian administrative law recognizes equal access to administrative courts for persons or NGO's residing abroad on the same basis that the applicants residing in Lithuania use. An EU citizen or a foreigner who is lawfully residing in Lithuania or in other state of the EU can get legal aid. A jurisdiction clause is possible in civil matters. It takes the form of a contractual provision whereby the parties agree to entrust the settlement of a dispute to a court which does not normally have jurisdiction. This may concern the subject matter jurisdiction or territorial jurisdiction. This clause may relate only to disputes arising from the contract. But, this mechanism is not used for administrative law litigations before administrative courts. The possibility to choose between courts could be possible in an international agreement.

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### Access to justice at Member State level

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

   Articles 53 and 54 of the Constitution and the Law on Environmental Protection set out basic requirements which must be fulfilled. The purpose of the Law on Environmental Protection is to regulate public relations in the field of environmental protection, establish the principal rights and duties of legal and natural persons in preserving the biodiversity, ecological systems and landscape characteristic of the Republic of Lithuania, ensuring a healthy and clean environment, rational utilisation of natural resources in the Republic of Lithuania, the territorial waters, continental shelf and economic zone thereof (Article 2 of the Law on Environmental Protection). Environmental protection is a public interest (Constitutional Court’s rulings of 29 October 2003, of 9 May 2014, of 5 March 2015).

   A person whose constitutional rights or freedoms are violated shall have the right to apply to a court (Article 30 (1) of the Constitution). One or more natural or legal persons and the public concerned have the right to file, in accordance with the procedure laid down by laws of the Republic of Lithuania, a complaint/application demanding that appropriate action be taken to prevent or minimise environmental damage or restore the environment to its baseline condition, and that the persons guilty of causing a harmful effect to the environment and the officials whose decisions or acts/failure to act have violated the rights of citizens, the public concerned, other legal and natural persons, or the interests protected under the law be punished; as well as to refer, in accordance with the procedure laid down by laws of the Republic of Lithuania, to court where they believe that their application filed in accordance with the procedure laid down by the legal acts regulating the right to obtain information on the environment has been unlawfully dismissed, has been provided with a partially or completely inappropriate response or has not been given proper regard in compliance with the legal acts regulating the right to obtain information on the environment (Article 7 (1) of the Law on Environmental Protection). The public concerned has the right to refer to court for defence of public interest challenging the substantive or procedural legality of decisions, acts or omissions in the area of the environment and environmental protection as well as utilisation of natural resources (Article 7 (2) of the Law on Environmental Protection).

   The state administration of environmental protection shall be carried out by the Government of the Republic, the Ministry of Environment and other institutions under the Ministry of Environment (e.g. the Department of Environmental Protection, the Environmental Protection Agency, the State Territorial Planning and Construction Inspectorate, the General Forest Enterprise, the State Protected Areas Service), other special state authorities (e.g. National Parks Directorates) and institutions of local self-government.

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

   There is no right to a clean, healthy, favourable, etc. environment directly enshrined in the Constitution. But this right can be derived from other Articles of the Constitution[2]. The concept of environmental protection is mentioned in several Articles of the Constitution: "The State and each individual must protect the environment from harmful influence" (Article 53 (3)); "The State shall concern itself with the protection of the natural environment, its fauna and flora, separate objects of nature and particularly valuable districts, and shall supervise the moderate utilization of natural resources, as well as their restoration and augmentation. The exhaustion of land and elements of the earth, water and air pollution, the production of radiation, as well as the impoverishment of fauna and flora, shall be prohibited by law" (Article 54). The Constitution guarantees access to justice: "Any person whose constitutional rights or freedoms are violated shall have the right to appeal to court" (Article 30 (1)).

   Text of the Constitution (English and Lithuanian)

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

   According to the Law on Administrative Proceedings, any interested person can apply to a court for protection of their infringed right, contested right or interest protected under law. Any applicant who challenges an administrative act has to demonstrate a particular interest in the annulment of this act. Only applications to protect an individual’s infringed or protective right to an administrative court are admissible (Article 5 of the Law on Administrative Proceedings). These main rules are applicable for different types of procedures and different actors. However, it is possible to bring a complaint in order to protect the State or other public interest. The actors for this possibility include the prosecutor, entities of administration, state control officers, other state institutions, agencies, organisations or natural persons. But this possibility can be used only in the cases prescribed by law (Article 55 of the Law on Administrative Proceedings). E.g., according to the Law on Environmental Protection the public concerned, one or more natural or legal persons, have the right to bring a claim before the courts, and in addition the public concerned has the right to refer to court for defence of public interest challenging the substantive or procedural legality of decisions, acts or omissions in the area of the environment and environmental protection as well as utilisation of natural resources. So if there were a complaint in order to protect the public interest connected with the protection of the environment, this complaint should be admissible because it is prescribed by the Law on Environmental Protection. This rule is used for all matters (not only environmental matters). According to Article 7 (8) of the Law on Environmental Protection, one or more natural or legal persons and the public concerned have the right to file a complaint/application demanding that appropriate action be taken to prevent or minimise environmental damage or restore the environment to its baseline condition, and that the persons guilty of causing a harmful effect to the environment and the officials whose decisions or acts/failure to act have violated the rights of citizens, the public concerned, other legal and natural persons or the interests protected under law be punished.

   There are specific rules regarding the possibility for the public concerned to bring a claim before the courts in the case of environmental impact assessment (Article 15 of the Law on Environmental Impact Assessment of the Proposed Economic Activity), integrated pollution prevention and control permits (Article 124 of Rules on issuance, renewal and cancellation of IPPC permits, approved by the Ministry of Environment of Lithuania - Order Number D1-528 in 2013), as well as territory planning (Article 49 of the Law on Territory Planning).

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

   The Supreme Administrative Court develops uniform practice of administrative courts in the interpretation and application of laws and other legal acts. The Supreme Court, as a court of cassation, ensures uniform court practice of courts of general jurisdiction.

   There is a distinction between cases about protection of the private interest and the public interest respectively. The protection of the private interest is guaranteed under the Constitution (Article 30). The protection of the public interest is possible only in the cases prescribed by law (Article 55 of the Law on Administrative Proceedings) (Supreme Administrative Court’s judgment of 23 September 2013 in case no. A520 - 211/2013). The Law on Environmental Protection...
Protection foresees the possibility to protect the public interest in environmental matters (Article 7). The Supreme Administrative Court applies the Aarhus Convention directly and decides about the legal status of the person according to the Aarhus Convention (Supreme Administrative Court's judgment of 29 May 2013 in case no. A602-186/2013). The Supreme Administrative Court decided about the requirements for NGOs: they should be active in the area of environment and environmental protection and should fulfill other requirements under the national law (Supreme Administrative Court's judgment of 23 September 2013 in case no. A520-211/2013). The status of "public concerned" can be qualified according to the Law on Environmental Protection and other laws, for example according to the Law on Environmental Impact Assessment of the Proposed Economic Activity (Supreme Administrative Court's judgment of 29 May 2013 in case no. A602-186/2013).

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?

The international treaties ratified by the Parliament (Seimas) are a constituent part of the legal system (Article 138 (3) of the Constitution). In cases of dispute, international agreements have primacy over national law (Article 11 (2) of the Law on International Treaties). Parties can rely directly on international law. The Aarhus Convention is effective without any additional national legislation. Administrative bodies and courts have to implement this treaty. The Aarhus Convention is implemented in national legislation.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

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)?

Lithuania has a dual judicial system with ordinary courts of general jurisdiction and administrative courts of special jurisdiction. The courts of general jurisdiction, dealing with civil and criminal matters, are the Supreme Court of Lithuania (1), the Court of Appeal of Lithuania (1) and, at first instance level, the regional courts (5) and the district courts (12). District courts also hear some cases of administrative offences from within their jurisdiction by law. The regional courts, the Court of Appeal and the Supreme Court of Lithuania have a civil division and a criminal division. The Supreme Court of Lithuania is the court reviewing judgments, decisions, rulings and orders of the other courts of general jurisdiction. It develops uniform court practice in the interpretation and application of laws and other legal acts. The Supreme Administrative Court of Lithuania (1) and the regional administrative courts (2) are courts of special jurisdiction hearing disputes arising between citizens and administrative bodies from administrative legal relations. The Supreme Administrative Court is a first and final instance court for administrative cases assigned to its jurisdiction by law. It is an appeal instance court for cases concerning decisions, rulings and orders taken by regional administrative courts, as well as for cases involving administrative offences decided by district courts. The Supreme Administrative Court is also an instance Court for hearing, in cases specified by law, petitions on the reopening of completed administrative cases, including administrative offences. The Supreme Administrative Court develops uniform practice of administrative courts in the interpretation and application of laws and other legal acts. There are no specialised courts competent to hear specific types of administrative disputes.

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

There are no special court rules in the environmental sector. The Administrative Dispute Commission of Lithuania and the administrative courts carry out full review of all administrative acts, including acts in environmental matters. The courts of general jurisdiction deal with environmental damage cases.

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.

The administrative court can quash the contested administrative act (sometimes part thereof). The court can also obligate the appropriate entity of administration to remedy the committed violation or carry out other orders of the court (Article 88 of the Law on Administrative Proceedings). The administrative court cannot change the administrative act, but it can obligate the state institution to elaborate (pass) a new administrative act. The decision of the court may contain this new administrative act. There are no special rules in the Law on Administrative Proceedings about cases in environmental matters. There is a possibility of petition for the protection of the State or other public interests, including environmental matters. (Article 55 of the Law on Administrative Proceedings).

With regard to the preparation for the hearing of the case in the court, the judge shall issue the orders necessary for preparing the hearing without notifying the participants in the proceedings (asking for evidence, appointing witnesses, etc.), except when deciding the issue of ordering the expert examination (Article 67 of the Law on Administrative Proceedings). In a court hearing, the judge can “actively” participate in the proceeding too by asking for evidence, appointing witnesses, experts, etc. The court can apply to the Constitutional Court requesting that it determine whether the law or other legal act adopted by the Seimas applicable in the case is in conformity with the Constitution, and whether the acts adopted by the President of the Republic or the Government applicable in the case are in compliance with the Constitution and laws. The court can also apply to a competent judicial authority of the European Union for the prejudicial decision on the issue of interpretation or validity of the laws of the European Union on its own motion.

1.3. Organisation of justice at administrative and judicial level

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

The state administration of environmental protection shall be carried out by the Government of the Republic, the Ministry of Environment and other institutions under the Ministry of Environment (e.g. the Department of Environmental Protection, the Environmental Protection Agency, the State Territorial Planning and Construction Inspectorate, the General Forest Enterprise, the State Protected Areas Service), other special state authorities (e.g. the National Parks Directorates) and institutions of local self-government. The administrative procedure is regulated by the Law on Public Administration for all matters of administrative law. There are no specific rules for environmental matters. The administrative procedure shall be completed and the decision on the administrative procedure shall be adopted within 20 working days from the beginning of the procedure. This term can be extended for a period not longer than 10 working days (Article 10 (4) of the Law on Public Administration).

The Lithuanian legal system provides for both mandatory and optional prelitigation procedures. According to the Law on Administrative Proceedings, before application is made to the administrative court individual legal acts adopted by public administration entities provided for by law, as well as their acts/omission may be, and in the cases established by the law must be, contested by applying to the institution for preliminary extrajudicial investigation of disputes (Article 26 (1) of the Law on Administrative Proceedings). In cases of mandatory prelitigation procedures, a certain body of pretrial investigation generally belongs to the internal organisational system of particular institutions of public administration and the examination of administrative disputes is one of its functions. In cases of optional prelitigation procedures, the individual is given the freedom of choice. An appeal may be lodged before the body for preliminary extrajudicial investigation or directly before the administrative court. The key authority of such pretrial investigation is the Lithuanian Administrative Disputes Commission. The Lithuanian Administrative Disputes Commission is composed by the Government of the Republic of Lithuania for the period of 4 years. This commission consists of members having higher legal education (Article 3 of the Law on Pre-trial Administrative Disputes Settlement Procedure).

2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?
A person shall have the right to appeal against a decision on the administrative procedure adopted by an entity of public administration, at his own choice, either to an administrative disputes commission or to an administrative court in accordance with the procedure set out in law (Article 14 of the Law on Public Administration).

The administrative court can revoke the decisions made by competent authorities (or part thereof) or oblige the competent authority to remedy the committed violation or carry out other orders of the court (Article 88 of the Law on Administrative Proceedings). There are no specific rules concerning environmental matters for the procedure before administrative courts.

The ordinary courts deal with cases concerning environmental liability. The possibility to claim compensation for damage is foreseen in Articles 32-34 of the Law on Environmental Protection. There are several possibilities for enforcing environmental liability. Each possibility is based on specific conditions.

The person can ask the competent authority to act if the environment is damaged. The decision made by the competent authority can be appealed before the administrative court.

Legal and natural persons whose health, property or interests have been damaged can make direct claims for damages before ordinary courts. Competent officers can make such claims when damage has been done to the interests of the State.

Complaints (applications) lodged with the administrative disputes commission must be considered and a decision thereon must be taken within 20 working days after receipt thereof (this term can be extended for a period not longer than 10 working days) (Article 12 of the Law on Pre-trial Administrative Disputes Settlement Procedure). The decision should be taken within 3 working days upon completion of the hearing of the case (Article 19 of the Law on Pre-trial Administrative Disputes Settlement Procedure).

The decision of the court shall be drawn up and announced, as a rule, on the same day after the hearing of the case (Article 84 (3) of the Law on Administrative Proceedings). After hearing the case, the court can defer adoption of the court decision and publication for no longer than 20 working days, and, after hearing the case regarding the legitimacy of a regulatory administrative act, for no longer than one month. In the case of important reasons, at the reasoned request of the judge hearing the case or the member(s) of the chamber of judges hearing the case, the president of the court or their appointed judge may extend such time limits by a reasoned ruling for no more than ten working days. In the event of illness of the judge hearing the case or all members of the chamber of judges hearing the case, the president of the court or a judge appointed by them, or inability to participate for any other objective reason, or in the event of illness of one or several members of the chamber of judges examining the case, or inability to participate for any other objective reason, the remaining (participating) member(s) of the chamber of judges may extend this time limit by means of a ruling until the objective reason no longer applies (Article 84 (5) of the Law on Administrative Proceedings).

There is no regulation in the law of how much time it should take between lodging a complaint and its hearing. There are several terms foreseen for the preparation of the case and of the hearing (as a rule the preparation of administrative cases for hearing in the court must be completed within one month from the day of acceptance of the complaint/application/petition (Article 64 (2) of the Law on Administrative Proceedings); the ruling to assign the case to be examined in the court hearing usually has to be adopted no later than one month before the day of the court meeting (Article 64 (3) of the Law on Administrative Proceedings).

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

There are no special courts, tribunals or environmental boards in Lithuania. The Administrative Dispute Commission of Lithuania and the administrative courts carry out full review of all administrative acts, including acts in environmental matters.

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

According to the Law on Administrative Proceedings, any interested person can challenge an administrative act before a regional administrative court. Applications to an administrative court to protect an individual’s infringed or protective right (Article 5) are admissible, as are applications to protect the state or other public interest (Article 55).

The decisions of regional administrative courts, adopted when hearing the cases in the first instance, may be appealed to the Supreme Administrative Court of Lithuania within 30 days from the pronouncement of the decision (Article 143 (1) of the Law on Administrative Proceedings).


All court proceedings are likely to be applied in all matters. There are no specific rules in the environmental area.

The court shall suspend the hearing of the case when it applies to a competent judicial authority of the European Union for the preliminary ruling on the issue of interpretation or validity of the laws of the European Union (Article 100 (1)(b) of the Law on Administrative Proceedings). The ruling to suspend the hearing of the case regarding the application to a competent judicial authority of the European Union cannot be appealed (Article 100 (3) of the Law on Administrative Proceedings).

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

There is a possibility to settle administrative disputes (including environmental disputes) by judicial mediation. The court asks the parties for their opinion regarding the intention and possibilities to resolve the dispute by judicial mediation (Article 71 of the Law on Administrative Proceedings).

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

The Ombudsman cannot bring a claim before the administrative court against the individual administrative decision. But he can apply to the administrative court with a request to investigate conformity of an administrative regulatory enactment (or part thereof) with the law or Government resolution (Article 19 (10)) of the Law on the Seimas Ombudsmen. He can recommend that the prosecutor apply to the court according to the procedure prescribed by law for the protection of public interest (Article 19 (116)) of the Law on the Seimas Ombudsmen. The public prosecutor can defend the public interest before administrative courts (Article 55 of the Law on Administrative Proceedings). Other state institutions have legal standing to act before administrative courts either when it is in their own interest to claim or to defend, or when they are defending the public interest.

The protection of public interest by the public prosecutor

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

Any applicant who challenges an administrative act has to demonstrate a particular interest in the annulment of this act. Only application to an administrative court as an individual in order to protect their own infringed or contested right or interest is admissible (Article 5 of the Law on Administrative Proceedings). It is possible to bring a complaint to protect the State or other public interest laid down for the prosecutor, entities of administration, state control officers, other state institutions, agencies, organisations or natural persons, but only in the cases prescribed by law (Article 55 of the Law on Administrative Proceedings). A complaint/petition may be filed with the administrative court within one month from the day of publication of the contested act, the day of delivery of the individual act to the party concerned, the notification of the party concerned of the act (or omission), within two months from the day of expiry of the time limit set by a law or any other legal act for compliance with the demand. If the public or internal administration entity delays consideration of a certain issue and
fails to resolve it by the due date, a complaint about the failure to act (in such delay) may be lodged within two months from the day of expiry of the time limit set by a law or any other legal act for the settlement of the issue. No time limits shall be set for the filing of petitions for the review of the lawfulness of administrative legal acts by the administrative courts (Article 29 of the Law on Administrative Proceedings). NGOs can bring a complaint in order to protect their own and their members’ infringed or contested rights or interests, or to protect the State or other public interest in the cases prescribed by law. The public concerned, as defined is Article 7 (2) of the Law on Environmental Protection, has the right to bring a complaint to protect the State or other public interest.

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, ELA, IPPC/EED, etc.)? There are additional rules regarding the possibility for the public concerned to bring a claim before courts in the case of environmental impact assessment (Article 15 of the Law on Environmental Impact Assessment of the Proposed Economic Activity) and integrated pollution prevention and control permits (Article 124 of Rules on issuance, renewal and cancellation of IPPC permits, approved by the Ministry of Environment of Lithuania - Order Number D1-528 in 2013), as well as territory planning (Article 49 of the Law on Territory Planning).

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.) According to the Law on Administrative Proceedings, any interested person (individuals, NGOs) can apply to a court for protection of their infringed right, contested right or interest protected under law. Any applicant who challenges an administrative act has to demonstrate a particular interest in the annulment of this act. Only applications to an administrative court to protect an individual’s infringed or protective right are admissible (Article 5 of the Law on Administrative Proceedings). These main rules are applicable for different types of procedure (first instance, appeal instance) and different actors (individuals, NGOs). However, it is possible to bring a complaint in order to protect the State or other public interest. The actors for this possibility include the prosecutor, entities of administration, state control officers, other state institutions, agencies, organisations or natural persons. But this possibility can be used only in the cases prescribed by law (Article 55 of the Law on Administrative Proceedings). E.g., according to the Law on Environmental Protection the public concerned, one or more natural or legal persons, have the right to bring a claim before the courts, and in addition the public concerned has the right to refer to court for defence of public interest challenging the substantive or procedural legality of decisions, acts or omissions in the area of the environment and environmental protection as well as utilisation of natural resources. So if there were a complaint in order to protect the public interest connected with the protection of the environment, this complaint should be admissible because it is prescribed by the Law on Environmental Protection. This rule is used for all matters (not only environmental matters).

4) What are the rules for translation and interpretation if foreign parties are involved? Article 9 of the Law on Administrative Proceedings provides that, in the process of administrative cases, decisions should be made and published in the Lithuanian language. All documents submitted to the court must be translated into Lithuanian. Where the participant in the proceedings to whom the procedural documents shall be served in a foreign state does not know the Lithuanian language, the administrative court shall be presented with translations of such documents into the language they understand or the official language of the country where such documents have to be served, or, in the event that said country has several official languages, into one of the official language used at the place of delivery. Where the judicial procedural documents have to be sent to the participant in the proceedings who does not know the Lithuanian language and resides in a foreign state, the court shall translate them into one of the languages they understand or the official language of the country where such documents have to be served. Upon the resolution of the judge who is preparing the case for hearing or of the court hearing the case, a document drawn up in another language may be translated at the court session by a translator. Persons who have no command of the Lithuanian language shall be guaranteed the right to have the assistance of an interpreter. The services provided by the interpreter at the court session shall be paid for from the State budget. Administrative procedures shall be conducted in the official language, namely Lithuanian (Article 28 of the Law on Public Administration). When a person in whose respect the administrative procedure has been initiated or other interested persons do not speak or understand Lithuanian or are unable to make themselves understood because of a sensory or speech disorder, an interpreter must be present at the administrative procedure. An entity of public administration that has initiated the administrative procedure or a person in whose respect the administrative procedure has been initiated shall invite an interpreter at their own initiative.

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? Parties and other persons present the evidence for the proceedings. The parties must prove the circumstances on which they base their claims and responses. In administrative and civil proceedings, the evidence includes: explanations of the parties and third parties (given directly or through representatives), witness evidence, written evidence, real evidence, statements of examination, expert evidence. The parties and other participants submit evidence to the court. If necessary, the court can allow those persons to submit additional evidence at the person’s request or may, on its own initiative, demand the necessary documents or request submissions from the officials. In civil proceedings, the court has the right to collect evidence on its own initiative only in exceptional cases prescribed by the law, such as in family cases and labour cases. The court may also demand and obtain evidence from the other party or third parties at another party’s request.

In no evidence before the courts has a predetermined value. The court evaluates the evidence according to its own inner conviction based on a thorough, comprehensive and objective examination of the facts in accordance with the law, as well as justice and reasonableness criteria. Judges must actively participate in the collection of evidence, in the establishment of all significant circumstances of the case, and must make a comprehensive and objective examination thereof.

In the administrative review procedure, the entity of public administration may demand only such documents and information as is not available in the state registers and other state or municipal information systems, except for cases where such documents and information must be provided under laws. The deadline must be set for the provision of the documents and information. It shall be allowed to make a repeated demand for documents and information from the persons in respect of whom the administrative procedure has been initiated only in exceptional cases and with proper substantiation of the necessity for such documents and information. An entity of public administration may request the assistance of another entity of public administration in adopting the decision on the administrative procedure. Where institutional assistance can be rendered by several entities of public administration, the entity of public administration of the lower level shall first be addressed. Institutional assistance rendered by one entity of public administration to another entity of public administration shall be free of charge (Article 12 of the Law on Public Administration).

2) Can one introduce new evidence? In administrative proceedings, parties can introduce new evidence up to the end of the hearing on merits. In civil proceedings, parties can introduce new evidence up to the end of the preparation for the hearing on the merits.

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts
3.1) Is the expert opinion binding on judges, is there a level of discretion?

3.2) Rules for experts being called upon by the court

3.3) Rules for experts called upon by the parties

Parties can submit expert opinions with other evidence to the court. Specialist explanations, opinions or conclusions gathered by the parties to the proceedings on their own initiative are not admitted as expert evidence. They are regarded as pieces of written evidence. The court decides either on its own initiative or at the request of the parties whether to order an expert examination in the proceedings. Usually an expert is ordered to examine certain issues arising in the case when the court needs special scientific, medical, artistic, technical or professional knowledge.

There is publicly available list of experts.

Expert opinions, like other evidence, do not have a predetermined value for the court. They are not binding on judges.

The amounts payable to experts and organisations of experts shall be paid in advance by the party which made a request for experts (Article 39 of the Law on Administrative Proceedings). If the request has been made by both parties, or if the experts are summoned or the examination is carried out on the initiative of the court, the required amounts shall be paid in by the parties to the proceedings in equal amounts. The specified amounts shall be paid into a special bank account of the court. Having regard to the property status of the natural person or group of natural persons, the administrative court may fully or in part exempt them from payment into the special court account of the amounts specified in this Article. The request for exemption from payment into the account of the said amounts must be justified and substantiated by relevant evidence. The aggrieved party may also be exempted from payment into the account of the amounts indicated in this Article.

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

The Forensic Science Centre of Lithuania (FSCL) is a governmental institution of public administration whose main task is to carry out forensic examinations required by courts and other pre-trial investigation institutions. The fees are regulated by the normative acts of this institution.

The fees of private experts are not regulated. No procedural fees exist.

The amounts payable to witnesses, specialists, experts and organisations of experts shall be paid in advance by the party which made a request to summon witnesses, specialists or experts (Article 39 (3) of the Law on Administrative Proceedings). If the requests have been made by both parties, or if the witnesses, specialists and experts are summoned or the examination is carried out on the initiative of the court, the required amounts shall be paid in by the parties to the proceedings in equal amounts (Article 39 (4) of the Law on Administrative Proceedings).

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

Parties can represent their interests in administrative courts themselves or through representatives. In administrative courts, the participation of lawyers is not compulsory in judicial procedures (including in environmental matters). A lawyer is compulsory before the cassation court (the Supreme Court of Lithuania) (e.g. in cases of environmental damage or in criminal cases). Generally, compulsory participation is required in criminal proceedings in all courts of general jurisdiction.

Lists of lawyers can be found on the following websites:

https://www.advokatura.lt/savitama
https://www.advokatura.lt/irasai/advokatu-paieska
https://www.infolex.lt

A list of lawyers specialising in environmental matters can be found here.

1.1 Existence or not of pro bono assistance

An advocate can provide legal services free of charge, i.e. as legal aid (Article 4 (5) of the Law on the Bar). An advocate decides if they will provide legal services free of charge. This service is pro bono assistance and not necessarily legal aid.

All citizens of the Republic of Lithuania, citizens of other Member States of the European Union as well as other natural persons residing lawfully in the Republic of Lithuania and other Member States of the European Union, and other persons specified in international treaties of the Republic of Lithuania are eligible for primary legal aid (Article 11 (1) of the Law On State-Guaranteed Legal Aid). The secondary legal aid is foreseen only for natural persons who prove their right to receive secondary state-guaranteed legal aid (Articles 11 (2) and 12 of the Law On State-Guaranteed Legal Aid). The following persons are eligible for secondary legal aid:

- citizens of the Republic of Lithuania, citizens of other Member States of the European Union as well as other natural persons residing lawfully in the Republic of Lithuania and other Member States of the European Union whose property and annual income do not exceed the property and income levels established by the Government of the Republic of Lithuania for the provision of legal aid;
- citizens of the Republic of Lithuania, citizens of other Member States of the European Union as well as other natural persons residing lawfully in the Republic of Lithuania and other Member States of the European Union as specified in Article 12 of this Law; these persons are eligible for secondary legal aid regardless of property and income levels;
- other persons specified in international treaties of the Republic of Lithuania.

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.)?

The procedure for pro bono assistance provided by an advocate is not regulated. There are several advocates who declare on their websites that they provide pro bono assistance.

The procedure for receiving state-guaranteed legal aid is regulated by the Law On State-Guaranteed Legal Aid.

The costs of primary legal aid shall comprise the costs related to legal information, legal advice and drafting of the documents to be submitted to state and municipal institutions, drafting of procedural documents specified in paragraph 7 of Article 15 of this Law, as well as the costs related to advice on the out-of-court settlement of disputes and to actions for the amicable settlement of a dispute and drafting of a settlement agreement. The State shall guarantee and cover 100 per cent of the costs of primary legal aid and the costs of conciliation mediation (Article 14 (1)(6) of the Law On State-Guaranteed Legal Aid).

1.3 Who should be addressed by the applicant for pro bono assistance?

There is a list of civil servants of the municipal administrations who provide primary legal aid:

Information about primary legal aid is provided by the State-guaranteed Legal Aid Service.

Vilnius University Legal Clinic is a non-governmental organisation that provides free legal aid. Legal consultations are provided by law students of Vilnius University.
2) Expert registries or publicly available websites of bars or registries that include the contact details of experts

There is a publicly available list of experts.

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

The list of NGOs who declare themselves to be environmental NGOs (NGOs do not have an obligation to be entered on this list, which is therefore not exhaustive) is found here.

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 general timeframe for challenging an administrative decision is one month. There are several kinds of environmental decision which have to be challenged by the administrative body within 10 working days after receipt thereof (e.g. a mandatory instruction according to Article 25 of the Law on State Control of Environmental Protection).

2) Time limit to deliver decision by an administrative organ

An administrative body shall complete the administrative procedure and adopt the decision of the administrative procedure within 20 working days from the beginning of the procedure. The public entity initiating the administrative procedure may extend the period by up to 10 working days where, for objective reasons, the administrative procedure cannot be completed within the set time limit. A person shall be notified about the extension of the time limit for the administrative procedure in writing or by e-mail (where the complaint has been received by e-mail) and the reasons for the extension (Article 10 (4) of the Law on Public Administration).

Special rules apply regarding complaints challenging a mandatory instruction. A complaint regarding a mandatory instruction submitted to the head of the state environmental control institution or a person authorised by them shall be examined within 10 working days (Article 25 of the Law on State Control of Environmental Protection).

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

According to Article 26 of the Law on Administrative Proceedings, before application is made to the administrative court, individual legal acts adopted by public administration entities, as well as their acts/omission, may be, and in cases established by law must be, contested by applying to the institution for preliminary extrajudicial investigation of disputes. There is no general rule in Lithuania that administrative acts must be challenged before a higher administrative authority or an independent dispute body before applying to the court. However, in certain kinds of administrative disputes the internal control of administrative acts/omission is compulsory (e.g. social security disputes, tax disputes). There are several kinds of environmental decision where internal control is compulsory (e.g. mandatory instructions). In other cases, the applicant, as a general rule, is entitled to have recourse to the court directly.

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

The decision of the court shall be drawn up and announced, as a rule, on the same day after the hearing of the case (Article 84 (3) of the Law on Administrative Proceedings). After hearing the case, the court can defer adoption of the court decision and publication for no longer than 20 working days, and after hearing the case regarding the legitimacy of a regulatory administrative act, for no longer than one month. In the case of important reasons, at the reasoned request of the judge hearing the case or the member(s) of the chamber of judges hearing the case, the president of the court or their appointed judge may extend such time limits by means of a reasoned ruling for no more than ten working days. In the event of illness of the judge hearing the case or all members of the chamber of judges hearing the case, the president of the court or a judge appointed by them, or inability to participate for any other objective reason, or in the event of illness of one or several members of the chamber of judges examining the case, or inability to participate for any other objective reason, the remaining (participating) member(s) of the chamber of judges may extend this time limit by means of a ruling until the objective reason no longer applies (Article 84 (5) of the Law on Administrative Proceedings).

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

The procedural actions in the court shall be performed within the time limits set by the Law on Administrative Proceedings. Where the time limits have not been set by law, they shall be set by the court. The court may grant an extension of the time limits it has set (Article 64 of the Law on Administrative Proceedings). The main time limits according the Law on Administrative Proceedings are:

- the claimant has a right to specify, change the basis of complaint/application/petition or the subject matter within fourteen calendar days from the day of receipt of the replies from the parties to the proceedings (Article 50 (3));
- the respondent and the third interested person have to present to the court their opinions within the specified time limit, which is usually at least fourteen calendar days from the day of receipt of a transcript (digital copy) of complaint/application/petition (Article 67 (1)(3) and Article 71);
- the decisions of regional administrative courts, adopted when hearing cases in the first instance, may be appealed to the Supreme Administrative Court of Lithuania within thirty days from pronouncement of the decision (Article 132 (1));
- the parties have to submit their detailed replies to the appeal within fourteen calendar days from receipt of a transcript of the appeal and annexes thereto (Article 139 (2));

A petition for renewal of the proceedings may be filed within three months from the day when the entity who filed it learned or should have learned of the circumstances furnishing grounds for renewal of the proceedings (Article 159 (1));

the parties have a right to submit a response to the petition on the renewal of proceedings within fourteen calendar days from the day of receipt of a copy of petition on the renewal of proceedings (Article 161 (2));

if an appeal has been filed against an order made in the manner prescribed by law when hearing a case in the absence of the parties, a separate appeal may be filed within seven days after delivery of a transcript (copy) of the order (Article 152 (3)).

The procedural actions for the administrative review before the competent authority shall be performed within the time limits set by the competent authority (Article 12 (3) of the Law on Public Administration).

1.7.2. Interim and precautionary measures, enforcement of judgments

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

The appeal or action submitted to the court against the administrative decision does not have a suspensive effect except in respect of certain decisions (e.g. tax decisions, decision on deportations or returns). Only the court can suspend the administrative decision by means of applying interim measures. Usually, administrative decisions can be immediately executed after their adoption (enforcement), irrespective of an appeal.

In certain kinds of administrative dispute, the internal control of administrative acts/omission is compulsory (e.g. social security disputes). In these cases, an administrative decision of the first competent authority is not implemented before the decision of the second authority.

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

Only the court can apply interim measures. The authority shall suspend execution of the decision until any errors are corrected where such errors may have a significant influence on the execution of the decision (Article 15 (2) of the Law on Public Administration).

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?
The claim shall be secured at any stage of the proceedings if the participant in the proceedings reasons the claim and failure to take provisional measures might lead to irreparable damage or damage that would be difficult to repair. Provisional measures may also be applied in cases where temporary regulation of the situation related to the disputed legal relations is needed (Article 70 of the Law on Administrative Proceedings).

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

It is not regulated under what conditions an administrative decision can be immediately executed.

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

The administrative decision is not suspended, but in practice a lot of challenged decisions are not executed.

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?

Appeal against rulings of the court regarding interim measures is possible. Only in civil cases does the court have a right to require a deposit from the applicant for applying for interim measures (Article 146 of the Code of Civil Procedure). The deposit is intended to protect the defendant against losses incurred as a result of the interim measures applied to them. The deposit could also be the bank guarantee.

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.

In administrative courts, the applicant should pay a court fee (30 EUR in the first instance administrative court and 15 EUR in the appeal instance). There are exemptions, however, in cases of complaint in order to protect the State or other public interests, in cases concerning compensation for material and moral damages inflicted by unlawful acts or omission in the sphere of public administration, for example. Other litigation-related costs include:

- costs paid to witnesses, interpreters, specialists, experts and organisations of experts;
- costs for payment of legal services of the lawyer or assistant lawyer (costs of consultations of the lawyer and assistant lawyer, assistance with the preparation and submission of procedural documents and participation in the court proceedings);
- other necessary and reasonable expenses.

In civil courts, applicants have to pay a court fee. There are exemptions in cases concerning compensation for material and moral damage in relation to a physical personal injury or death, in cases concerning the defence of the public interest under the claim of the prosecutor, public institutions or other persons. Other litigation-related costs include:

- costs paid to witnesses, experts, authorities and interpreters, and costs associated with on-site inspections;
- costs of searching for the defendant;
- costs associated with the service of delivery of documents;
- costs related to enforcement of judgments;
- costs related to the salary of the curator;
- costs for lawyers or lawyers’ assistants;
- costs associated with the application for interim relief;
- other necessary and reasonable expenses.

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

There are differences between administrative and civil proceedings. In administrative proceedings, in the case of an injunctive relief or interim measure a deposit (cross-undertaking in damages) is not needed (it is not foreseen in the Law on Administrative Proceedings). The Code of Civil Procedure establishes the court’s right to require a deposit from the applicant for applying for interim measures (Article 146 of the Code of Civil Procedure). The deposit is intended to protect the defendant against losses incurred as a result of the interim measures applied to them. The deposit could also be the bank guarantee. The amount of the deposit depends on the case and is quite difficult to evaluate generally.

3) Is there legal aid available for natural persons?

All citizens of the Republic of Lithuania, citizens of other Member States of the European Union as well as other natural persons residing lawfully in the Republic of Lithuania and other Member States of the European Union, and other persons specified in international treaties of the Republic of Lithuania shall be eligible for legal aid (Article 11 of Law on State-Guaranteed Legal Aid).

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?

State-guaranteed legal aid is not foreseen for associations, legal persons and NGOs. Pro bono assistance is possible for all persons (including legal persons and NGOs). The procedure of pro bono assistance is not regulated by law. It is a voluntary decision of the advocate. Primary legal aid for NGOs is available from the Vilnius University Legal Clinic.

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

There are no other financial mechanisms available.

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

The general rule is that the losing party has to bear all costs, including stamp duties and costs related to initial court proceedings. The party shall also be obliged to remunerate the costs of the winning party. Stamp duty, expert costs and other costs are usually paid in full, but the costs for legal representation are reduced as recommended by the Minister of Justice and the Chairman of the Bar. However, these amounts are only recommended and depend on the complexity of the court proceedings, case material and other factors. Nevertheless, in the absolute majority of civil and administrative cases state courts reduce parties’ requested legal expenses for their legal assistance according to the recommended amounts and reasonableness.

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?

Complaints/petitions shall be received and heard by the administrative courts only after payment of the stamp duty prescribed by the law. Several exemptions from the stamp duty are foreseen in Article 36 of the Law on Administrative Proceedings, e.g.:

- complaints/petitions relating to delay by entities of public administration in performing actions assigned within the remit of their competence, awarding of or refusal to award pensions, violations of election laws and the Law on Referendum, petitions by state servants and municipal employees where such concern legal relations in the Office, compensation for damage inflicted upon a natural person or organisation by unlawful acts/omissions in the sphere of public administration, and complaints relating to the protection of public interests and some other complaints/petitions.

Having regard to the property status of a natural person or group of natural persons, the administrative court may grant full or partial exemption from stamp duty. The petition for exempting the natural person from stamp duty must be justified and substantiated by appropriate evidence (Article 37 of Law on Administrative Proceedings).
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?

Information about access to environmental information is provided on the website of the Ministry of Environment.

The procedure for access to information is regulated by the Order on Public Access to Environmental Information, approved by Government Resolution Number 1175 of 1999, with subsequent amendments.

The request can be made in writing or verbally. The information can be given verbally only if the applicant does not ask for a written answer. The requirements for the written request are: name, contact details, requested information, form of giving the information.

The applicant does not have to state an interest. If an applicant requests that information be made available in a specific form (including in the form of copies), the public authority shall make it so available (there are some exceptions foreseen in Articles 16 and 18 of the Order on Public Access to Environmental Information). The information shall be made available to an applicant within 14 calendar days after receipt of the request by the public authority. This term can be extended to at least 14 calendar days.

An applicant who considers that their request for environmental information has been ignored, wrongly refused or inadequately answered has access to a review procedure before an administrative disputes commission or an administrative court. Alongside the establishment of administrative courts, the general procedure of pre-litigation of complaints (applications) contesting the adopted individual administrative acts in the sphere of public administration was established by the Law on Pre-Trial Resolution of Administrative Disputes. The law provides for the establishment of the Lithuanian Administrative Dispute Commission.

The Order on Public Access to Environmental Information is applicable for all state institutions, other persons performing the functions of public administration, and other persons who are controlled by the state institutions whose activity has an impact on the environment.

The Order on Public Access to Environmental Information is not applicable to information about the air, water and waste management plans and programmes.

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

Taking into consideration that the procedure on access to environmental information set out in the Order on Public Access to Environmental Information essentially does not differ from the general procedure on access to information from public administration entities, general regulations apply.

According to Article 7 (8) of the Law on Environmental Protection, the public concerned, one or more natural or legal persons, have the right to bring a claim before courts.

The applicant should request information from any public administration entity. Different environmental procedures set obligations event for the private actors to provide information for the public (e.g. EIA procedure).

A general provision applies that the appeal (access to justice) procedure should be described in every written answer provided by the public administration entity where the written request to provide information is rejected or partly rejected.

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

These are the sectoral rules regarding the access to information:

- regarding EIA: in the course of a screening for environmental impact assessment and an environmental impact assessment, the public concerned shall have the right to obtain information on the potential environmental impact of the proposed economic activity from other participants in the processes of screening for environmental impact assessment and environmental impact assessment (Article 13 of the Law on Environmental Impact Assessment of the Proposed Economic Activity (EIA)).

- regarding IPPC/IED: the Environmental Protection Agency is responsible for providing the information and is obliged to ensure the availability of information on access to justice (Article 69 and 125 of the Rules on Issuance, Renewal and Cancellation of IPPC Permits, approved by Ministry of Environment of Lithuania Order Number D1-628 in 2013; Article 3.2.4 and 57 of the Rules on Issuance, Renewal and Cancellation of Pollution Permits, approved by Ministry of Environment of Lithuania Order Number D1-259 in 2016).

- regarding territorial planning documents: the publicity of territorial planning is ensured by the organiser of planning (Article 31 of the Law on Territorial Planning; Article 8.3 of the Rules on Strategic Impact Assessment of Plans and Programmes, approved by Government Order Number 967 of 2004). The general and simplified procedure for territorial planning document publicity procedures is based on the type and level of territorial planning documents, as established in the Regulations on the Provision of Information to the Public, Public Consultation and Participation in Adopting Decisions Relating to Territorial Planning approved by Government Order Number 1079 of 1996);

- regarding air protection: according to Article 16 of the Law on Ambient Air Protection, persons have the right to obtain correct information from state administration and self-government institutions concerning the condition of ambient air, normative standards of allowable pollution and the effect of planned economic activities;

- regarding water protection: according to Article 27 of the Law on Water, the Ministry of the Environment and other institutions and persons who have information about river basins are obliged to provide this information to the public; according to Article 4 of the Law on Drinking Water, the municipal institutions are responsible for providing information about the quality of drinking water.

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

According to Article 10 (5) of the Law on Public Administration, an individual administrative act must contain clearly formulated established or granted rights and duties, and specify the appeal procedure.

According to Article 87 (3) of the Law on Administrative Proceedings, the appeal procedure and timeline for appeal should be provided in the judgment.

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

Administrative procedures shall be conducted in the official language, namely Lithuanian (Article 28 of the Law on Public Administration). When a person in whose respect the administrative procedure has been initiated or other interested persons do not speak or understand Lithuanian or are unable to make themselves understood because of a sensory or speech disorder, an interpreter must be present at the administrative procedure. An entity of public administration that has initiated the administrative procedure or a person in whose respect the administrative procedure has been initiated shall invite an interpreter at their own initiative.

1.8. Special procedural rules


Country-specific EIA rules related to access to justice

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

EIA screening decisions are administrative decisions and can be reviewed by administrative courts. The conditions regarding legal standing, rules of evidence, rules on hearing or extent of review by the court are not specific for these cases.

According to Article 15 of the Law on EIA, the public has the right to refer to court if it considers that its application filed in accordance with the procedure laid down by the legal acts governing the processes of screening for environmental impact assessment and environmental impact assessment has been unlawfully dismissed, has been provided with a partially or completely inappropriate response or has not been given proper regard in accordance with the
legal acts governing the processes of screening for environmental impact assessment and environmental impact assessment. The public concerned has the right to refer to court disputing the substantive or procedural legitimacy of decisions, acts or omissions in the areas of screening for environmental impact assessment and environmental impact assessment.

Natural or legal persons have the right to lodge a complaint (application) concerning an administrative act if their rights have been infringed upon. In the cases prescribed by law, it is possible to bring a complaint in order to protect the state or another public interest (including environmental interest). Agencies, organisations and groups may lodge an appeal against measures affecting their own interests (existence, estate, activity, operating conditions) as well as asking for damages for the material and moral damage they suffer. But they may also go to court to defend the public interest of those they represent insofar as the regulatory or individual disputed measure harms this public interest.

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

The public concerned has the right to refer to court disputing all decisions, acts or omissions in the areas of environmental impact assessment. The scoping decisions are included.

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

A complaint may be filed within one month from the day of publication of the contested act, the day of delivery of the individual act to the party concerned, the notification of the party concerned of the act (or omission), within two months from the day of expiry of the time limit set by a law or any other legal act for compliance with the demand (Article 29 of the Law on Administrative Proceedings).

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

All decisions in the area of environmental impact assessment, including the final EIA decision, can be challenged. A foreign NGO has the same rights to lodge a complaint concerning a final EIA decision as a national NGO.

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

The administrative courts review the procedural legality and also the substantive legality of all administrative decisions. The courts study the material, technical findings and calculations when they are considered as belonging to the decision. The court is obliged to "actively" participate in the proceedings by asking for evidence, appointing witnesses, experts, etc. The court has no limitation on its control. It can review all aspects of the contested decision.

6) At what stage are decisions, acts or omissions challengeable?

According to Article 29 of the Law on Administrative Proceedings, the basic rule is that a complaint may be filed within one month from the day of publication of the contested act, the day of delivery of the individual act to the party concerned, the notification of the party concerned of the act (or omission). There are no special rules regarding decisions in the areas of screening for environmental impact assessment and environmental impact assessment.

7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

All decisions in the areas of screening for environmental impact assessment and environmental impact assessment can be challenged directly before the court.

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?

The requirement of a necessary interest to have the power to act is at the very head of the conditions for an appeal's admissibility. It is not necessary to participate in the public consultation phase of the EIA procedure or to make comments to have standing before administrative courts. The public concerned has the right to lodge a complaint (application) concerning an EIA administrative act in order to protect the public interest (Article 15 of the Law on EIA).

9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

According to the Law on Administrative Proceedings, each party has equal rights in the procedure.

10) How is the notion of "timely" implemented by the national legislation?

The Law on EIA sets out the terms for particular actions in the areas of screening for environmental impact assessment and environmental impact assessment, e.g.: a screening conclusion on whether an environmental impact assessment is obligatory shall be submitted in writing to the organiser (developer) of the proposed economic activity within 20 working days from receipt of the screening information (Article 7 (7)); the competent authority shall, within 10 working days from receipt of the programme, approve the programme or submit reasoned requests to the drafter of environmental impact assessment documents to supplement or revise the programme (Article 8 (9)); the public concerned has the right to submit to the competent authority, within 10 working days from publication of the notice, written proposals on the environmental impact assessment of the proposed economic activity and the report (Article 10 (9)); the competent authority shall, within 25 working days from receipt of the report, adopt a decision regarding the environmental impact of the proposed economic activity (Article 11 (1)).

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 administrative cases in all matters. According to Article 70 of the Law on Administrative Proceedings, the court or the judge may, upon a motivated petition of the participants in the proceedings or upon their own initiative, take measures with a view to securing a claim. The claim may be secured at any stage of the proceedings if failure to take provisional measures to secure a claim may lead to irreparable damage or damage that would be difficult to repair. There are no special rules applicable to EIA procedures.

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

The public concerned and NGOs have the right to lodge a complaint (application) concerning an administrative act in the area of the IPPC (Article 124 of the Rules on issuance, renewal and cancellation of IPPC permits, approved by Ministry of Environment of Lithuania Order Number D1-528 in 2013 (IPPC rules)).

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?

A complaint may be filed within one month from the day of publication of the contested act, the day of delivery of the individual act to the party concerned, the notification of the party concerned of the act (or omission), within two months from the day of expiry of the time limit set by a law or any other legal act for compliance with the demand.

The public concerned has the right to receive information about the application for a permit, to submit proposals regarding the application and permit, and to receive an answer regarding their proposals from the competent authority.

The public concerned and NGOs have the right to challenge a final IPPC decision. A foreign NGO has the same rights to lodge a complaint concerning an IPPC decision as a national NGO.

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

There are no screening and scoping phases in the IPPC procedure. The IPPC procedure has two stages: approval of the application for a permit and adoption of the final IPPC decision. The EIA procedure is considered as a separate procedure. The public concerned has the right to lodge a complaint (application) concerning a final administrative act in the area of the IPPC.
4) Rules on standing relating to scoping (conditions, timeframe, public concerned)  
There are no screening and scoping phases in the IPPC procedure.  

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?  
In Article 29 of the Law on Administrative Proceedings, the basic rule is that a complaint may be filed within one month from the day of publication of the contested act, the day of delivery of the individual act to the party concerned, the notification of the party concerned of the act (or omission). There are no special rules regarding decisions in the area of IPPC.  

6) Can the public challenge the final authorisation?  
According to Article 124 of the IPPC rules, the public concerned has the right to lodge a complaint (application) concerning a final administrative act in the area of the IPPC. According Article 92 of the Rules on Issuance, Renewal and Cancellation on Emissions Permits, approved by Ministry of Environment of Lithuania, Order No D1-259 in 2014 (EP rules) the decisions in the area of the emissions permits can be challenged alternatively before the administrative dispute commission or before the administrative court. According to the Law on Administrative Proceedings and the Law on Environmental Protection, the public has the right to challenge the final emissions permit decision.  

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 courts review the procedural legality and also the substantive legality of all administrative decisions. The courts study the material, technical findings and calculations when they are considered as belonging to the decision. All information related to the application for a permit can be controlled by the court. The court is obliged to “actively” participate in the proceedings by asking for evidence, appointing witnesses, experts, etc. The court has no limitation on its control. It can review all aspects of the contested decision.  

8) At what stage are these challengeable?  
According to Article 29 of the Law on Administrative Proceedings, the basic rule is that a complaint may be filed within one month from the day of publication of the contested act, the day of delivery of the individual act to the party concerned, the notification of the party concerned of the act (or omission). There are no special rules regarding decisions in the area of the IPPC.  

9) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?  
There is no requirement for exhaustion of administrative review procedures prior to recourse to judicial review procedure. Decisions in the area of IPPC can be challenged before the administrative court (Article 124 of the IPPC rules). Decisions in the area of emissions permits can be challenged before the administrative dispute commission or before the administrative court (Article 92 of the EP rules).  

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?  
The requirement of a necessary interest to have the power to act is at the very head of the conditions for an appeal’s admissibility. It is not necessary to participate in the public consultation phase of the IPPC or EP procedure or to make comments to have standing before administrative courts. The public concerned has the right to lodge a complaint (application) concerning an IPPC administrative act in order to protect the public interest (Article 124 of the IPPC rules).  

11) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?  
According to the Law on Administrative Proceedings, each party has equal rights in the procedure.  

12) How is the notion of “timely” implemented by the national legislation?  
The IPPC rules and the EP rules set out the terms for particular actions in the areas of IPPC permit procedure and EP procedure, e.g.: the authority shall, within 30 working days from receipt of the application, take a decision accepting or rejecting the application (Article 36-2 of the IPPC rules); the authority shall, within 20 working days from accepting the application, take a permit decision (Article 83 of the IPPC rules); the operator has a right to receive a draft of the permit decision and to comment on it no later than 5 working days before the competent authority reaches a decision (Article 87 of the IPPC rules); the competent authority shall, within 20 working days from accepting the application, adopt a permit decision (Article 85 of the EP rules).  

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 administrative cases in all matters. According to Article 70 of the Law on Administrative Proceedings, the court or the judge may, upon a motivated petition of the participants in the proceedings or upon their own initiative, take measures with a view to securing a claim. The claim may be secured at any stage of the proceedings if failure to take provisional measures to secure a claim may lead to irreparable damage or damage that would be difficult to repair. There are no special rules applicable to IPPC and EP procedures.  

14) Is information on access to justice provided to the public in a structured and accessible manner?  
According to Article 10 (5) of the Law on Public Administration, an individual administrative act must contain clearly formulated established or granted rights and duties, and specify the appeal procedure. According to Article 125 of the IPPC rules, the authority is obliged to ensure the availability of information on access to justice.  

1.8.3. Environmental liability[3]  
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?  
According to Article 7 (8) of the Law on Environmental Protection, one or more natural or legal persons and the public concerned have the right to file a complaint/application demanding that appropriate action be taken to prevent or minimise environmental damage or restore the environment to its baseline condition, and demanding that the persons guilty of causing a harmful effect on the environment and the officials whose decisions or acts/failure to act have violated the rights of citizens, the public concerned, other legal and natural persons or the interests protected under law be punished. According to Article 4 (1) of the Law on State Control of Environmental Protection, natural and legal persons have a right to challenge the decisions or acts/failure to act of officials and environmental authorities. The common requirements are set out in the Law on Administrative Proceedings. There are no special requirements regarding decisions on environmental remediation.  

2) In what deadline does one need to introduce appeals?  
According to Article 29 of the Law on Administrative Proceedings, the basic rule is that a complaint may be filed within one month from the day of publication of the contested act, the day of delivery of the individual act to the party concerned, the notification of the party concerned of the act (or omission). There are several kinds of environmental decision which have to be challenged by the administrative body within 10 working days after receipt thereof (e.g. a mandatory instruction according Article 25 of the Law on State Control of Environmental Protection). Only the person against whom the decision has been taken has the right to challenge such decisions.  

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?
4) Are there specific requirements regarding ‘plausibility’ for showing that environmental damage occurred, and if yes, which ones?
If the applicant demands that the competent authority take action to prevent or minimise environmental damage or restore the environment to its baseline condition, there is no requirement 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)?
There are no special requirements regarding decisions in the area of environmental damage. A person in whose respect the administrative procedure has been initiated shall, within 3 working days, be notified about the adopted decision on the administrative procedure, the factual circumstances determined during the consideration of the complaint, the legal acts based on which the decision on the administrative procedure has been adopted, as well as the procedure for appealing the decision. The decision on the administrative procedure shall be delivered or sent to the person with respect to whom the procedure is initiated (Article 13 of the Law on Public Administration).

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?
In the presence of an imminent threat of environmental damage, an economic entity must, without delay, take all necessary preventive measures. Where, despite the preventive measures taken by the economic entity, the imminent threat of environmental damage is not dispelled, the economic entity must immediately inform the Ministry of Environment or an institution authorised by it (Article 32-1 of the Law on Environmental Protection).

7) Which are the competent authorities designated by the MS?
The competent authority is the Environmental Protection Department under the Ministry of Environment.

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?
There is no requirement in environmental damage cases concerning the prior administrative review procedure.

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?
Article 34 of the Law on Environmental Protection provides that disputes between legal and natural persons of the Republic of Lithuania and foreign states shall be settled in the manner established by the law of the Republic of Lithuania, unless international agreements of the Republic of Lithuania provide otherwise. The admissibility of an action before a court is possible under the general conditions set out in the Law on Administrative Proceedings or in the Code of Civil Procedure. There are no specific rules regarding EIA, IPPC, etc.

2) Notion of public concerned?
The concept of public concerned is not specific in a transboundary context. The general rules are applicable (especially concerning the admissibility of requests through the concept of legal interest).

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)?
Lithuanian administrative law recognises equal access to administrative courts for NGOs residing abroad on the same basis as applicants residing in Lithuania. There is no difference regarding the procedural rights of national NGOs and NGOs residing abroad. There is no secondary legal aid for NGOs in Lithuania.

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)?
Lithuanian administrative law recognises equal access to administrative courts for persons residing abroad on the same basis as applicants residing in Lithuania. There is no difference regarding the procedural rights of the parties. Citizens of other Member States of the European Union as well as other natural persons residing lawfully in the Republic of Lithuania and other Member States of the European Union, and other persons specified in international treaties of the Republic of Lithuania shall be eligible for primary and secondary legal aid (Article 11 of the Law on State-Guaranteed Legal Aid). There are no legal requirements regarding pro bono assistance provided by advocates.

6) At what stage is the information provided to the public concerned (including the above parties)?
Regarding EIA:
Where the proposed economic activity is subject to procedures of transboundary environmental impact assessment, a competent institution shall inform the drafter of environmental impact assessment documents requesting that they prepare and submit to the competent authority a summary of the screening information or a programme which must include information on the proposed economic activity and its potential significant transboundary impact in a bilateral agreement, if available, in the specified language, or in other cases in English and, where requested by an affected state, also in its national language (Article 9 (2) of the Law on EIA). An institution shall dispatch a notice to an affected state accompanied by a description of the proposed economic activity, the
available information on the potential significant transboundary impact of the proposed economic activity on the environment, the information on the nature of possible solutions, specify a time period (not less than 25 working days) for submission of a notice of the willingness of the affected state to participate in the process of transboundary environmental impact assessment, and request that the affected state inform the competent authorities and the public of the state (Article 9 (3) of the Law on EIA). A competent institution shall, upon receiving a reply from an affected state concerning its participation in the process of the transboundary environmental impact assessment of the proposed economic activity, inform the organiser (developer) of the proposed economic activity and the drafter of environmental impact assessment documents, who shall be instructed to submit a report, a summary of the relevant information about the proposed economic activity and its potential significant transboundary environmental impact in a bilateral agreement, if available, in the specified language, or in other cases in English and, where requested by the affected state, also in its national language (Article 9 (5) of the Law on EIA).

Regarding IPPC:

If the operation of the installation may have significant impact on the environment of another EU Member State, the drafter of documents should prepare and submit to the competent institution the documents regarding the application for a permit in English (Article 78 of the IPPC rules). The competent institution shall provide the documents to an affected state at the same time as the documents are provided to the public concerned and request that information be provided to the public and the competent authorities of this state, indicating a period of not less than 40 working days from receipt of such information within which the affected state may submit its proposals to the competent institution (Article 9 (6) of the Law on EIA). The appeal against a decision may be filed within one month from the day of publication of the decision, the day of delivery of the individual act to the party concerned, the notification of the party concerned of the act (or omission), within two months from the day of expiry of the time limit set by a law or any other legal act for compliance with the demand (Article 29 of the Law on Administrative Proceedings). There are no special rules for an affected state to appeal against a decision.

6) What are the timeframes for public involvement including access to justice?

Regarding EIA:

A competent institution provides the documentation of an environmental impact assessment to an affected state together with information on the environmental impact assessment procedures, the proposed transboundary consultations and the duration thereof, and a request that information be provided to the public and the competent authorities of this state, indicating a period of not less than 30 working days from the date of dispatch within which the affected state may submit its proposals to the competent institution (Article 9 (6) of the Law on EIA). The appeal against a decision may be filed within one month from the day of publication of the decision, the day of delivery of the individual act to the party concerned, the notification of the party concerned of the act (or omission), within two months from the day of expiry of the time limit set by a law or any other legal act for compliance with the demand (Article 29 of the Law on Administrative Proceedings). There are no special rules for an affected state to appeal against a decision.

Regarding IPPC:

The competent institution shall provide the documents to an affected state at the same time as the documents are provided to the public concerned and request that information be provided to the public and the competent authorities of this state, indicating a period of not less than 40 working days from receipt of such information within which the affected state may submit its proposals to the competent institution (Article 9 (6) of the Law on IPPC). The appeal against a decision may be filed within one month from the day of publication of the decision, the day of delivery of the individual act to the party concerned, the notification of the party concerned of the act (or omission), within two months from the day of expiry of the time limit set by a law or any other legal act for compliance with the demand (Article 29 of the Law on Administrative Proceedings). There are no special rules for an affected state to appeal against a decision.

7) How is information on access to justice provided to the parties?

Regarding EIA:

Where the proposed economic activity has been subject to transboundary environmental impact assessment procedures, the competent authority shall provide information on the EIA decision to an affected state participating in the process of transboundary environmental impact assessment (Article 11 (12) of the Law on EIA). According to Article 10 (5) of the Law on Public Administration, the EIA decision should specify the appeal procedure.

Regarding IPPC:

There is no special regulation. According to Article 10 (5) of the Law on Public Administration, the IPPC decision should specify the appeal procedure.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?

Article 9 of the Law on Administrative Proceedings provides that, in the process of administrative cases, decisions are made and published in the Lithuanian language. All documents submitted to the court must be translated into Lithuanian. Where the participant in the proceedings to whom the procedural documents shall be served in a foreign state does not know the Lithuanian language, the administrative court shall be presented with translations of such documents into the language the participant understands or the official language of the country where such documents have to be served, or, in the event that said country has several official languages, into one of the official languages used at the place of delivery. Where the judicial procedural documents have to be sent to the participant in the proceedings who does not know the Lithuanian language and resides in a foreign state, the court shall translate them into one of the languages they understand or the official language of the country where such documents have to be served. Upon the resolution of the judge who is preparing the case for hearing or of the court hearing the case, a document drawn up in another language may be translated at the court session by a translator. Persons who have no command of the Lithuanian language shall be guaranteed the right to have the assistance of an interpreter. The services provided by the interpreter at the court session shall be paid for from the State budget.

Administrative procedures shall be conducted in the official language, namely Lithuanian (Article 28 of the Law on Public Administration). When a person in whose respect the administrative procedure has been initiated or other interested persons do not speak or understand Lithuanian or are unable to make themselves understood because of a sensory or speech disorder, an interpreter must be present at the administrative procedure. An entity of public administration that has initiated the administrative procedure or a person in whose respect the administrative procedure has been initiated shall invite an interpreter at their own initiative.

9) Any other relevant rules?

No additional information.

[1] The Law on Environmental Protection defines public concerned as one or more natural or legal persons affected or likely to be affected by, or having an interest in, the taking of decisions, acts or omissions in the field of the environment and protection thereof as well as utilisation of natural resources. For the purposes of this definition, the associations and other public legal persons (with the exception of the legal persons established by the State or a municipality or institutions thereof) established in accordance with the procedure laid down by legal acts and promoting environmental protection shall in any case be deemed the public concerned.

[2] See for example, the ruling of the Constitutional Court of the Republic of Lithuania of 1 June, 1998.

[3] See also case C-529/15. 

Last update: 14/09/2016
1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission and its content? In particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

All administrative decisions in the environmental area can be challenged before administrative courts according to the general rules of the Law on Administrative Proceedings (any interested person can apply to a court for protection of their infringed right, contested right or interest protected under law; the appeal may be filed within one month from the day of publication of the decision, the day of delivery of the individual act to the party concerned, the notification of the party concerned of the act (or omission)). Special sectoral legislation can provide special rules on standing.

Administrative procedure law does not include a general rule for an administrative review. But several special legal acts (e.g. the Law on Territorial Planning, the rules regarding informing and participating of the public in decision-making in the preparation of plans and programmes in the areas of air and water protection and waste management) prescribe such an administrative review as a requirement for a court action. According to Article 7 (8) of the Law on Environmental Protection, the public has a lot of possibilities for challenging decisions in the area of the environment. In light of the national case-law, access to courts in environmental matters can be considered effective.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The authoritative authority and the court can review both procedural and substantive legality.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

As a general rule, administrative review is not compulsory. Only in the cases prescribed by law is the exhaustion of administrative review procedures prior to recourse to judicial review procedures a requirement of the court action. The largest area of such decisions is decisions concerning territorial planning documents.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure — to make comments, participate at hearing, etc.?

As a general rule, participation in the public consultation phase of the administrative procedure is not compulsory. Only in the cases prescribed by law is participation in the public consultation a requirement of the administrative procedure.

5) Are there some grounds/arguments precluded from the judicial review phase?

According to Article 3 of the Law on Administrative Proceedings, the administrative court shall settle disputes over issues of law in public administration. The court shall not offer assessment of the disputed legal acts and actions (omissions) from the point of view of political or economic expediency and shall only establish whether or not, in a particular case, there has been violation of a law or any other legal act, whether or not the entity of public administration has acted within the limits of its discretion, and whether or not the legal act or action (omission) complies with the objectives and tasks for which purpose the institution has been set up and vested with powers.

The administrative court is not bound to allegations specifically presented in the appeal. The court is obliged to “actively” participate in the proceeding. It can review all aspects of the contested decision.

6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

According to the Law on Administrative Proceedings, each party has equal rights in the procedure. The court must explain to the parties their procedural rights and duties, warn them of the consequences of the performance of or non-performance of procedural actions, and assist said persons in exercising their procedural rights (Article 12 of the Law on Administrative Proceedings). Administrative courts have an obligation to give guidance to the parties in order to ensure that all parties have equal opportunities to present their arguments and submit evidence.

7) How is the notion of “timely” implemented by the national legislation?

There are several categories of case which should be resolved within the time limit set by special laws (e.g. cases about the refusal to issue permits for residence and work in Lithuania or withdrawal of such permits, refusal or cancellation of asylum, cases about dismissal of a public or municipal servant). Environmental cases are not assigned to urgent cases.

The Law on Administrative Proceedings sets out the time limits for the court and for the parties, e.g.: after the court has received a complaint/application/petition, the president or the judge of the administrative court shall, within 7 business days, decide on the issue of acceptance thereof (Article 33 (1) of the Law on Administrative Proceedings); as a rule, the preparation of administrative cases for hearing in the court must be completed within one month from the day of acceptance of the complaint/application/petition (Article 64 (2) of the Law on Administrative Proceedings); the judge or the court shall hear the petition for securing the claim within no more than 3 business days from receipt thereof, without notifying the respondent and other participants in the proceedings (Article 70 (4) of the Law on Administrative Proceedings); after hearing the case, the court can defer adoption of the court decision and publication for no longer than 20 business days, and, after hearing the case regarding the legitimacy of regulatory administrative act, for no longer than one month (Article 84 (5) of the Law on Administrative Proceedings); the claimant shall have the right to specify, change the basis of complaint/application/petition or the subject matter within 14 calendar days from the day of receipt of the replies from the parties to the proceedings (Article 50 (3) of the Law on Administrative Proceedings); the respondent has to present to the court their opinions within the specified time limit, which is usually at least 14 calendar days from the day of receipt of a transcript (digital copy) of the complaint/application/petition (Article 67 (1) of the Law on Administrative Proceedings). etc.

The Law on Territorial Planning and other implementing legal acts set out terms for the actions of the organiser of the particular plan, for the institutions and for the public participating in the planning procedure.

6) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

Injunctive relief is available in all administrative matters in the same manner. The claim shall be secured at any stage of the proceedings if the participant in the proceedings reasons the claim and failure to take provisional measures may lead to irreparable damage or damage that would be difficult to repair. The court can take provisional measures to ensure the claim by the reasoned application of the participants in the proceedings or on its own initiative. The provisional measures may also be applied in cases of need of temporary regulation of the situation related to the disputed legal relations (Article 70 of the Law on Administrative Proceedings).
9) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive, and do these include express statutory reference to a requirement that costs should not be prohibitive?

General rules of the Law on Administrative Proceedings apply. If the person submits an appeal to the administrative court, he should pay a stamp duty. There are exemptions, however, in cases about complaints in order to protect the State or other public interests, in cases concerning compensation for material and moral damages inflicted by unlawful acts or omission in the sphere of public administration, for example. Other litigation-related costs include: costs paid to witnesses, experts and expert organisations; costs for lawyers or lawyers’ assistants; other necessary and reasonable expenses.

When submitting an appeal to the first instance administrative court, the applicant should pay a stamp duty in the amount of 30 EUR (in the electronic cases 75 per cent of the sum of stamp duty) (Article 35 of the Law on Administrative Proceedings). The stamp duty for the appeal of the first instance court’s judgment is 15 EUR.

The amount of stamp duty is the same for all categories of administrative cases. The court, taking into account the financial situation of a natural person, may decrease the amount of stamp duty or exempt the person from the obligation to pay the stamp duty (Article 37 of the Law on Administrative Proceedings).

The prevailing party to the proceedings shall be entitled to recover costs from the non-prevailing adverse party (Article 40 (1) of the Law on Administrative Proceedings).

There is a recommendation from Minister of Justice and the Chairman of Bar concerning lawyer fees (Ministry of Justice Order No. 1R-85 from 2004). Recommended maximum remuneration sizes are calculated using the coefficients which are based on the Lithuanian Government approved the minimum monthly salary. An estimation of lawyer fees in the case of the legal aid is regulated by Order of the Ministry of Justice No 1R-332 from 2020.

There is no express statutory reference to a requirement that costs should not be prohibitive.

1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[2]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The procedure of the SEA is regulated by the Resolution of the Government of the Republic of Lithuania On Approval of the Procedure for Strategic Assessment of Environmental Impact of Plans and Programmes (approved by Resolution No. 967 of the Government from 2004) (SEA Resolution). Article 44 of the SEA Resolution sets the common rule that disputes in the area of SEA shall be examined in accordance with the procedure laid down by laws. There are no special rules on standing for individuals and NGOs. The common rules on access to justice of the Law on Administrative Proceedings shall be applied (e.g. one month term, protection of the infringed right or interest protected under law). The special standing rules are foreseen in the special legal acts, e.g. in the Law on the Territorial Planning.

According to Article 6 of the SEA Resolution, the SEA is performed in the cases of:

- preparation of a plan or programme (or amendment to the plan or programme) intended for the development of industry, energy, transport, telecommunications, tourism, agriculture, forestry, fishery, aquaculture, waste management, preparation of a special territorial planning document, detailed plan or land management project which sets the framework for the development of the economic activities listed in Annexes 1 and 2 of the Law on EIA and which is prepared for an area of more than 10 square kilometres; preparation or amendment of a general plan;
- implementation of a plan or programme related to the Natura 2000 sites and the State Service for Protected Areas determines that implementation of such a plan or programme (separately or together with other plans or programmes) may have significant consequences on the Natura 2000 sites;
- during the screening, a decision is made that SEA of a plan or programme is required.

The participation of the individuals and NGOs on decision-making in territorial planning procedure is regulated by the Law on Territorial Planning and the Resolution of the Government of the Republic of Lithuania on Public information, Consultation and Participation on Decision-Making in Territorial Planning (approved by Resolution No. 1079 of the Government from 1996). There are special rules regarding access to justice:

According to Article 49 (4) of the Law on Territorial Planning, representatives of the public concerned, other natural and legal persons concerned shall have the right to apply to court regarding the adopted administrative decision on the revocation of approval of a territorial planning document only in the cases where:

- they have been involved in the publicity procedures of territorial planning and have lodged complaints or reports regarding the decisions relating to territorial planning adopted by entities of public administration or regarding the failure to act to these entities to the institutions carrying out state supervision of territorial planning before the adoption of the appealed administrative decision on the approval of the territorial planning document, where in the course of the publicity procedures they were aware of or could have objectively foreseen the possible violation of their rights;
- due to reasons recognised by the court as serious, they could not have been involved in the publicity procedures of territorial planning and lodged complaints or reports regarding the decisions relating to territorial planning adopted by the entities of public administration or regarding the failure to act to these entities to the institutions carrying out state supervision of territorial planning before the adoption of the appealed administrative decision on the approval of the territorial planning document.

According to Article 49 (6) of the Law on Territorial Planning, the period of limitation for entities defending the public interest to make a claim in relation to contesting the approved territorial planning documents, their solutions or administrative acts approving them shall be 20 working days from the date of issuance of a document permitting construction based on the territorial planning document sought to be contested, but not later than two years from the date of entry into force of the approved territorial planning document. A limitation period of two years provided for in this paragraph shall be definitive.

There are different rules of standing regarding the individual administrative acts and normative (regulatory) administrative acts (plans and programmes fall into one of these categories). According to Article 112 (1) of the Law on Administrative Proceedings, the right to apply to the administrative court with an application for review of conformity of a regulatory administrative act (part thereof) with a law or a regulation issued by the Government shall be vested in the members of the Seimas, ombudsperson of the Seimas, children rights protection ombudsperson, equal opportunities ombudsperson, the control officers of the State of the Republic of Lithuania, courts of general and specialised competency, prosecutors and professional self-government associations established according to the laws to perform public functions.

Other persons shall have the right to apply to the administrative court to review conformity of a regulatory administrative act (or part thereof) with the law or Government regulation when a specific case regarding infringement of their rights is heard before the court (Article 113 (1) of the Law on Administrative Proceedings).

The public concerned does not have standing for the review of conformity of a regulatory administrative act (decision relating to general plan or to special territorial planning document).

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?
The administrative courts review the procedural legality and also the substantive legality of all administrative decisions. The courts study the material, technical findings and calculations when they are considered as belonging to the decision. The court is obliged “actively” participate in the proceeding by asking for evidence, appointing witnesses, experts, etc. The court has no limited control. It can review all aspects of the contested decision. Annex 1 of the SEA Resolution sets the criteria for the determination of significance of the impact of plans and programmes. Annex 2 of the SEA Resolution determines information which shall be involved in the report on the SEA. These criteria and information can be controlled by the court.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? According to Article 33 (2) of the Law on Administrative Proceedings, the court shall by virtue of an order declare the complaint not receivable if the claimant has not complied with the procedure for extrajudicial consideration of the case established by the law for the cases of the said category. There is no common rule for all plans and programmes.

Having proof or legal basis for believing that the public interest specified in Article 8(1) of the Law on Territorial Planning has been violated, the public concerned shall have the right to defend the public interest in territorial planning and to apply to the institution protecting the public interest in the field in which the violation of the public interest has been committed or to the prosecutor requesting an investigation of the possible cases of violation of the public interest (Article 49 (5) of the Law on Territorial Planning). So the defence of the public interest in territorial planning is possible before the institution protecting the public interest or the prosecutor.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.? In the procedure of the preparation of a territorial planning document representatives of the public concerned, other natural and legal persons concerned shall have the right to apply to court regarding the adopted administrative decision on the revocation of approval of a territorial planning document only in the cases where they have been involved in the publicity procedures of territorial planning and have lodged complaints or reports regarding the decisions relating to territorial planning adopted by entities of public administration or regarding the failure to act of these entities to the institutions carrying out state supervision of territorial planning before the adoption of the appealed administrative decision on the approval of the territorial planning document, where in the course of the publicity procedures they were aware of or could have objectively foreseen the possible violation of their rights (Article 49 (4) of the Law on Territorial Planning).

According to Article 37 of the Law on Territorial Planning, the proposals regarding territorial planning documents shall be submitted to the organiser of planning in writing. The reply provided by the organiser of planning may, within 10 working days, be appealed against to the respective institution carrying out state supervision of territorial planning.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions? Injunctive relief is available in all administrative matters in the same manner. The claim shall be secured at any stage of the proceedings if the participant in the proceedings reasons the claim and failure to take provisional measures may lead to irreparable damage or damage that would be difficult to repair. The court can take provisional measures to ensure the claim by the reasoned application of the participants in the proceedings or on its own initiative. The provisional measures may also be applied in the event that temporary regulation of the situation related to the disputed legal relations is needed (Article 70 of the Law on Administrative Proceedings).

There is a special regulation regarding territorial planning documents for projects of importance to the State in Article 23 of the Law on Territorial Planning. No later than within 10 working days from the date of submission by the organiser of planning of the reply to the complaint, the court shall, by its ruling, resolve the issue of whether further procedures of preparation, coordination and approval of the territorial planning document of the project of importance to the State need to be suspended due to the complaint lodged (Article 23 (5) of the Law on Territorial Planning).

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive? General rules of the Law on Administrative Proceedings apply. If the person submits an appeal to the administrative court, they should pay stamp duty. There are exemptions, however, in cases concerning complaints in order to protect the State or other public interests, in cases concerning compensation for material and moral damages inflicted by unlawful acts or omission in the sphere of public administration, for example. Other litigation-related costs include: costs paid to witnesses, experts and expert organisations; costs for lawyers or lawyers' assistants; other necessary and reasonable expenses. When submitting an appeal to the first instance administrative court, the applicant should pay stamp duty in the amount of 30 EUR (in electronic cases 75 per cent of the sum) (Article 35 of the Law on Administrative Proceedings). The stamp duty for the appeal of the first instance court's judgment is 15 EUR. The amount of stamp duty is the same for all categories of administrative case. The court, taking into account the financial situation of a natural person, may decrease the amount of stamp duty or exempt the person from the obligation to pay the stamp duty (Article 37 of the Law on Administrative Proceedings). The prevailing party to the proceedings shall be entitled to recover costs from the non-prevailing adverse party (Article 40 (1) of the Law on Administrative Proceedings).

There is a recommendation from the Minister of Justice and the Chairman of the Bar concerning lawyers' fees (Ministry of Justice Order No. 1R-85 from 2004). Recommended maximum remuneration sizes are calculated using coefficients based on the Lithuanian Government’s approved minimum monthly salary. An estimation of lawyers’ fees in the case of legal aid is regulated by Order of the Ministry of Justice No. 1R-332 from 2020. There is no express statutory reference to a requirement that costs should not be prohibitive.

1.3. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with the public participation requirements of Article 7 of the Aarhus Convention in respect of plans and programmes not submitted to the procedures set out in the Strategic Environmental Assessment (SEA) Directive 2001/42/EC

Directive 2001/42/EC

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

Representatives of the public concerned and other natural and legal persons may be actively involved in the publicity procedures of territorial planning. These procedures should be guaranteed for all territorial planning documents which do not fall under the regulation of the SEA Resolution but under the regulation of the Law on Territorial Planning. The participation of individuals and NGOs in decision-making in territorial planning procedure is regulated by the Law on Territorial Planning and the Resolution of the Government of the Republic of Lithuania on Public Information, Consultation and Participation in Decision-Making in Territorial Planning (approved by Resolution No. 1079 of the Government of 1996). There are special rules regarding access to justice.
According to Article 49 (4) of the Law on Territorial Planning, representatives of the public concerned, and other natural and legal persons concerned, shall have the right to apply to court regarding the adopted administrative decision on the revocation of approval of a territorial planning document only in the cases where:

- they have been involved in the publicity procedures of territorial planning and have lodged complaints or reports regarding the decisions relating to territorial planning adopted by entities of public administration or regarding the failure of these entities to act to the institutions carrying out state supervision of territorial planning before the adoption of the appealed administrative decision on the approval of the territorial planning document, where in the course of the publicity procedures they were aware of or could have objectively foreseen the possible violation of their rights;
- for reasons recognised by the court as serious, they could not have been involved in the publicity procedures of territorial planning and lodged complaints or reports regarding the decisions relating to territorial planning adopted by the entities of public administration or regarding the failure of these entities to act to the institutions carrying out state supervision of territorial planning before the adoption of the appealed administrative decision on the approval of the territorial planning document.

According to Article 49 (6) of the Law on Territorial Planning, the period of limitation for entities defending the public interest to make a claim in relation to contesting the approved territorial planning documents, their solutions or administrative acts approving them shall be 20 working days from the date of issuance of a document permitting construction based on the territorial planning document sought to be contested, but not later than two years from the date of entry into force of the approved territorial planning document. A limitation period of two years provided for in this paragraph shall be definitive.

There are different rules of standing regarding the individual administrative acts and normative (regulatory) administrative acts. According to Article 112 (1) of the Law on Administrative Proceedings, the right to apply to the administrative court for review of conformity of a regulatory administrative act (or part thereof) with a law or regulation issued by the Government shall be vested in the members of the Seimas, the ombudsman of the Seimas, the children’s rights protection ombudsman, the equal opportunities ombudsman, the control officers of the State of the Republic of Lithuania, courts of general and specialised competency, prosecutors and professional self-government associations established according to the law to perform public functions. Other persons shall have the right to apply to the administrative court for review of conformity of a regulatory administrative act (or part thereof) with the law or Government regulation where a specific case regarding infringement of their rights is heard before the court (Article 113 (1) of the Law on Administrative Proceedings).

There are other plans and programmes which are not territorial planning documents, e.g. land holding projects (land use planning projects for land reform; projects of formation and rearrangement of land parcels; projects for taking land for public needs; land consolidation projects) (Article 37 of the Law on Land); plans on protection zones etc.

According to Article 44 of the Law on Land, disputes regarding decisions taken by state and municipal institutions related to land management shall be investigated in accordance with the procedure laid down in the Law on Administrative Proceedings. The land owner or another user may apply for compensation for damage incurred due to the actions of a state or municipal institution when drafting and implementing the land use planning documents to the institution that has taken the decision to approve the land use planning document, or shall have the right to claim damages in the court proceedings. A person must apply to the institution that has taken the decision to approve the land use planning documents not later than within one month after the day they found out about the occurrence of the damage. Disputes regarding the amount of and compensation for damage shall be settled in court in the manner prescribed by law.

There are several special legal acts regulating the participation of the public. E.g., according to Articles 58-61 of the Rules of the Projects of Formation and Rearrangement of Land Parcels, approved by Order of the Minister of Agriculture and the Minister of Environment No. 3D-452/D1-51 of 2004, proposals of representatives of the public regarding projects of formation and rearrangement of land parcels shall be submitted to the project organiser in writing. The reply provided by the project organiser may, within 10 working days, be appealed to the National Land Service. A decision of the National Land Service shall be revoked by the court.

In light of the national case-law, access to national courts can be considered effective.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The administrative courts review the procedural legality and also the substantive legality of all administrative decisions. The courts study the material, technical findings and calculations where they are considered as belonging to the decision. The court is obliged to “actively” participate in the proceedings by asking for evidence, appointing witnesses, experts, etc. The court has no limitation on its control. It can review all aspects of the contested decision.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

According to Article 33 (2) of the Law on Administrative Proceedings, the court shall, by means of an order, declare the complaint not receivable if the claimant has not complied with the procedure for extrajudicial consideration of the case established by the law for cases of the said category. There is no common rule for all plans and programmes. Having proof or legal basis for believing that the public interest specified in Article 8(1) of the Law on Territorial Planning has been violated, the public concerned shall have the right to defend the public interest in territorial planning and to apply to the institution protecting the public interest in the field in which the violation of the public interest has been committed, or to the prosecutor requesting an investigation of possible cases of violation of the public interest (Article 49 (5) of the Law on Territorial Planning).

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure — to make comments, participate at hearing, etc.?

In the procedure of the preparation of a territorial planning document, representatives of the public concerned, and other natural and legal persons concerned, shall have the right to apply to court regarding the adopted administrative decision on the revocation of approval of a territorial planning document only in cases where they have been involved in the publicity procedures of territorial planning and have lodged complaints or reports regarding the decisions relating to territorial planning adopted by entities of public administration or regarding the failure of these entities to act to the institutions carrying out state supervision of territorial planning before the adoption of the appealed administrative decision on the approval of the territorial planning document where, in the course of the publicity procedures, they were aware of, or could have objectively foreseen, the possible violation of their rights (Article 49 (4) of the Law on Territorial Planning).

There are several other legal acts which set a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures. E.g., proposals of representatives of the public regarding projects of formation and rearrangement of land parcels shall be submitted to the project organiser in writing. The reply provided by the project organiser may, within 10 working days, be appealed to the National Land Service. A decision of the National Land Service shall be revoked by the court. According to Article 37 of the Law on Territorial Planning, proposals regarding territorial planning documents shall be submitted to the planning organiser in writing. The reply provided by the planning organiser may, within 10 working days, be appealed to the respective institution carrying out state supervision of territorial planning.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?
Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

4) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

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?

There are different rules of standing regarding individual administrative acts and normative (regulatory) administrative acts. According to Article 112 (1) of the Law on Administrative Proceedings, the right to apply to the administrative court for review of conformity of a regulatory administrative act (or part thereof) with a law or regulation issued by the Government shall be vested in the members of the Seimas, the ombudsperson of the Seimas, the children’s rights protection ombudsperson, the equal opportunities ombudsperson, the control officers of the State of the Republic of Lithuania, courts of general and specialised competency, prosecutors and professional self-government associations established according to the law to perform public functions.

Other persons shall have the right to apply to the administrative court for review of conformity of a regulatory administrative act (or part thereof) with the law or Government regulation where a specific case regarding infringement of their rights is heard before the court (Article 113 (1) of the Law on Administrative Proceedings). The persons have the right to apply for review of the normative (regulatory) administrative act only if there is a case regarding the breach of their rights initiated before the court.

According to Article 7 (8) of the Law on Environmental Protection, one or more natural or legal persons and the public concerned shall have the right to file, in accordance with the procedure laid down by laws of the Republic of Lithuania, a complaint/application demanding that appropriate action be taken to prevent or minimise environmental damage or restore the environment to its baseline condition, and that the persons guilty of causing a harmful effect on the environment and the officials whose decisions or acts/failure to act have violated the rights of citizens, the public concerned, other legal and natural persons or the interests protected under law be punished.

The persons have a right to file a complaint regarding the protection of the environment and to ask the court to initiate the review of the normative (regulatory) administrative act.

If there is a special territorial planning document or detailed plan, the information, consultation and participation procedure is regulated by the Resolution of the Government of the Republic of Lithuania on Public information, Consultation and Participation in Decision-Making in Territorial Planning (approved by Resolution No. 1079 of the Government of 1996). There is a special legal act which sets out the rules regarding the informing and participation of the public in decision-making in the preparation of plans and programmes in the areas of air and water protection and waste management (approved by Order of the Minister of Environment No. D-381 from 2005). According to Article 8 of this Order, representatives of the public have a right to submit proposals to the institution which is preparing the plan or programme. According to Articles 12 and 13 of the Order, the institution shall, on its website, provide persons who have submitted proposals with a reasoned reply and shall inform the public about the adoption of the plan or programme and about the reasons.

No other special legal standing rules foreseen in the aforementioned acts.

2) Does the form in which the plan or programme is adopted make a difference in terms of legal standing (see also Section 2.5 below)?

There are different rules of standing regarding individual administrative acts and normative (regulatory) administrative acts. According to Article 112 (1) of the Law on Administrative Proceedings, the right to apply to the administrative court for review of conformity of a regulatory administrative act (or part thereof) with a law or regulation issued by the Government shall be vested in the members of the Seimas, the ombudsperson of the Seimas, the children’s rights protection ombudsperson, the equal opportunities ombudsperson, the control officers of the State of the Republic of Lithuania, courts of general and specialised competency, prosecutors and professional self-government associations established according to the law to perform public functions.

Other persons shall have the right to apply to the administrative court for review of conformity of a regulatory administrative act (or part thereof) with the law or Government regulation where a specific case regarding infringement of their rights is heard before the court (Article 113 (1) of the Law on Administrative Proceedings). The persons have the right to apply for review of the normative (regulatory) administrative act only if there is a case regarding the breach of their rights initiated before the court.

3) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The administrative courts review the procedural legality and also the substantive legality of all administrative decisions. The courts study the material technical findings and calculations where they are considered as belonging to the decision. The court is obliged to “actively” participate in the proceedings by asking for evidence, appointing witnesses, experts, etc. The court has no limitation on its control. It can review all aspects of the contested decision.

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

General rules of the Law on Administrative Proceedings apply. If the person submits an appeal to the administrative court, they should pay stamp duty. There are exemptions, however, in cases about complaints in order to protect the State or other public interests, in cases concerning compensation for material and moral damages inflicted by unlawful acts or omissions in the sphere of public administration, for example. Other litigation-related costs include: costs paid to witnesses, experts and expert organisations; costs for lawyers or lawyers’ assistants; other necessary and reasonable expenses.

When submitting an appeal to the first instance administrative court, the applicant should pay stamp duty in the amount of 30 EUR (in electronic cases 75 per cent of the sum) (Article 35 of the Law on Administrative Proceedings). The stamp duty for the appeal of the first instance court’s judgment is 15 EUR.

The amount of stamp duty is the same for all categories of administrative cases. The court, taking into account the financial situation of a natural person, may decrease the amount of stamp duty or exempt the person from the obligation to pay the stamp duty (Article 37 of the Law on Administrative Proceedings).

There is no express statutory reference to a requirement that costs should not be prohibitive.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[4]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the content of the plan (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The procedure of preparing plans and programmes does not depend on whether the basis for the preparation of such plans and programmes comes from the EU, international or national law. The possibility of administrative review or legal challenge before the national courts depends on the type of document and its legal status.

If there is a special territorial planning document or detailed plan, the information, consultation and participation procedure is regulated by the Resolution of the Government of the Republic of Lithuania on Public information, Consultation and Participation in Decision-Making in Territorial Planning (approved by Resolution No. 1079 of the Government of 1996). There is a special legal act which sets out the rules regarding the informing and participation of the public in decision-making in the preparation of plans and programmes in the areas of air and water protection and waste management (approved by Order of the Minister of Environment No. D-381 from 2005). According to Article 8 of this Order, representatives of the public have a right to submit proposals to the institution which is preparing the plan or programme. According to Articles 12 and 13 of the Order, the institution shall, on its website, provide persons who have submitted proposals with a reasoned reply and shall inform the public about the adoption of the plan or programme and about the reasons.

There are no other special legal standing rules foreseen in the aforementioned acts.

2) Does the form in which the plan or programme is adopted make a difference in terms of legal standing (see also Section 2.5 below)?

There are different rules of standing regarding individual administrative acts and normative (regulatory) administrative acts. According to Article 112 (1) of the Law on Administrative Proceedings, the right to apply to the administrative court for review of conformity of a regulatory administrative act (or part thereof) with a law or regulation issued by the Government shall be vested in the members of the Seimas, the ombudsperson of the Seimas, the children’s rights protection ombudsperson, the equal opportunities ombudsperson, the control officers of the State of the Republic of Lithuania, courts of general and specialised competency, prosecutors and professional self-government associations established according to the law to perform public functions.

Other persons shall have the right to apply to the administrative court for review of conformity of a regulatory administrative act (or part thereof) with the law or Government regulation where a specific case regarding infringement of their rights is heard before the court (Article 113 (1) of the Law on Administrative Proceedings). The persons have the right to apply for review of the normative (regulatory) administrative act only if there is a case regarding the breach of their rights initiated before the court.

According to Article 7 (8) of the Law on Environmental Protection, one or more natural or legal persons and the public concerned shall have the right to file, in accordance with the procedure laid down by laws of the Republic of Lithuania, a complaint/application demanding that appropriate action be taken to prevent or minimise environmental damage or restore the environment to its baseline condition, and that the persons guilty of causing a harmful effect on the environment and the officials whose decisions or acts/failure to act have violated the rights of citizens, the public concerned, other legal and natural persons or the interests protected under law be punished.

The persons have a right to file a complaint regarding the protection of the environment and to ask the court to initiate the review of the normative (regulatory) administrative act.

If there is a special territorial planning document or detailed plan, the information, consultation and participation procedure is regulated by the Resolution of the Government of the Republic of Lithuania on Public information, Consultation and Participation in Decision-Making in Territorial Planning (approved by Resolution No. 1079 of the Government of 1996).

There is a special legal act which sets out the rules regarding the informing and participation of the public in decision-making in the preparation of plans and programmes in the areas of air and water protection and waste management (approved by Order of the Minister of Environment No. D-381 from 2005). According to Article 8 of this Order, representatives of the public have a right to submit proposals to the institution which is preparing the plan or programme. According to Articles 12 and 13 of the Order, the institution shall, on its website, provide persons who have submitted proposals with a reasoned reply and shall inform the public about the adoption of the plan or programme and about the reasons.

There are no other special legal standing rules foreseen in the aforementioned acts.

2) Does the form in which the plan or programme is adopted make a difference in terms of legal standing (see also Section 2.5 below)?

There are different rules of standing regarding individual administrative acts and normative (regulatory) administrative acts. According to Article 112 (1) of the Law on Administrative Proceedings, the right to apply to the administrative court for review of conformity of a regulatory administrative act (or part thereof) with a law or regulation issued by the Government shall be vested in the members of the Seimas, the ombudsperson of the Seimas, the children’s rights protection ombudsperson, the equal opportunities ombudsperson, the control officers of the State of the Republic of Lithuania, courts of general and specialised competency, prosecutors and professional self-government associations established according to the law to perform public functions.

Other persons shall have the right to apply to the administrative court for review of conformity of a regulatory administrative act (or part thereof) with the law or Government regulation where a specific case regarding infringement of their rights is heard before the court (Article 113 (1) of the Law on Administrative Proceedings). The persons have the right to apply for review of the normative (regulatory) administrative act only if there is a case regarding the breach of their rights initiated before the court.
There is no general rule that administrative review is necessary prior to recourse to judicial review procedures. The requirement of exhaustion of administrative review shall be foreseen in the special legal acts.

If there is a territorial planning document, Article 49 (4) of the Law on Territorial Planning sets out the requirement for participation in the publicity procedures of territorial planning, including administrative review.

If there are plans and programmes in the areas of air and water protection and waste management which fall under the regulation of Order of the Minister of Environment No. D1-381, the submission of the proposals to the institution which is preparing the plan or programme is a requirement for the judicial review.

5) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

In the procedure of the preparation of a territorial planning document, representatives of the public concerned, and other natural and legal persons concerned, shall have the right to apply to court regarding the adopted administrative decision on the revocation of approval of a territorial planning document only in cases where they have been involved in the publicity procedures of territorial planning and have lodged complaints or reports regarding the decisions relating to territorial planning adopted by entities of public administration or regarding the failure of these entities to act to the institutions carrying out state supervision of territorial planning before the adoption of the appealed administrative decision on the approval of the territorial planning document where, in the course of the publicity procedures, they were aware of, or could have objectively foreseen, the possible violation of their rights (Article 49 (5) of the Law on Territorial Planning).

6) Are there some grounds/arguments precluded from the judicial review phase?

According to Article 3 of the Law on Administrative Proceedings, the administrative court shall settle disputes over issues of law in public administration. The court shall not offer assessment of the disputed legal acts and actions (omissions) from the point of view of political or economic expediency and shall only establish whether or not, in a particular case, there has been violation of a law or any other legal act, whether or not the entity of public administration has acted within the limits of its discretion, and whether or not the legal act or action (omission) complies with the objectives and tasks for which purpose the institution has been set up and vested with powers.

The administrative court is not bound to allegations specifically presented in the appeal. The court is obliged to “actively” participate in the proceeding. It can review all aspects of the contested decision.

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

According to the Law on Administrative Proceedings, each party has equal rights in the procedure. The court must explain to the parties to the proceedings their procedural rights and duties, warn them of the consequences of the performance or non-performance of procedural actions, and assist said persons in exercising their procedural rights (Article 12 of the Law on Administrative Proceedings). Administrative courts have an obligation to give guidance to the parties in order to ensure that all parties have equal opportunities to present their arguments and submit evidence.

8) How is the notion of “timely” implemented by the national legislation?

There are several categories of case which should be resolved within the time limit set by special laws (e.g. cases about the refusal to issue permits for residence and work in Lithuania or withdrawal of such permits, refusal or cancellation of asylum, cases about dismissal of a public or municipal servant). Environmental cases are not assigned to urgent cases.

The Law on Administrative Proceedings sets out the time limits for the actions of the court and for the parties, e.g.: after the court has received a complaint/application/petition, the president or the judge of the administrative court shall, within 7 business days, decide on the issue of acceptance thereof (Article 33 (1) of the Law on Administrative Proceedings); as a rule, the preparation of administrative cases for hearing in the court must be completed within one month from the day of acceptance of the complaint/application/petition (Article 64 (2) of the Law on Administrative Proceedings); the judge or the court shall hear the petition for securing the claim within not more than 3 business days from receipt thereof, without notifying the respondent and other participants in the proceedings (Article 70 (4) of the Law on Administrative Proceedings); after hearing the case, the court can defer adoption of the court decision and publication for no longer than 20 business days, and, after hearing the case regarding the legitimacy of regulatory administrative act, for no longer than one month (Article 84 (5) of the Law on Administrative Proceedings); the complaint shall have the right to specify, change the basis of complaint/application/petition or the subject matter within 14 calendar days from the day of receipt of the replies from the parties to the proceedings (Article 50 (3) of the Law on Administrative Proceedings); the respondent has to present to the court their opinions within the specified time limit, which is usually at least 14 calendar days from the day of receipt of a transcript (digital copy) of the complaint/application/petition (Article 67 (1) of the Law on Administrative Proceedings) etc.

The Law on Territorial Planning and other implementing legal acts set out terms for the actions of the organiser of the particular plan, for the institutions and for the public participating in the planning procedure. E.g., according to Article 25 (4) of the Law on Territorial Planning, prior to commencing the preparation of a document of complex territorial planning, the planning organiser, or a person authorised by them, shall apply in writing to the institutions specified in the Rules for the Preparation of Documents of Complex Territorial Planning requesting that they issue planning conditions within 15 working days (in the case of documents of municipal-level and local-level territorial planning, within ten working days) from the date of receipt of the application. If the planning conditions have not been issued within the set time limit and the planning organiser has not been informed of the reasons for refusal, the planning organiser shall have the right to commence the preparation of the document of complex territorial planning; according to Article 37 (2) of the Law on Territorial Planning, the reply provided by the planning organiser may, within ten working days, be appealed to the respective institution carrying out state supervision of territorial planning, etc.

9) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

Injunctive relief is available in all administrative matters in the same manner. The claim shall be secured at any stage of the proceedings if the participant in the proceedings reasons the claim and failure to take provisional measures may lead to irreparable damage or damage that would be difficult to repair. The court can take provisional measures to ensure the claim by the reasoned application of the participants in the proceedings or on its own initiative. The provisional measures may also be applied in the event that temporary regulation of the situation related to the disputed legal relations is needed (Article 70 of the Law on Administrative Proceedings).

There is a special regulation regarding territorial planning documents of projects of importance to the State in Article 23 of the Law on Territorial Planning. Not later than within 10 working days from the date of submission by the planning organiser of the reply to the complaint, the court shall, by its ruling, resolve the issue of whether further procedures of preparation, coordination and approval of the territorial planning document of the project of importance to the State need to be suspended due to the complaint lodged (Article 23 (5) of the Law on Territorial Planning).

10) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

General rules of the Law on Administrative Proceedings apply. If the person submits an appeal to the administrative court, they should pay stamp duty. There are exemptions, however, in cases about complaints in order to protect the State or other public interests, in cases concerning compensation for material and
moral damages inflicted by unlawful acts or omissions in the sphere of public administration, for example. Other litigation-related costs include: costs paid to
witnesses, experts and expert organisations; costs for lawyers or lawyers’ assistants; other necessary and reasonable expenses.

When submitting an appeal to the first instance administrative court, the applicant should pay stamp duty in the amount of 30 EUR (in electronic cases, 75
per cent of the sum) (Article 35 of the Law on Administrative Proceedings). The stamp duty for the appeal of the first instance court’s judgement is 15 EUR.
The amount of stamp duty is the same for all categories of administrative case. The court, taking into account the financial situation of a natural person, may
decrease the amount of stamp duty or exempt the person from the obligation to pay the stamp duty (Article 37 of the Law on Administrative Proceedings).

There is no express statutory reference to a requirement that costs should not be prohibitive.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU
regulatory acts[5]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal
challenge before a national court in respect of the procedure for adopting or the content of the decision, act or omission of the national regulatory act (in
particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts
in light of the CJEU case law and any related national case law?

The EU regulatory acts in the environmental area are implemented through laws, resolutions and decisions of the Government, regulatory acts of ministers,
heads of Government bodies and other state institutions and bodies and collegial institutions, regulatory acts of municipal institutions. These are normative
(regulatory) legal acts. Only subjects foreseen in the Constitution and in the Law on Administrative Proceedings have a right to challenge normative
(regulatory) legal acts before courts.

According to Article 105 of the Constitution, the Constitutional Court shall consider and adopt a decision whether the laws of the Republic of Lithuania and
other acts adopted by the Seimas are not in conflict with the Constitution of the Republic of Lithuania. The Constitutional Court shall also consider if the
following are not in conflict with the Constitution and laws:

acts of the President of the Republic;

acts of the Government of the Republic.

The President of the Republic, the Government, not less than 1/5 of all the members of the Seimas and the courts shall have the right to apply to the
Constitutional Court. The right to file a petition with the Constitutional Court concerning the constitutionality of all above-mentioned legal acts is also granted
to any person who believes that a decision adopted on the basis of such a legal act has violated their constitutional rights or freedoms and the person has
exhausted all legal remedies. Such a person may apply to the Constitutional Court only where, in the case concerning the decision violating their
constitutional rights or freedoms, the final and non-appealable decision on the merits of the case or on rejecting the complaint is adopted by a court of
general competence or an administrative court, i.e. such a decision of a court is adopted that precludes any further defence of the violated rights or freedoms
of the person before the courts of general competence or the administrative courts. A petition concerning the violated constitutional rights or freedoms may
be filed with the Constitutional Court not later than within 4 months of the day that the final and non-appealable decision of the court came into force.

According to Article 112 (1) of the Law on Administrative Proceedings, the right to apply to the administrative court with an application for review of
conformity of a regulatory administrative act (or part thereof) with a law or regulation issued by the Government shall be vested in the members of the
Seimas, the ombudsman of the Seimas, the children’s rights protection ombudsman, the equal opportunities ombudsman, the control officers of the
State of the Republic of Lithuania, courts of general and specialised competency, prosecutors and professional self-government associations established
according to the law to perform public functions. The right to apply to the administrative court with a petition for review of conformity of a regulatory
administrative act issued by the entity of municipal administration with a law or Government regulation shall also be vested in the Government
representatives supervising the activities of municipalities (Article 112 (2) of the Law on Administrative Proceedings).

Other persons shall have the right to apply to the administrative court to review conformity of a regulatory administrative act (or part thereof) with the law or
Government regulation where a specific case regarding infringement of their rights is heard before the court (Article 113 (1) of the Law on Administrative
Proceedings).

The persons have the right to apply for review of the normative (regulatory) administrative act only if there is a case regarding the breach of their rights
initiated before the court. The right to file a petition with the Constitutional Court concerning the constitutionality of laws of the Republic of Lithuania and other
acts adopted by the Seimas, the Government or the President of the Republic is also granted to any person who believes that a decision adopted on the
basis of such a legal act has violated their constitutional rights or freedoms and the person has exhausted all legal remedies.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?
The competence of the courts regarding review of normative (regulatory) acts is the same as in other administrative matters. Both procedural and substantive
legality of the challenged normative (regulatory) act can be reviewed.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
The requirement of the constitutional complaint is the exhaustion of all legal remedies. There is a requirement of exhaustion of administrative review
procedures for contesting of territorial planning documents (general plans, special plans).

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make
comments, participate at hearing, etc.?

The Law on Legislative Framework sets out the principle of public consultation. According to Article 7 of the Law on Legislative Framework, the public shall
have a possibility to submit proposals relating to the legislative initiatives and draft legal acts published in the Legislative Information System, as well as to
monitor the carrying out of the legal regulation. The public must be consulted in due time and on essential issues (effectiveness of consultation), and to the
extent necessary (proportionality of consultation). Methods of public consultation and ways of recording the results shall be selected by the entities initiating
public consultation. Information on the results of public consultation must be provided to the entity adopting a legal act. Participation in the public consultation
phase is not necessary.

If the special legal act sets out a requirement for participation in the public consultation phase, it is the requirement for legal standing before the national
courts.

In the procedure of the preparation of a territorial planning document, representatives of the public concerned, and other natural and legal persons
concerned, shall have the right to apply to court regarding the adopted administrative decision on the revocation of approval of a territorial planning document
only in cases where they have been involved in the publicity procedures of territorial planning and have lodged complaints or reports regarding the decisions
relating to territorial planning adopted by entities of public administration or regarding the failure of these entities to act to the institutions carrying out state
supervision of territorial planning before the adoption of the appealed administrative decision on the approval of the territorial planning document where, in
the course of the publicity procedures, they were aware of, or could have objectively foreseen, the possible violation of their rights (Article 49 (5) of the Law
on Territorial Planning).
According to Article 37 of the Law on Territorial Planning, the proposals regarding territorial planning documents shall be submitted to the planning organiser in writing. The reply provided by the planning organiser may, within 10 working days, be appealed to the respective institution carrying out state supervision of territorial planning.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

According to Article 67-2 of the Law on the Constitutional Court, having regard to a reasoned request submitted by the petitioner to suspend the execution of the decision of the court, the Constitutional Court may suspend the execution of the decision of the court in exceptional circumstances where the constitutional rights or freedoms of the petitioner would be irremediably violated due to the execution of the decision of the court or where suspending the execution of the decision of the court is necessary for reasons of public interest. A request to suspend the execution of the decision of the court must be submitted together with the respective petition requesting an investigation into the compliance of a legal act with the Constitution or laws.

According to Article 26 of the Law on the Constitutional Court, in cases where the Constitutional Court receives a submission by the President of the Republic or a resolution of the Seimas, the Constitutional Court shall carry out a preliminary investigation within three days. If the Constitutional Court adopts a decision to accept the petition for consideration, the President of the Constitutional Court shall immediately announce that the validity of the act in question is suspended from the day of the official publication of this announcement in the Register of Legal Acts until the ruling of the Constitutional Court concerning this case is published.

According to Article 70 (3) of the Law on Administrative Proceedings, provisional measures may be as follows:
- granting of a restraining injunction against certain actions;
- stay of execution under the writ of execution;
- temporary suspension of the validity of the disputed individual legal act, as well as the granting of subjective rights to another person (not the claimant);
- other measures applied by the court or the judge.

The administrative courts have no possibility to suspend the validity of a disputed normative (regulatory) legal act until the announcement of the effective decision of the administrative court on recognition of the relevant regulatory administrative act (or part thereof) as illegal. Where necessary, the administrative court may suspend the validity of the regulatory administrative act (or part thereof) recognised as illegal until the coming into effect of the court decision (Article 118 (3) of the Law on Administrative Proceedings).

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

If the person submits an appeal to the administrative court regarding the breach of their rights or interests, general rules of the Law on Administrative Proceedings regarding stamp duty and other costs apply. In the case of an abstract application for review of legality of a regulatory administrative act, no stamp duty is required.

According to Article 39 of the Law on the Constitutional Court, expenses incurred by the institutions participating in the case in relation to their attendance and participation in proceedings before the Constitutional Court shall be compensated by the institutions and establishments that they represent.

After, subsequent to a petition by a person, a law or other act of the Seimas, an act of the President of the Republic, or an act of the Government that served as a basis for adopting a decision violating the constitutional rights or freedoms of the person is declared by the Constitutional Court to be in conflict with the Constitution or laws, the necessary and justified expenses incurred by the petitioner in relation to participation in the proceedings before the Constitutional Court shall be compensated by the state institution that adopted the legal act (or part thereof) declared to be in conflict with the Constitution. The Government, or an institution authorised by it, shall determine the maximum amounts of compensation for expenses relating to participation in proceedings before the Constitutional Court and the procedure for their payment. Maximum amounts of compensation for expenses are regulated by Order of the Minister of Justice No. 1R-261 in 2019.

7) Is it possible to bring a legal challenge before a national court concerning any related EU regulatory act with a view to a validity reference under Article 267 TFEU, and if so how?[6]

Only subjects foreseen in the Law on Administrative Proceedings can challenge national normative (regulatory) legal acts directly by appeal in court. Other subjects have the right to ask the court to apply to the administrative court to review conformity of a regulatory administrative act (or part thereof) with the law or Government regulation where a specific case regarding infringement of their rights is heard before the court. It is only one option to apply directly to the court regarding the decision of the European Commission foreseen in the Law on Administrative Proceedings - the State Data Protection Inspectorate shall submit a petition to apply to a competent legal authority of the European Union regarding the decision of the European Commission to the Supreme Administrative Court of Lithuania in cases specified in the Law on the Legal Protection of Personal Data (Article 1221 of the Law on Administrative Proceedings). Having examined the Petition on the Decision of the European Commission, the Supreme Administrative Court of Lithuania shall adopt one of the following decisions: 1) to apply to a competent judicial authority of the European Union with a petition to adopt a prejudicial decision according to Article 267 TFEU; 2) to reject the petition of the State Data Protection Inspectorate on the Decision of the European Commission (Article 1223 of the Law on Administrative Proceedings).

In other cases, the court applies to a competent judicial authority of the European Union for the prejudicial decision on the issue of interpretation or validity of the laws of the European Union. Any party in the proceedings may request that the court apply to a competent judicial authority of the European Union for the prejudicial decision, but this is at the discretion of the court.

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[1] This category of case reflects recent case-law of the CJEU such as Protect C-664/15, the Slovak brown bear case C-240/09, see as described under Commission Notice C/2017/2616 on access to justice in environmental matters.

[2] The Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.

[3] See findings under ACCC/C/2010/54 for an example of a plan not submitted to SEA but subject to the public participation requirements of Article 7 of the Aarhus Convention.

[4] These fall within the scope of both Article 7 and Article 9(3) of the Aarhus Convention. See also relevant case-law of the Court of Justice of the European Union such as Case C-237/97, Janecek and cases such as Boxus and Solvay C-128/09-C-131/09 and C-182/10, as referred to under Commission Notice C/2017/2616 on access to justice in environmental matters.

[5] Such acts come within the scope of Article 8 and Article 9(3) of the Aarhus Convention. An example of such an act concerns the decision of the national administration that featured in Case C-281/16, Vereniging Hoekschewaards Landschap, ECLI:EU:C:2017:774.

[6] For an example of such a preliminary reference, see Case C-281/16, Vereniging Hoekschewaards Landschap, ECLI:EU:C:2017:774.

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Other relevant rules on appeals, remedies and access to justice in environmental matters

- Remedies against the silence of the administration (the administrative passivity).
  According to Article 7 (8) of the Law on Environmental Protection, one or more natural or legal persons and the public concerned shall have the right, in accordance with the procedure laid down by laws of the Republic of Lithuania, to file a complaint/application demanding that appropriate action be taken to prevent or minimise environmental damage or restore the environment to its baseline condition, and that the persons guilty of causing a harmful effect on the environment and the officials whose decisions or acts/failure to act have violated the rights of citizens, the public concerned, other legal and natural persons or the interests protected under law be punished.
  If the entity of public administration fails to perform its duties or delays the consideration of a certain issue and fails to resolve it by the due date, a complaint about such failure to act (delay in performance) may be lodged within two months from the day of expiry of the time limit set by a law or any other legal act for settlement of the issue (Article 29 (2) of the Law on Administrative Proceedings).
  Personal standing rules are the same as for any other administrative or judicial review procedure. Only those persons whose rights are being breached have standing to challenge the failure to act, whereas standing is granted for environmental NGOs in cases related to their aims and activities.

- Penalties that the judiciary or any other independent and impartial body (information commissioner, ombudsman, prosecutor, etc.) can impose on the public administration for failing to provide effective access to justice.
  According to Article 99 of the Law on Administrative Proceedings, after the court decision whereby the complaint/application/petition is met becomes effective, the approved copy (transcript) thereof shall be sent for enforcement by the entity of public administration or other persons whose legal acts or actions (inactions) or delay to perform actions were appealed, or to the entity of public administration representing the State (Government) in the case, as well as the claimant. If the entity of public administration or any other person fails to perform the decision within 15 calendar days or within the time limit set by the court, at the request of the claimant the administrative court which adopted the decision issues a letter of enforcement by also ordering the enforcement thereof by the bailiff according to the location of the seat of the respondent in accordance with the procedure laid down by the Code of Civil Procedure. Where the sums are recovered to the state budget, or in the case of recovery of damage resulting from illegal actions of entities of public administration, as well as in the case of recovery of sums associated with Office-related legal relations or payment of pensions, the court shall issue a letter of enforcement to the recovering entity without the request thereof.
  The Seimas Ombudsman shall investigate claimants’ complaints about the abuse of office by and bureaucracy of officials or other violations of human rights and freedoms in the sphere of public administration (Article 12 of the Law on the Seimas Ombudsman). When performing his duties, the Seimas Ombudsman shall have the right to draw up a record of administrative violations of law for failure to comply with the demands of the Seimas Ombudsman or for interfering in any other way with fulfilment by the Seimas Ombudsman of the rights granted to him (Article 19 (9) of the Law on the Seimas Ombudsman).
  The state control of environmental protection and utilisation of natural resources shall be exercised by officials of the system of the Ministry of Environment – state inspectors of environmental protection. According to Article 18 of the Law on Environmental Protection, state inspectors of environmental protection in the cases, and in accordance with the procedure, specified by the Law on State Control of Environmental Protection shall have the right to issue mandatory instructions; draw up statements, acts and other documents in the specified format; hear cases of administrative offences and impose administrative penalties; hear cases of economic sanctions and impose economic sanctions.
  The state control of environmental protection and utilisation of natural resources shall be exercised by officials of the system of the Ministry of Environment – state inspectors of environmental protection. According to Article 31 of the Law on Environmental Protection, state inspectors of environmental protection shall have the right to suspend the construction or reconstruction of objects of economic and other activities, suspend or restrict the activities of legal and natural persons where laws on environmental protection are being violated or where these activities do not comply with the normative standards, rules, limits and other conditions established in respect of environmental protection; in the cases, and in accordance with the procedure specified by the Law on State Control of Environmental Protection and other laws, to issue mandatory instructions, draw up statements, acts and other documents in the specified format; hear cases of administrative offences and impose administrative penalties; hear cases of economic sanctions and impose economic sanctions.
  A state or municipal institution or agency which has compensated for damage caused by a civil servant shall have the right of recourse against said civil servant to the amount paid by it, but not in excess of 9 average salaries of the civil servant. If the civil servant caused the damage deliberately, a state or municipal institution or agency which has compensated for the damage caused by a civil servant shall have the right of recourse against said civil servant to the full amount paid by it (Article 39 of the Law on Civil Service).

- Penalties for the de-facto contempt of the court, e.g. when the judgment of the court is not followed and respected.
  There are no penalties for the competent body in the event that it does not follow and respect the judgment of the court.
  The execution of the court decision is regulated by the Law on Administrative Proceedings and the Code of Civil Procedure. If the court revokes the contested act (or part thereof) and/or obligates the appropriate entity of administration to remedy the committed violation or carry out other orders of the court (e.g. to guarantee access to justice), the claimant can request that the court issue a letter of enforcement. The claimant can also initiate a new suit challenging this omission/failure and/or asking the court to award damages caused by unlawful actions of public administration entities. According to Article 83 of the Law on Administrative Proceedings, the judge or the court which hears an administrative case shall be entitled to impose fines if: officers and persons fail to meet, by the set time and without good reason, the requests by the judge or the court for a reply to the complaint/application/petition, documents and other material, or fail to comply with other requirements laid down by the judge/court related to the hearing of the case; a witness, specialist or expert fails to appear, without good reason, before the judge preparing the case for hearing or at the court hearing; after having been given a warning, persons participating in the proceedings again speak out of turn or insult other persons participating in the court proceedings; persons present in the courtroom fail to observe order or disregard the demands of the presiding judge that order be observed; persons abuse the right of disqualification; persons abuse the administrative proceedings. The administrative court may recognise the submission of a clearly unreasoned procedural document, or an objectively unfair action or inaction directed against cost-efficient, expedient and fair examination or resolution of the case as abuse of administrative proceedings.
  The court which hears the administrative case shall have the right to impose on natural persons and legal persons and their representatives a fine in the amount of up to 300 EUR, and on officers or representatives of institution or agencies in the amount of up to 600 EUR for each case of violation, except for the case referred to in paragraph 1 subparagraph 5 of this Article. The court shall have the right to impose a fine on a person abusing the right of
disqualification in the amount of up to 1,500 EUR. A separate appeal may be filed against the order of the court of first instance concerning the imposition of a fine.

There are several special norms:

If a person summoned to court fails to appear, they may be brought to the court upon the order of the court or judge. Failure to appear in court or refusal to give evidence, explanations or opinions in the court may be punishable by a fine in the amount of up to 300 EUR or detention in custody for the term of up to one month (Article 58 (1) of the Law on Administrative Proceedings).

Where injunctions applied as provisional measures are not complied with, the guilty persons shall be given a fine by court order in the amount of up to 300 EUR. A separate appeal may be filed against the order of the court concerning the imposition of a fine (Article 70 (12) of the Law on Administrative Proceedings).

The court shall have the right to impose a fine of up to 60 EUR on participants in the proceedings for failure to perform the obligation to inform the court of changes in address, email address, telephone and fax numbers, as well as addresses of other means of electronic communication if they are necessary in order to receive the procedural documents by means of electronic communication, where such failure to notify results in deferral of the hearing of the case (Article 76 (2) of the Law on Administrative Proceedings).

According to Article 72 of the Law on the Constitutional Court, a law (or part thereof) or other act (or part thereof) of the Seimas, an act of the President of the Republic, or an act (or part thereof) of the Government may not be applied from the day of the official publication of the ruling of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution of the Republic of Lithuania. The same consequences shall arise where the Constitutional Court gives a ruling that an act of the President of the Republic or an act (or part thereof) of the Government is in conflict with laws. All state institutions, as well as their officials, must annul the substantive acts adopted by them, or provisions of these substantive acts, if they are based on a legal act that has been ruled to be unconstitutional. Decisions based on legal acts that have been ruled to be in conflict with the Constitution or laws must not be executed if they had not been executed before entry into force of the respective ruling of the Constitutional Court. The legal force of a ruling of the Constitutional Court to declare a legal act or part thereof unconstitutional may not be overruled by the repeated adoption of a like legal act or part thereof.

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Access to justice in environmental matters - Lithuania

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
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. Legal order – sources of environmental law

Articles 53 and 54 of the Constitution and the Law on Environmental Protection set out basic requirements which must be fulfilled. The purpose of the Law on Environmental Protection is to regulate public relations in the field of environmental protection, establish the principal rights and duties of legal and natural persons in preserving the biodiversity, ecological systems and landscape characteristic of the Republic of Lithuania, ensuring a healthy and clean environment, rational utilisation of natural resources in the Republic of Lithuania, the territorial waters, continental shelf and economic zone thereof (Article 2 of the Law on Environmental Protection). Environmental protection is a public interest (Constitutional Court's rulings of 29 October 2003, of 9 May 2014, of 5 March 2015).

A person whose constitutional rights or freedoms are violated shall have the right to apply to a court (Article 30 (1) of the Constitution). One or more natural or legal persons and the public concerned[1] have the right to file, in accordance with the procedure laid down by laws of the Republic of Lithuania, a complaint/application demanding that appropriate action be taken to prevent or minimise environmental damage or restore the environment to its baseline condition, and that the persons guilty of causing a harmful effect to the environment and the officials whose decisions or acts/failure to act have violated the rights of citizens, the public concerned, other legal and natural persons, or the interests protected under the law be punished; as well as to refer, in accordance with the procedure laid down by laws of the Republic of Lithuania, to court where they believe that their application filed in accordance with the procedure laid down by the legal acts regulating the right to obtain information on the environment has been unlawfully dismissed, has been provided with a partially or completely inappropriate response or has not been given proper regard in compliance with the legal acts regulating the right to obtain information on the environment (Article 7 (1) of the Law on Environmental Protection). The public concerned has the right to refer to court for defence of public interest challenging the substantive or procedural legality of decisions, acts or omissions in the area of the environment and environmental protection as well as utilisation of natural resources (Article 7 (2) of the Law on Environmental Protection).

The state administration of environmental protection shall be carried out by the Government of the Republic, the Ministry of Environment and other institutions under the Ministry of Environment (e.g. the Department of Environmental Protection, the Environmental Protection Agency, the State Territorial Planning and Construction Inspectorate, the General Forest Enterprise, the State Protected Areas Service), other special state authorities (e.g. National Parks Directorates) and institutions of local self-government.

2) Constitution – main (content of + including references) provisions on environment and access to justice in the national constitution (if applicable) including procedural rights

There is no right to a clean, healthy, favourable, etc. environment directly enshrined in the Constitution. But this right can be derived from other Articles of the Constitution[2]. The concept of environmental protection is mentioned in several Articles of the Constitution: “The State and each individual must protect the environment from harmful influence” (Article 53 (3)); “The State shall concern itself with the protection of the natural environment, its fauna and flora, separate objects of nature and particularly valuable districts, and shall supervise the moderate utilization of natural resources, as well as their restoration and augmentation. The exhaustion of land and elements of the earth, water and air pollution, the production of radiation, as well as the impoverishment of fauna
and flora, shall be prohibited by law" (Article 54). The Constitution guarantees access to justice: “Any person whose constitutional rights or freedoms are violated shall have the right to appeal to court” (Article 30 (1)).

Text of the Constitution (English and Lithuanian)

3) Acts, Codes, Decrees, etc. - main provisions on environment and access to justice, national codes, acts

According to the Law on Administrative Proceedings, any interested person can apply to a court for protection of their infringed right, contested right or interest protected under law. Any applicant who challenges an administrative act has to demonstrate a particular interest in the annulment of this act. Only applications to protect an individual’s infringed or protective right to an administrative court are admissible (Article 5 of the Law on Administrative Proceedings). These main rules are applicable for different types of procedures and different actors. However, it is possible to bring a complaint in order to protect the State or other public interest. The actors for this possibility include the prosecutor, entities of administration, state control officers, other state institutions, agencies, organisations or natural persons. But this possibility can be used only in the cases prescribed by law (Article 55 of the Law on Administrative Proceedings). E.g., according to the Law on Environmental Protection the public concerned, one or more natural or legal persons, have the right to bring a claim before the courts, and in addition the public concerned has the right to refer to court for defence of public interest challenging the substantive or procedural legality of decisions, acts or omissions in the area of the environment and environmental protection as well as utilisation of natural resources. So if there were a complaint in order to protect the public interest connected with the protection of the environment, this complaint should be admissible because it is prescribed by the Law on Environmental Protection. This rule is used for all matters (not only environmental matters). According to Article 7 (8) of the Law on Environmental Protection, one or more natural or legal persons and the public concerned have the right to file a complaint/application demanding that appropriate action be taken to prevent or minimise environmental damage or restore the environment to its baseline condition, and that the persons guilty of causing a harmful effect on the environment and the officials whose decisions or acts/failure to act have violated the rights of citizens, the public concerned, other legal and natural persons or the interests protected under law be punished.

There are specific rules regarding the possibility for the public concerned to bring a claim before the courts in the case of environmental impact assessment (Article 15 of the Law on Environmental Impact Assessment of the Proposed Economic Activity), integrated pollution prevention and control permits (Article 124 of Rules on issuance, renewal and cancellation of IPPC permits, approved by the Ministry of Environment of Lithuania - Order Number D1-528 in 2013), as well as territory planning (Article 49 of the Law on Territory Planning).

4) Examples of national case-law, role of the Supreme Court in environmental cases

The Supreme Administrative Court develops uniform practice of administrative courts in the interpretation and application of laws and other legal acts. The Supreme Court, as a court of cassation, ensures uniform court practice of courts of general jurisdiction.

There is a distinction between cases about protection of the private interest and the public interest respectively. The protection of the private interest is guaranteed under the Constitution (Article 30). The protection of the public interest is possible only in the cases prescribed by law (Article 55 of the Law on Administrative Proceedings) (Supreme Administrative Court’s judgment of 23 September 2013 in case no. A520 - 211/2013). The Law on Environmental Protection foresees the possibility to protect the public interest in environmental matters (Article 7). The Supreme Administrative Court applies the Aarhus Convention directly and decides about the legal status of the person according to the Aarhus Convention (Supreme Administrative Court's judgment of 29 May 2013 in case no. A602 -/816/2013). The Supreme Administrative Court decided about the requirements for NGOs: they should be active in the area of environmental and environmental protection and should fulfil other requirements under the national law (Supreme Administrative Court's judgment of 23 September 2013 in case no. A520 - 211/2013). The status of “public concerned” can be qualified according to the Law on Environmental Protection and other laws, for example according to the Law on Environmental Impact Assessment of the Proposed Economic Activity (Supreme Administrative Court's judgment of 29 May 2013 in case no. A602 -/816/2013).

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?

The international treaties ratified by the Parliament (Seimas) are a constituent part of the legal system (Article 138 (3) of the Constitution). In cases of dispute, international agreements have primacy over national law (Article 11 (2) of the Law on International Treaties). Parties can rely directly on international law. The Aarhus Convention is effective without any additional national legislation. Administrative bodies and courts have to implement this treaty. The Aarhus Convention is implemented in national legislation.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

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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)?

Lithuania has a dual judicial system with ordinary courts of general jurisdiction and administrative courts of special jurisdiction. The courts of general jurisdiction, dealing with civil and criminal matters, are the Supreme Court of Lithuania (1), the Court of Appeal of Lithuania (1) and, at first instance level, the regional courts (5) and the district courts (12). District courts also hear some cases of administrative offences from within their jurisdiction by law. The regional courts, the Court of Appeal and the Supreme Court of Lithuania have a civil division and a criminal division. The Supreme Court of Lithuania is the court reviewing judgments, decisions, rulings and orders of the other courts of general jurisdiction. It develops uniform court practice in the interpretation and application of laws and other legal acts. The Supreme Administrative Court of Lithuania (1) and the regional administrative courts (2) are courts of special jurisdiction hearing disputes arising between citizens and administrative bodies from administrative legal relations. The Supreme Administrative Court is a first and final instance court for administrative cases assigned to its jurisdiction by law. It is an appeal instance court for cases concerning decisions, rulings and orders taken by regional administrative courts, as well as for cases involving administrative offences decided by district courts. The Supreme Administrative Court is also an instance Court for hearing, in cases prescribed by law, petitions on the reopening of completed administrative cases, including administrative offences. The Supreme Administrative Court develops uniform practice of administrative courts in the interpretation and application of laws and other legal acts. There are no specialised courts competent to hear specific types of administrative disputes.

3) Specialities as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges

There are no special court rules in the environmental sector. The Administrative Dispute Commission of Lithuania and the administrative courts carry out full review of all administrative acts, including acts in environmental matters. The courts of general jurisdiction deal with environmental damage cases.

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

The administrative court can quash the contested administrative act (sometimes part thereof). The court can also oblige the appropriate entity of administration to remedy the committed violation or carry out other orders of the court (Article 88 of the Law on Administrative Proceedings). The administrative court cannot change the administrative act, but it can oblige the state institution to elaborate (pass) a new administrative act. The decision of
the court may contain this new administrative act. There are no special rules in the Law on Administrative Proceedings about cases in environmental matters. There is a possibility of petition for the protection of the State or other public interests, including environmental matters (Article 55 of the Law on Administrative Proceedings).

With regard to the preparation for the hearing of the case in the court, the judge shall issue the orders necessary for preparing the hearing without notifying the participants in the proceedings (asking for evidence, appointing witnesses, etc.), except when deciding the issue of ordering the expert examination (Article 67 of the Law on Administrative Proceedings). In a court hearing, the judge can “actively” participate in the proceeding too by asking for evidence, appointing witnesses, experts, etc. The court can apply to the Constitutional Court requesting that it determine whether the law or other legal act adopted by the Seimas applicable in the case is in conformity with the Constitution, and whether the acts adopted by the President of the Republic or the Government applicable in the case are in compliance with the Constitution and laws. The court can also apply to a competent judicial authority of the European Union for the prejudicial decision on the issue of interpretation or validity of the laws of the European Union on its own motion.

1.3. Organisation of justice at administrative and judicial level

1) System of the administrative procedure (ministries and/or specific state authorities)

The state administration of environmental protection shall be carried out by the Government of the Republic, the Ministry of Environment and other institutions under the Ministry of Environment (e.g. the Department of Environmental Protection, the Environmental Protection Agency, the State Territorial Planning and Construction Inspectorate, the General Forest Enterprise, the State Protected Areas Service), other special state authorities (e.g. the National Parks Directorates) and institutions of local self-government. The administrative procedure is regulated by the Law on Public Administration for all matters of administrative law. There are no specific rules for environmental matters. The administrative procedure shall be completed and the decision on the administrative procedure shall be adopted within 20 working days from the beginning of the procedure. This term can be extended for a period not longer than 10 working days (Article 10 (4) of the Law on Public Administration).

The Lithuanian legal system provides for both mandatory and optional prelitigation procedures. According to the Law on Administrative Proceedings, before application is made to the administrative court individual legal acts adopted by public administration entities provided for by law, as well as their acts/omission may be, and in the cases established by the law must be, contested by applying to the institution for preliminary extrajudicial investigation of disputes (Article 26 (1) of the Law on Administrative Proceedings). In cases of mandatory prelitigation procedures, a certain body of pretrial investigation generally belongs to the internal organisational system of particular institutions of public administration and the examination of administrative disputes is one of its functions. In cases of optional prelitigation procedures, the individual is given the freedom of choice. An appeal may be lodged before the body for preliminary extrajudicial investigation or directly before the administrative court. The key authority of such pretrial investigation is the Lithuanian Administrative Disputes Commission. The Lithuanian Administrative Disputes Commission is composed by the Government of the Republic of Lithuania for the period of 4 years. This commission consists of members having higher legal education (Article 3 of the Law on Pre-trial Administrative Disputes Settlement Procedure).

2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?

A person shall have the right to appeal against a decision on the administrative procedure adopted by an entity of public administration, at his own choice, either to an administrative disputes commission or to an administrative court in accordance with the procedure set out in law (Article 14 of the Law on Public Administration).

The administrative court can revoke the decisions made by competent authorities (or part thereof) or obligate the competent authority to remedy the committed violation or carry out other orders of the court (Article 88 of the Law on Administrative Proceedings). There are no specific rules concerning environmental matters for the procedure before administrative courts.

The ordinary courts deal with cases concerning environmental liability. The possibility to claim compensation for damage is foreseen in Articles 32-34 of the Law on Environmental Protection. There are several possibilities for enforcing environmental liability. Each possibility is based on specific conditions. The person can ask the competent authority to act if the environment is damaged. The decision made by the competent authority can be appealed before the administrative court.

Legal and natural persons whose health, property or interests have been damaged can make direct claims for damages before ordinary courts. Competent officers can make such claims when damage has been done to the interests of the State.

Complaints (applications) lodged with the administrative disputes commission must be considered and a decision thereon must be taken within 20 working days after receipt thereof (this term can be extended for a period not longer than 10 working days) (Article 12 of the Law on Pre-trial Administrative Disputes Settlement Procedure). The decision should be taken within 3 working days upon completion of the hearing of the case (Article 19 of the Law on Pre-trial Administrative Disputes Settlement Procedure).

The decision of the court shall be drawn up and announced, as a rule, on the same day after the hearing of the case (Article 84 (3) of the Law on Administrative Proceedings). After hearing the case, the court can defer adoption of the court decision and publication for no longer than 20 working days, and, after hearing the case regarding the legitimacy of a regulatory administrative act, for no longer than one month. In the case of important reasons, at the reasoned request of the judge hearing the case or the member(s) of the chamber of judges hearing the case, the president of the court or their appointed judge may extend such time limits by a reasoned ruling for no more than ten working days. In the event of illness of the judge hearing the case or all members of the chamber of judges hearing the case, the president of the court or a judge appointed by them, or inability to participate for any other objective reason, or in the event of illness of one or several members of the chamber of judges examining the case, or inability to participate for any other objective reason, the remaining (participating) member(s) of the chamber of judges may extend this time limit by means of a ruling until the objective reason no longer applies (Article 84 (5) of the Law on Administrative Proceedings).

There is no regulation in the law of how much time it should take between lodging a complaint and its hearing. There are several terms foreseen for the preparation of the case and of the hearing (as a rule the preparation of administrative cases for hearing in the court must be completed within one month from the day of acceptance of the complaint/application/petition (Article 64 (2) of the Law on Administrative Proceedings); the ruling to assign the case to be examined in the court hearing usually has to be adopted no later than one month before the day of the court meeting (Article 64 (3) of the Law on Administrative Proceedings).

3) Existence of special environmental courts, main role, competence

There are no special courts, tribunals or environmental boards in Lithuania. The Administrative Dispute Commission of Lithuania and the administrative courts carry out full review of all administrative acts, including acts in environmental matters.

4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)

According to the Law on Administrative Proceedings, any interested person can challenge an administrative act before a regional administrative court. Applications to an administrative court to protect an individual’s infringed or protective right (Article 5) are admissible, as are applications to protect the state or other public interest (Article 55).

The decisions of regional administrative courts, adopted when hearing the cases in the first instance, may be appealed to the Supreme Administrative Court of Lithuania within 30 days from the pronouncement of the decision (Article 132 (1) of the Law on Administrative Proceedings).

All court are likely to be applied in all matters. There are no specific rules in the environmental area.

The court shall suspend the hearing of the case when it applies to a competent judicial authority of the European Union for the preliminary ruling on the issue of interpretation or validity of the laws of the European Union (Article 100 (1)(9)) of the Law on Administrative Proceedings). The ruling to suspend the hearing of the case regarding the application to a competent judicial authority of the European Union cannot be appealed (Article 100 (3) of the Law on Administrative Proceedings).

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?

There is a possibility to settle administrative disputes (including environmental disputes) by judicial mediation. The court asks the parties for their opinion regarding the intention and possibilities to resolve the dispute by judicial mediation (Article 71 of the Law on Administrative Proceedings).

7) How can other actors help (ombudsperson (if applicable), public prosecutor), accessible link to the sites?

The Ombudsman cannot bring a claim before the administrative court against the individual administrative decision. But he can apply to the administrative court with a request to investigate conformity of an administrative regulatory enactment (or part thereof) with the law or Government resolution (Article 19 (1 (10)) of the Law on the Seimas Ombudsmen). He can recommend that the prosecutor apply to the court according to the procedure prescribed by law for the protection of public interest (Article 19 (1(16)) of the Law on the Seimas Ombudsmen). The public prosecutor can defend the public interest before administrative courts (Article 55 of the Law on Administrative Proceedings). Other state institutions have legal standing to act before administrative courts either when it is in their own interest to claim or to defend, or when they are defending the public interest.

The Seimas Ombudsmen's Office

The protection of public interest by the public prosecutor

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)?

Any applicant who challenges an administrative act has to demonstrate a particular interest in the annulment of this act. Only application to an administrative court as an individual in order to protect their own infringed or contested right or interest is admissible (Article 5 of the Law on Administrative Proceedings). It is possible to bring a complaint to protect the State or other public interest laid down for the prosecutor, entities of administration, state control officers, other state institutions, agencies, organisations or natural persons, but only in the cases prescribed by law (Article 55 of the Law on Administrative Proceedings). A complaint/petition may be filed with the administrative court within one month from the day of publication of the contested act, the day of delivery of the individual act to the party concerned, the notification of the party concerned of the act (or omission), within two months from the day of expiry of the time limit set by a law or any other legal act for compliance with the demand. If the public or internal administration entity delays consideration of a certain issue and fails to resolve it by the due date, a complaint about the failure to act (in such delay) may be lodged within two months from the day of expiry of the time limit set by a law or any other legal act for the settlement of the issue. No time limits shall be set for the filing of petitions for the review of the lawfulness of administrative legal acts by the administrative courts (Article 29 of the Law on Administrative Proceedings).

NGOs can bring a complaint in order to protect their own and their members' infringed or contested rights or interests, or to protect the State or other public interest in the cases prescribed by law. The public concerned, as defined is Article 7 (2) of the Law on Environmental Protection, has the right to bring a complaint to protect the State or other public interest.

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?

There are additional rules regarding the possibility for the public concerned to bring a claim before courts in the case of environmental impact assessment (Article 15 of the Law on Environmental Impact Assessment of the Proposed Economic Activity) and integrated pollution prevention and control permits (Article 124 of Rules on issuance, renewal and cancellation of IPPC permits, approved by the Ministry of Environment of Lithuania - Order Number D1-528 in 2013), as well as territory planning (Article 49 of the Law on Territory Planning).

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.)

According to the Law on Administrative Proceedings, any interested person (individuals, NGOs) can apply to a court for protection of their infringed right, contested right or interest protected under law. Any applicant who challenges an administrative act has to demonstrate a particular interest in the annulment of this act. Only applications to an administrative court to protect an individual's infringed or protective right are admissible (Article 5 of the Law on Administrative Proceedings). These main rules are applicable for different types of procedure (first instance, appeal instance) and different actors (individuals, NGOs).

However, it is possible to bring a complaint in order to protect the State or other public interest. The actors for this possibility include the prosecutor, entities of administration, state control officers, other state institutions, agencies, organisations or natural persons. But this possibility can be used only in the cases prescribed by law (Article 55 of the Law on Administrative Proceedings). E.g., according to the Law on Environmental Protection the public concerned, one or more natural or legal persons, have the right to bring a claim before the courts, and in addition the public concerned has the right to refer to court for defence of public interest challenging the substantive or procedural legality of decisions, acts or omissions in the area of the environment and environmental protection as well as utilisation of natural resources. So if there were a complaint in order to protect the public interest connected with the protection of the environment, this complaint should be admissible because it is prescribed by the Law on Environmental Protection. This rule is used for all matters (not only environmental matters).

4) What are the rules for translation and interpretation if foreign parties are involved?

Article 9 of the Law on Administrative Proceedings provides that, in the process of administrative cases, decisions should be made and published in the Lithuanian language. All documents submitted to the court must be translated into Lithuanian. Where the participant in the proceedings to whom the procedural documents shall be served in a foreign state does not know the Lithuanian language, the administrative court shall be presented with translations of such documents into the language they understand or the official language of the country where such documents have to be served, or, in the event that said country has several official languages, into one of the official language used at the place of delivery. Where the judicial procedural documents have to be sent to the participant in the proceedings who does not know the Lithuanian language and resides in a foreign state, the court shall translate them into one of the languages they understand or the official language of the country where such documents have to be served. Upon the resolution of the judge who is preparing the case for hearing or of the court hearing the case, a document drawn up in another language may be translated at the court session by a translator. Persons who have no command of the Lithuanian language shall be guaranteed the right to have the assistance of an interpreter. The services provided by the interpreter at the court session shall be paid for from the State budget.

Administrative procedures shall be conducted in the official language, namely Lithuanian (Article 28 of the Law on Public Administration). When a person in whose respect the administrative procedure has been initiated or other interested persons do not speak or understand Lithuanian or are unable to make
themselves understood because of a sensory or speech disorder, an interpreter must be present at the administrative procedure. An entity of public administration that has initiated the administrative procedure or a person in whose respect the administrative procedure has been initiated shall invite an interpreter at their own initiative.

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?

Parties and other persons present the evidence for the proceedings. The parties must prove the circumstances on which they base their claims and responses. In administrative and civil proceedings, the evidence includes: explanations of the parties and third parties (given directly or through representatives), witness evidence, written evidence, real evidence, statements of examination, expert evidence. The parties and other participants submit evidence to the court. If necessary, the court can allow those persons to submit additional evidence at the person’s request or may, on its own initiative, demand the necessary documents or request submissions from the officials. In civil proceedings, the court has the right to collect evidence on its own initiative only in exceptional cases prescribed by the law, such as in family cases and labour cases. The court may also demand and obtain evidence from the other party or third parties at another party’s request.

No evidence before the courts has a predetermined value. The court evaluates the evidence according to its own inner conviction based on a thorough, comprehensive and objective examination of the facts in accordance with the law, as well as justice and reasonableness criteria. Judges must actively participate in the collection of evidence, in the establishment of all significant circumstances of the case, and must make a comprehensive and objective examination thereof.

In the administrative review procedure, the entity of public administration may demand only such documents and information as is not available in the state registers and other state or municipal information systems, except for cases where such documents and information must be provided under laws. The deadline must be set for the provision of the documents and information. It shall be allowed to make a repeated demand for documents and information from the persons in respect of whom the administrative procedure has been initiated only in exceptional cases and with proper substantiation of the necessity for such documents and information. An entity of public administration may request the assistance of another entity of public administration in adopting the decision on the administrative procedure. Where institutional assistance can be rendered by several entities of public administration, the entity of public administration of the lower level shall first be addressed. Institutional assistance rendered by one entity of public administration to another entity of public administration shall be free of charge (Article 12 of the Law on Public Administration).

2) Can one introduce new evidence?

In administrative proceedings, parties can introduce new evidence up to the end of the hearing on merits. In civil proceedings, parties can introduce new evidence up to the end of the preparation for the hearing on the merits.

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts

3.1) Is the expert opinion binding on judges, is there a level of discretion?

3.2) Rules for experts being called upon by the court

3.3) Rules for experts called upon by the parties

Parties can submit expert opinions with other evidence to the court. Specialist explanations, opinions or conclusions gathered by the parties to the proceedings on their own initiative are not admitted as expert evidence. They are regarded as pieces of written evidence. The court decides either on its own initiative or at the request of the parties whether to order an expert examination in the proceedings. Usually an expert is ordered to examine certain issues arising in the case when the court needs special scientific, medical, artistic, technical or professional knowledge.

There is publicly available list of experts.

Expert opinions, like other evidence, do not have a predetermined value for the court. They are not binding on judges.

The amounts payable to experts and organisations of experts shall be paid in advance by the party which made a request for experts (Article 39 of the Law on Administrative Proceedings). If the request has been made by both parties, or if the experts are summoned or the examination is carried out on the initiative of the court, the required amounts shall be paid in by the parties to the proceedings in equal amounts. The specified amounts shall be paid into a special bank account of the court. Having regard to the property status of the natural person or group of natural persons, the administrative court may fully or in part exempt them from payment into the special court account of the amounts specified in this Article. The request for exemption from payment into the account of the said amounts must be justified and substantiated by relevant evidence. The aggrieved party may also be exempted from payment into the account of the amounts indicated in this Article.

3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?

The Forensic Science Centre of Lithuania (FSCL) is a governmental institution of public administration whose main task is to carry out forensic examinations required by courts and other pre-trial investigation institutions. The fees are regulated by the normative acts of this institution.

The fees of private experts are not regulated. No procedural fees exist.

The amounts payable to witnesses, specialists, experts and organisations of experts shall be paid in advance by the party which made a request to summon witnesses, specialists or experts (Article 39 (3) of the Law on Administrative Proceedings). If the requests have been made by both parties, or if the witnesses, specialists and experts are summoned or the examination is carried out on the initiative of the court, the required amounts shall be paid in by the parties to the proceedings in equal amounts (Article 39 (4) of the Law on Administrative Proceedings).

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

Parties can represent their interests in administrative courts themselves or through representatives. In administrative courts, the participation of lawyers is not compulsory in judicial procedures (including in environmental matters). A lawyer is compulsory before the cassation court (the Supreme Court of Lithuania) (e.g. in cases of environmental damage or in criminal cases). Generally, compulsory participation is required in criminal proceedings in all courts of general jurisdiction.

Lists of lawyers can be found on the following websites:

- [https://www.advokatura.lt/savitama](https://www.advokatura.lt/savitama)
- [https://www.advokatura.lt/irasai/advokatu-paieska](https://www.advokatura.lt/irasai/advokatu-paieska)
- [https://www.infolex.lt](https://www.infolex.lt)

A list of lawyers specialising in environmental matters can be found here.
1.1 Existence or not of pro bono assistance
An advocate can provide legal services free of charge, i.e. as legal aid (Article 4 (5) of the Law on the Bar). An advocate decides if they will provide legal services free of charge. This service is pro bono assistance and not necessarily legal aid.
All citizens of the Republic of Lithuania, citizens of other Member States of the European Union as well as other natural persons residing lawfully in the Republic of Lithuania and other Member States of the European Union, and other persons specified in international treaties of the Republic of Lithuania are eligible for primary legal aid (Article 11 (1) of the Law On State-Guaranteed Legal Aid). The secondary legal aid is foreseen only for natural persons who prove their right to receive secondary state-guaranteed legal aid (Articles 11 (2) and 12 of the Law On State-Guaranteed Legal Aid). The following persons are eligible for secondary legal aid:
citizens of the Republic of Lithuania, citizens of other Member States of the European Union as well as other natural persons residing lawfully in the Republic of Lithuania and other Member States of the European Union whose property and annual income do not exceed the property and income levels established by the Government of the Republic of Lithuania for the provision of legal aid;
citizens of the Republic of Lithuania, citizens of other Member States of the European Union as well as other natural persons residing lawfully in the Republic of Lithuania and other Member States of the European Union as specified in Article 12 of this Law; these persons are eligible for secondary legal aid regardless of property and income levels;
other persons specified in international treaties of the Republic of Lithuania.

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.)?
The procedure for pro bono assistance provided by an advocate is not regulated. There are several advocates who declare on their websites that they provide pro bono assistance.
The procedure for receiving state-guaranteed legal aid is regulated by the Law On State-Guaranteed Legal Aid.
The costs of primary legal aid shall comprise the costs related to legal information, legal advice and drafting of the documents to be submitted to state and municipal institutions, drafting of procedural documents specified in paragraph 7 of Article 15 of this Law, as well as the costs related to advice on the out-of-court settlement of disputes and to actions for the amicable settlement of a dispute and drafting of a settlement agreement. The State shall guarantee and cover 100 per cent of the costs of primary legal aid and the costs of conciliation mediation (Article 14 (1)(6) of the Law On State-Guaranteed Legal Aid).

1.3 Who should be addressed by the applicant for pro bono assistance?
There is a list of civil servants of the municipal administrations who provide primary legal aid:
Information about primary legal aid is provided by the State-guaranteed Legal Aid Service.
Vilnius University Legal Clinic is a non-governmental organisation that provides free legal aid. Legal consultations are provided by law students of Vilnius University.

2) Expert registries or publicly available websites of bars or registries that include the contact details of experts
There is a publicly available list of experts.

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible
The list of NGOs who declare themselves to be environmental NGOs (NGOs do not have an obligation to be entered on this list, which is therefore not exhaustive) is found here.

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 general timeframe for challenging an administrative decision is one month. There are several kinds of environmental decision which have to be challenged by the administrative body within 10 working days after receipt thereof (e.g. a mandatory instruction according to Article 25 of the Law on State Control of Environmental Protection).

2) Time limit to deliver decision by an administrative organ
An administrative body shall complete the administrative procedure and adopt the decision of the administrative procedure within 20 working days from the beginning of the procedure. The public entity initiating the administrative procedure may extend the period by up to 10 working days where, for objective reasons, the administrative procedure cannot be completed within the set time limit. A person shall be notified about the extension of the time limit for the administrative procedure in writing or by e-mail (where the complaint has been received by e-mail) and the reasons for the extension (Article 10 (4) of the Law on Public Administration).
Special rules apply regarding complaints challenging a mandatory instruction. A complaint regarding a mandatory instruction submitted to the head of the state environmental control institution or a person authorised by them shall be examined within 10 working days (Article 25 of the Law on State Control of Environmental Protection).

3) Is it possible to challenge the first level administrative decision directly before court?
According to Article 26 of the Law on Administrative Proceedings, before application is made to the administrative court, individual legal acts adopted by public administration entities, as well as their acts/omission, may be, and in cases established by law must be, contested by applying to the institution for preliminary extrajudicial investigation of disputes. There is no general rule in Lithuania that administrative acts must be challenged before a higher administrative authority or an independent dispute body before applying to the court. However, in certain kinds of administrative disputes the internal control of administrative acts/omission is compulsory (e.g. social security disputes, tax disputes). There are several kinds of environmental decision where internal control is compulsory (e.g. mandatory instructions). In other cases, the applicant, as a general rule, is entitled to have recourse to the court directly.

4) Is there a deadline set for the national court to deliver its judgment?
The decision of the court shall be drawn up and announced, as a rule, on the same day after the hearing of the case (Article 84 (3) of the Law on Administrative Proceedings). After hearing the case, the court can defer adoption of the court decision and publication for no longer than 20 working days, and after hearing the case regarding the legitimacy of a regulatory administrative act, for no longer than one month. In the case of important reasons, at the reasoned request of the judge hearing the case or the member(s) of the chamber of judges hearing the case, the president of the court or their appointed judge may extend such time limits by means of a reasoned ruling for no more than ten working days. In the event of illness of the judge hearing the case or all members of the chamber of judges hearing the case, the president of the court or a judge appointed by them, or inability to participate for any other objective reason, or in the event of illness of one or several members of the chamber of judges examining the case, or inability to participate for any other objective reason, the remaining (participating) member(s) of the chamber of judges may extend this time limit by means of a ruling until the objective reason no longer applies (Article 84 (5) of the Law on Administrative Proceedings).

5) Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)
There are differences between administrative and civil proceedings. In administrative proceedings, there is a decision-making step before the court, while in civil proceedings, the court makes the decision. In administrative proceedings, the court can suspend the administrative decision, but in practice, many challenged decisions are not executed. The procedures for the administrative review before the competent authority must be performed within the time limits set by the competent authority (Article 12 (3) of the Law on Public Administration).

1.7.2. Interim and precautionary measures, enforcement of judgments

1) When does the appeal challenging an administrative decision have suspensive effect?
The appeal or action submitted to the court against the administrative decision does not have a suspensive effect except in respect of certain decisions (e.g. tax decisions, decision on deportations or returns). Only the court can suspend the administrative decision by means of applying interim measures. Usually, administrative decisions can be immediately executed after their adoption (enforcement), irrespective of an appeal.

2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?

Only the court can apply interim measures. The authority shall suspend execution of the decision until the errors are corrected where such errors may have a significant influence on the execution of the decision (Article 15 (2) of the Law on Public Administration).

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?
The claim shall be secured at any stage of the proceedings if the participant in the proceedings reasons the claim and failure to take provisional measures might lead to irreparable damage or damage that would be difficult to repair. Provisional measures may also be applied in cases where temporary regulation of the situation related to the disputed legal relations is needed (Article 70 of the Law on Administrative Proceedings).

4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?

It is not regulated under what conditions an administrative decision can be immediately executed. The administrative decision is not suspended, but in practice, a lot of challenged decisions are not executed.

5) Is the administrative decision suspended once challenged before court at the judicial phase?
The administrative decision is not suspended, but in practice, a lot of challenged decisions are not executed.

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?

Appeal against rulings of the court regarding interim measures is possible. Only in civil cases does the court have a right to require a deposit from the applicant for applying interim measures (Article 146 of the Code of Civil Procedure). The deposit is intended to protect the defendant against losses incurred as a result of the interim measures applied to them. The deposit could also be the bank guarantee.

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.?

In administrative courts, the administrative costs could be a court fee (30 EUR in the first instance administrative court and 15 EUR in the appeal instance). There are exemptions, however, in cases of complaint in order to protect the State or other public interests, in cases concerning compensation for material and moral damages inflicted by unlawful acts or omission in the sphere of public administration, for example. Other litigation-related costs include: costs paid to witnesses, interpreters, specialists, experts and organisations of experts; costs for payment of legal services of the lawyer or assistant lawyer; costs associated with the preparation and submission of procedural documents and participation in the court proceedings; other necessary and reasonable expenses.

In civil courts, applicants have to pay a court fee. There are exemptions in cases concerning compensation for material and moral damage in relation to a physical personal injury or death, in cases concerning the defence of the public interest under the claim of the prosecutor, public institutions or other persons. Other litigation-related costs include:

2) Cost of injunctive relief/interim measure, is a deposit necessary?

There are differences between administrative and civil proceedings. In administrative proceedings, in the case of an injunctive relief or interim measure a deposit (cross-undertaking in damages) is not needed (it is not foreseen in the Law on Administrative Proceedings). The Code of Civil Procedure establishes
the court’s right to require a deposit from the applicant for applying the interim measures (Article 146 of the Code of Civil Procedure). The deposit is intended to protect the defendant against losses incurred as a result of the interim measures applied to them. The deposit could also be the bank guarantee. The amount of the deposit depends on the case and is quite difficult to evaluate generally.

3) Is there legal aid available for natural persons?
All citizens of the Republic of Lithuania, citizens of other Member States of the European Union as well as other natural persons residing lawfully in the Republic of Lithuania and other Member States of the European Union, and other persons specified in international treaties of the Republic of Lithuania shall be eligible for legal aid (Article 11 of Law on State-Guaranteed Legal Aid).

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?
State-guaranteed legal aid is not foreseen for associations, legal persons and NGOs. Pro bono assistance is possible for all persons (including legal persons and NGOs). The procedure of pro bono assistance is not regulated by law. It is a voluntary decision of the advocate.
Primary legal aid for NGOs is available from the Vilnius University Legal Clinic.

5) Are there other financial mechanisms available to provide financial assistance?
There are no other financial mechanisms available.

6) Does the ‘loser pays’ principle apply? How is it applied by courts, are there exceptions?
The general rule is that the losing party has to bear all costs, including stamp duties and costs related to initial court proceedings. The party shall also be obliged to remunerate the costs of the winning party. Stamp duty, expert costs and other costs are usually paid in full, but the costs for legal representation are reduced as recommended by the Minister of Justice and the Chairman of the Bar. However, these amounts are only recommended and depend on the complexity of the court proceedings, case material and other factors. Nevertheless, in the absolute majority of civil and administrative cases state courts reduce parties’ requested legal expenses for their legal assistance according to the recommended amounts and reasonableness.

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?
Complaints/petitions shall be received and heard by the administrative courts only after payment of the stamp duty prescribed by the law. Several exemptions from the stamp duty are foreseen in Article 36 of the Law on Administrative Proceedings, e.g.: complaints/petitions relating to delay by entities of public administration in performing actions assigned within the remit of their competence, awarding or refusal to award pensions, violations of election laws and the Law on Referendum, petitions by state servants and municipal employees where such concern legal relations in the Office, compensation for damage inflicted upon a natural person or organisation by unlawful acts/omissions in the sphere of public administration, and complaints relating to the protection of public interests and some other complaints/petitions.
Having regard to the property status of a natural person or group of natural persons, the administrative court may grant full or partial exemption from stamp duty. The petition for exempting the natural person from stamp duty must be justified and substantiated by appropriate evidence (Article 37 of Law on Administrative Proceedings).

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?
Information about access to environmental information is provided on the website of the Ministry of Environment.
The procedure for access to information is regulated by the Order on Public Access to Environmental Information, approved by Government Resolution Number 1175 of 1999, with subsequent amendments.
The request can be made in writing or verbally. The information can be given verbally only if the applicant does not ask for a written answer. The requirements for the written request are: name, contact details, requested information, form of giving the information.
The applicant does not have to state an interest. If an applicant requests that information be made available in a specific form (including in the form of copies), the public authority shall make it so available (there are some exceptions foreseen in Articles 16 and 18 of the Order on Public Access to Environmental Information). The information shall be made available to an applicant within 14 calendar days after receipt of the request by the public authority. This term can be extended to at least 14 calendar days.
An applicant who considers that their request for environmental information has been ignored, wrongfully refused or inadequately answered has access to a review procedure before an administrative disputes commission or an administrative court. Alongside the establishment of administrative courts, the general procedure of pre-litigation of complaints (applications) contesting the adopted individual administrative acts in the sphere of public administration was established by the Law on Pre-Trial Resolution of Administrative Disputes. The law provides for the establishment of the Lithuanian Administrative Dispute Commission. The Order on Public Access to Environmental Information is applicable for all state institutions, other persons performing the functions of public administration, and other persons who are controlled by the state institutions whose activity has an impact on the environment. The Order on Public Access to Environmental Information is not applicable to information about the air, water and waste management plans and programmes.

2) During different environmental procedures how is this information provided? From whom should the applicant request information?
Taking into consideration that the procedure on access to environmental information set out in the Order on Public Access to Environmental Information essentially does not differ from the general procedure on access to information from public administration entities, general regulations apply. According to Article 7 (8) of the Law on Environmental Protection, the public concerned, one or more natural or legal persons, have the right to bring a claim before courts. The applicant should request information from any public administration entity. Different environmental procedures set obligations event for the private actors to provide information for the public (e.g. EIA procedure).
A general provision applies that the appeal (access to justice) procedure should be described in every written answer provided by the public administration entity where the written request to provide information is rejected or partly rejected.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?
These are the sectoral rules regarding the access to information: regarding EIA: in the course of a screening for environmental impact assessment and an environmental impact assessment, the public concerned shall have the right to obtain information on the potential environmental impact of the proposed economic activity from other participants in the processes of screening for environmental impact assessment and environmental impact assessment (Article 13 of the Law on Environmental Impact Assessment of the Proposed Economic Activity (EIA)).
Regarding IPPC/IED: the Environmental Protection Agency is responsible for providing the information and is obliged to ensure the availability of information on access to justice (Article 69 and 125 of the Rules on Issuance, Renewal and Cancellation of IPPC Permits, approved by Ministry of Environment of
regarding territorial planning documents: the publicity of territorial planning is ensured by the organiser of planning (Article 31 of the Law on Territorial Planning; Article 8.3 of the Rules on Strategic Impact Assessment of Plans and Programmes, approved by Government Order Number 967 of 2004). The general and simplified procedure for territorial planning document publicity procedures is based on the type and level of territorial planning documents, as established in the Regulations on the Provision of Information to the Public, Public Consultation and Participation in Adopting Decisions Relating to Territorial Planning approved by Government Order Number 1079 of 1996; regarding air protection: according to Article 16 of the Law on Ambient Air Protection, persons have the right to obtain correct information from state administration and self-government institutions concerning the condition of ambient air, normative standards of allowable pollution and the effect of planned economic activities; regarding water protection: according to Article 27 of the Law on Water, the Ministry of the Environment and other institutions and persons who have information about river basins are obliged to provide this information to the public; according to Article 4 of the Law on Drinking Water, the municipal institutions are responsible for providing information about the quality of drinking water.

4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment? According to Article 10 (5) of the Law on Public Administration, an individual administrative act must contain clearly formulated established or granted rights and duties, and specify the appeal procedure. According to Article 87 (3) of the Law on Administrative Proceedings, the appeal procedure and timeline for appeal should be provided in the judgement.

5) Is translation, interpretation provided to foreign participants? What are the rules applicable? Administrative procedures shall be conducted in the official language, namely Lithuanian (Article 28 of the Law on Public Administration). When a person in whose respect the administrative procedure has been initiated or other interested persons do not speak or understand Lithuanian or are unable to make themselves understood because of a sensory or speech disorder, an interpreter must be present at the administrative procedure. An entity of public administration that has initiated the administrative procedure or a person in whose respect the administrative procedure has been initiated shall invite an interpreter at their own initiative.

1.8. Special procedural rules


Country-specific EIA rules related to access to justice

1) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned) EIA screening decisions are administrative decisions and can be reviewed by administrative courts. The conditions regarding legal standing, rules of evidence, rules on hearing or extent of review by the court are not specific for these cases. According to Article 15 of the Law on EIA, the public has the right to refer to court if it considers that its application filed in accordance with the procedure laid down by the legal acts governing the processes of screening for environmental impact assessment and environmental impact assessment has been unlawfully dismissed, has been provided with a partially or completely inappropriate response or has not been given proper regard in accordance with the legal acts governing the processes of screening for environmental impact assessment and environmental impact assessment. The public concerned has the right to refer to court disputing the substantive or procedural legitimacy of decisions, acts or omissions in the areas of screening for environmental impact assessment and environmental impact assessment. Natural or legal persons have the right to lodge a complaint (application) concerning an administrative act if their rights have been infringed upon. In the cases prescribed by law, it is possible to bring a complaint in order to protect the state or another public interest (including environmental interest). Agencies, organisations and groups may lodge an appeal against measures affecting their own interests (existence, use, activity, operating conditions) as well as asking for damages for the material and moral damage they suffer. But they may also go to court to defend the public interest of those they represent insofar as the regulatory or individual disputed measure harms this public interest.

2) Rules on standing relating to scoping (conditions, timeframe, public concerned) The public concerned has the right to refer to court disputing all decisions, acts or omissions in the areas of environmental impact assessment. The scoping decisions are included.

3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions? A complaint may be filed within one month from the day of publication of the contested act, the day of delivery of the individual act to the party concerned, the notification of the party concerned of the act (or omission), within two months from the day of expiry of the time limit set by a law or any other legal act for compliance with the demand (Article 29 of the Law on Administrative Proceedings).

4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO? All decisions in the area of environmental impact assessment, including the final EIA decision, can be challenged. A foreign NGO has the same rights to lodge a complaint concerning a final EIA decision as a national NGO.

5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion? The administrative courts review the procedural legality and also the substantive legality of all administrative decisions. The courts study the material, technical findings and calculations when they are considered as belonging to the decision. The court is obliged to “actively” participate in the proceedings by asking for evidence, appointing witnesses, experts, etc. The court has no limitation on its control. It can review all aspects of the contested decision.

6) At what stage are decisions, acts or omissions challengeable? According to Article 29 of the Law on Administrative Proceedings, the basic rule is that a complaint may be filed within one month from the day of publication of the contested act, the day of delivery of the individual act to the party concerned, the notification of the party concerned of the act (or omission). There are no special rules regarding decisions in the areas of screening for environmental impact assessment and environmental impact assessment.

7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? All decisions in the areas of screening for environmental impact assessment and environmental impact assessment can be challenged directly before the court.

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? The requirement of a necessary interest to have the power to act is at the very head of the conditions for an appeal’s admissibility. It is not necessary to participate in the public consultation phase of the EIA procedure or to make comments to have standing before administrative courts. The public concerned has the right to lodge a complaint (application) concerning an EIA administrative act in order to protect the public interest (Article 15 of the Law on EIA).

9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction? According to the Law on Administrative Proceedings, each party has equal rights in the procedure.
10) How is the notion of "timely" implemented by the national legislation?
The Law on EIA sets out the terms for particular actions in the areas of screening for environmental impact assessment and environmental impact assessment, e.g.: a screening conclusion on whether an environmental impact assessment is obligatory shall be submitted in writing to the organiser (developer) of the proposed economic activity within 20 working days from receipt of the screening information (Article 7 (7)); the competent authority shall, within 10 working days from receipt of the programme, approve the programme or submit reasoned requests to the drafter of the environmental impact assessment documents to supplement or revise the programme (Article 8 (9)); the public concerned has the right to submit to the competent authority; within 10 working days from publication of the notice, written proposals on the environmental impact assessment of the proposed economic activity and the report (Article 10 (9)); the competent authority shall, within 25 working days from receipt of the report, adopt a decision regarding the environmental impact of the proposed economic activity (Article 11 (1)).

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 administrative cases in all matters. According to Article 70 of the Law on Administrative Proceedings, the court or the judge may, upon a motivated petition of the participants in the proceedings or upon their own initiative, take measures with a view to securing a claim. The claim may be secured at any stage of the proceedings if failure to take provisional measures to secure a claim may lead to irreparable damage or damage that would be difficult to repair. There are no special rules applicable to EIA procedures.

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
The public concerned and NGOs have the right to lodge a complaint (application) concerning a final administrative act in the area of the IPPC (Article 124 of the Rules on issuance, renewal and cancellation of IPPC permits, approved by Ministry of Environment of Lithuania Order Number D1-528 in 2013 (IPPC rules)).

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?
A complaint may be filed within one month from the day of publication of the contested act, the day of delivery of the individual act to the party concerned, the notification of the party concerned of the act (or omission), within two months from the day of expiry of the time limit set by a law or any other legal act for compliance with the demand.
The public concerned has the right to receive information about the application for a permit, to submit proposals regarding the application and permit, and to receive an answer regarding their proposals from the competent authority.
The public concerned and NGOs have the right to challenge a final IPPC decision. A foreign NGO has the same rights to lodge a complaint concerning an IPPC decision as a national NGO.

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)
There are no screening and scoping phases in the IPPC procedure. The IPPC procedure has two stages: approval of the application for a permit and adoption of the final IPPC decision. The EIA procedure is considered as a separate procedure. The public concerned has the right to lodge a complaint (application) concerning a final administrative act in the area of the IPPC.

4) Rules on standing relating to scoping (conditions, timeframe, public concerned)
There are no screening and scoping phases in the IPPC procedure.

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?
In Article 29 of the Law on Administrative Proceedings, the basic rule is that a complaint may be filed within one month from the day of publication of the contested act, the day of delivery of the individual act to the party concerned, the notification of the party concerned of the act (or omission). There are no special rules regarding decisions in the area of IPPC.

6) Can the public challenge the final authorisation?
According to Article 124 of the IPPC rules, the public concerned has the right to lodge a complaint (application) concerning a final administrative act in the area of the IPPC. According Article 92 of the Rules on Issuance, Renewal and Cancellation on Emissions Permits, approved by Ministry of Environment of Lithuania, Order No D1-259 in 2014 (EP rules) the decisions in the area of the emissions permits can be challenged alternatively before the administrative dispute commission or before the administrative court. According to the Law on Administrative Proceedings and the Law on Environmental Protection, the public has the right to challenge the final emissions permit decision.

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 courts review the procedural legality and also the substantive legality of all administrative decisions. The courts study the material, technical findings and calculations when they are considered as belonging to the decision. All information related to the application for a permit can be controlled by the court. The court is obliged to "actively" participate in the proceedings by asking for evidence, appointing witnesses, experts, etc. The court has no limitation on its control. It can review all aspects of the contested decision.

8) At what stage are these challengeable?
According to Article 29 of the Law on Administrative Proceedings, the basic rule is that a complaint may be filed within one month from the day of publication of the contested act, the day of delivery of the individual act to the party concerned, the notification of the party concerned of the act (or omission). There are no special rules regarding decisions in the area of IPPC.

9) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
There is no requirement for exhaustion of administrative review procedures prior to recourse to judicial review procedure. Decisions in the area of IPPC can be challenged before the administrative court (Article 124 of the IPPC rules). Decisions in the area of emissions permits can be challenged before the administrative dispute commission or before the administrative court (Article 92 of the EP rules).

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?
The requirement of a necessary interest to have the power to act is at the very head of the conditions for an appeal's admissibility. It is not necessary to participate in the public consultation phase of the IPPC or EP procedure or to make comments to have standing before administrative courts. The public concerned has the right to lodge a complaint (application) concerning an IPPC administrative act in order to protect the public interest (Article 124 of the IPPC rules).

11) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
According to the Law on Administrative Proceedings, each party has equal rights in the procedure.

12) How is the notion of “timely” implemented by the national legislation?
The IPPC rules and the EP rules set out the terms for particular actions in the areas of IPPC permit procedure and EP procedure, e.g.: the authority shall, within 30 working days from receipt of the application, take a decision accepting or rejecting the application (Article 36-2 of the IPPC rules); the authority shall, within 20 working days from accepting the application, take a permit decision (Article 83 of the IPPC rules); the operator has a right to receive a draft of the permit decision and to comment on it no later than 5 working days before the competent authority reaches a decision (Article 87 of the IPPC rules); the competent authority shall, within 20 working days from accepting the application, adopt a permit decision (Article 65 of the EP rules).

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 administrative cases in all matters. According to Article 70 of the Law on Administrative Proceedings, the court or the judge may, upon a motivated petition of the participants in the proceedings or upon their own initiative, take measures with a view to securing a claim. The claim may be secured at any stage of the proceedings if failure to take provisional measures to secure a claim may lead to irreparable damage or damage that would be difficult to repair. There are no special rules applicable to IPPC and EP procedures.

14) Is information on access to justice provided to the public in a structured and accessible manner?

According to Article 10 (5) of the Law on Public Administration, an individual administrative act must contain clearly formulated established or granted rights and duties, and specify the appeal procedure. According to Article 125 of the IPPC rules, the authority is obliged to ensure the availability of information on access to justice.

1.8.3. Environmental liability

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?

According to Article 7 (8) of the Law on Environmental Protection, one or more natural or legal persons and the public concerned have the right to file a complaint/application demanding that appropriate action be taken to prevent or minimise environmental damage or restore the environment to its baseline condition, and demanding that the persons guilty of causing a harmful effect on the environment and the officials whose decisions or acts/failure to act have violated the rights of citizens, the public concerned, other legal and natural persons or the interests protected under law be punished. According to Article 54 (1) of the Law on State Control of Environmental Protection, natural and legal persons have a right to challenge the decisions or acts/failure to act of officials and environmental authorities. The common requirements are set out in the Law on Administrative Proceedings. There are no special requirements regarding decisions taken on environmental remediation.

2) In what deadline does one need to introduce appeals?

According to Article 29 of the Law on Administrative Proceedings, the basic rule is that a complaint may be filed within one month from the day of publication of the contested act, the day of delivery of the individual act to the party concerned, the notification of the party concerned of the act (or omission). There are several kinds of environmental decision which have to be challenged by the administrative body within 10 working days after receipt thereof (e.g. a mandatory instruction according Article 25 of the Law on State Control of Environmental Protection). Only the person against whom the decision has been taken has the right to challenge such decisions.

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?

The applicant should deliver all relevant information and data which are available to them supporting the observations submitted in relation to the environmental damage in question. There is no need to deliver the scientific data and evidence.

4) Are there specific requirements regarding ‘plausibility’ for showing that environmental damage occurred, and if yes, which ones?

If the applicant demands that the competent authority take action to prevent or minimise environmental damage or restore the environment to its baseline condition, there is no requirement regarding ‘plausibility’ for showing that environmental damage occurred. The ordinary courts deal with cases concerning environmental damage. The possibility to claim compensation for damage is foreseen in Article 32-34 of the Law on Environmental Protection. According to Article 33 of the Law on Environmental Protection, the following persons shall have the right to file claims regarding the damage caused: the persons whose health, property or interests have been impaired; officials of the Ministry of Environment, other officials authorised by law, where damage to the interests of the State has been caused. In civil cases, the claimant should provide the evidence regarding the ‘plausibility’ for showing that environmental damage occurred. The basic rules of the civil procedure are applicable. There is no special regulation regarding environmental damage.

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)?

There are no special requirements regarding decisions in the area of environmental damage. A person in whose respect the administrative procedure has been initiated shall, within 3 working days, be notified about the adopted decision on the administrative procedure, the factual circumstances determined during the consideration of the complaint, the legal acts based on which the decision on the administrative procedure has been adopted, as well as the procedure for appealing the decision. The decision on the administrative procedure shall be delivered or sent to the person with respect to whom the procedure is initiated (Article 13 of the Law on Public Administration). Special procedure and time limits for decision-making (5 working days) are set out in the Description of the procedure for the selection of environmental remediation measures and obtaining prior approval, approved on 16 May 2006, by order No. D1-228 of the Minister of Environment.

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?

In the presence of an imminent threat of environmental damage, an economic entity must, without delay, take all necessary preventive measures. Where, despite the preventive measures taken by the economic entity, the imminent threat of environmental damage is not dispelled, the economic entity must immediately inform the Ministry of Environment or an institution authorised by it (Article 32-1 of the Law on Environmental Protection). The Ministry of Environment or an institution authorised by it shall have the right and duty at any time:

- to require an economic entity to supply all information on any situation in the course of which damage was caused to the environment, or a threat thereof occurred, or in suspected cases that such a situation might occur;
- to require an economic entity to take necessary preventive and/or remedial measures;
- to require an economic entity to take or issue the appropriate entity instructions concerning all actions to collect contaminants and/or remove, control or otherwise manage other factors having a damaging effect on the environment in order to prevent or limit environmental damage and adverse effects on human health;
- to give compulsory instructions to an economic entity regarding the application of preventive and/or remedial measures;
- to take, at its own discretion, the necessary preventive and/or remedial measures (Article 32-1 of the Law on Environmental Protection).
7) Which are the competent authorities designated by the MS?
The competent authority is the Environmental Protection Department under the Ministry of Environment.

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?
There is no requirement in environmental damage cases concerning the prior administrative review procedure.

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?
Article 34 of the Law on Environmental Protection provides that disputes between legal and natural persons of the Republic of Lithuania and foreign states shall be settled in the manner established by the law of the Republic of Lithuania, unless international agreements of the Republic of Lithuania provide otherwise. The admissibility of an action before a court is possible under the general conditions set out in the Law on Administrative Proceedings or in the Code of Civil Procedure. There are no specific rules regarding EIA, IPPC, etc.

2) Notion of public concerned?
The concept of public concerned is not specific in a transboundary context. The general rules are applicable (especially concerning the admissibility of requests through the concept of legal interest).

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)?
Lithuanian administrative law recognises equal access to administrative courts for NGOs residing abroad on the same basis as applicants residing in Lithuania. There is no difference regarding the procedural rights of national NGOs and NGOs residing abroad.

There is no secondary legal aid for NGOs in Lithuania.

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)?
Lithuanian administrative law recognises equal access to administrative courts for persons residing abroad on the same basis as applicants residing in Lithuania. There is no difference regarding the procedural rights of the parties.

Citizens of other Member States of the European Union as well as other natural persons residing lawfully in the Republic of Lithuania and other Member States of the European Union, and other persons specified in international treaties of the Republic of Lithuania shall be eligible for primary and secondary legal aid (Article 11 of the Law on State-Guaranteed Legal Aid).

There are no legal requirements regarding pro bono assistance provided by advocates.

5) At what stage is the information provided to the public concerned (including the above parties)?
Regarding EIA:
Where the proposed economic activity is subject to procedures of transboundary environmental impact assessment, a competent institution shall inform the drafter of environmental impact assessment documents requesting that they prepare and submit to the competent authority a summary of the screening information or a programme which must include information on the proposed economic activity and its potential significant transboundary impact in a bilateral agreement, if available, in the specified language, or in other cases in English and, where requested by an affected state, also in its national language (Article 9 (2) of the Law on EIA). An institution shall dispatch a notice to an affected state accompanied by a description of the proposed economic activity, the available information on the potential significant transboundary impact of the proposed economic activity on the environment, the information on the nature of possible solutions, specify a time period (not less than 25 working days) for submission of a notice of the willingness of the affected state to participate in the process of transboundary environmental impact assessment, and request that the affected state inform the competent authorities and the public of the state (Article 9 (3) of the Law on EIA). A competent institution shall, upon receiving a reply from an affected state concerning its participation in the process of the transboundary environmental impact assessment of the proposed economic activity, inform the organiser (developer) of the proposed economic activity and the drafter of environmental impact assessment documents, who shall be instructed to submit a report, a summary of the relevant information about the proposed economic activity and its potential significant transboundary environmental impact in a bilateral agreement, if available, in the specified language, or in other cases in English and, where requested by the affected state, also in its national language (Article 9 (5) of the Law on EIA).

Regarding IPPC:
If the operation of the installation may have significant impact on the environment of another EU Member State, the drafter of documents should prepare and submit to the competent institution the documents regarding the application for a permit in English (Article 78 of the IPPC rules). The competent institution shall provide the documents to an affected state at the same time as the documents are provided to the public concerned and request that information be provided to the public and the competent authorities of this state, indicating a period of not less than 40 working days from receipt of such information within which the affected state may submit its proposals to the competent institutional; this information shall be published on the website of the Environmental Protection Agency (Article 79 of the IPPC rules).

6) What are the timeframes for public involvement including access to justice?
Regarding EIA:
A competent institution provides the documentation of an environmental impact assessment to an affected state together with information on the environmental impact assessment procedures, the proposed transboundary consultations and the duration thereof, and a request that information be provided to the public and the competent authorities of this state, indicating a period of not less than 30 working days from the date of dispatch within which the affected state may submit its proposals to the competent institution (Article 9 (6) of the Law on EIA). The appeal against a decision may be filed within one month from the day of publication of the decision, the day of delivery of the individual act to the party concerned, the notification of the party concerned of the act (or omission), within two months from the day of expiry of the time limit set by a law or any other legal act for compliance with the demand (Article 29 of the Law on Administrative Proceedings). There are no special rules for an affected state to appeal against a decision.

Regarding IPPC:
The competent institution shall provide the documents to an affected state at the same time as the documents are provided to the public concerned and request that information be provided to the public and the competent authorities of this state, indicating a period of not less than 40 working days from receipt of such information within which the affected state may submit its proposals to the competent institution (Article 79 of the IPPC rules). The appeal against a decision may be filed within one month from the day of publication of the decision, the day of delivery of the individual act to the party concerned, the notification of the party concerned of the act (or omission), within two months from the day of expiry of the time limit set by a law or any other legal act for compliance with the demand (Article 29 of the Law on Administrative Proceedings). There are no special rules for an affected state to appeal a decision.

7) How is information on access to justice provided to the parties?
Regarding EIA:
Where the proposed economic activity has been subject to transboundary environmental impact assessment procedures, the competent authority shall provide information on the EIA decision to an affected state participating in the process of transboundary environmental impact assessment (Article 11 (12) of the Law on EIA). According to Article 10 (5) of the Law on Public Administration, the EIA decision should specify the appeal procedure.

Regarding IPPC:
There is no special regulation. According to Article 10 (5) of the Law on Public Administration, the IPPC decision should specify the appeal procedure.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?
Article 9 of the Law on Administrative Proceedings provides that, in the process of administrative cases, decisions are made and published in the Lithuanian language. All documents submitted to the court must be translated into Lithuanian. Where the participant in the proceedings to whom the procedural documents shall be served in a foreign state does not know the Lithuanian language, the administrative court shall be presented with translations of such documents into the language they understand or the official language of the country where such documents have to be served, or, in the event that said country has several official languages, into one of the official language used at the place of delivery. Where the judicial procedural documents have to be sent to the participant in the proceedings who does not know the Lithuanian language and resides in a foreign state, the court shall translate them into one of the languages they understand or the official language of the country where such documents have to be served. Upon the resolution of the judge who is preparing the case for hearing or of the court hearing the case, a document drawn up in another language may be translated at the court session by a translator. Persons who have no command of the Lithuanian language shall be guaranteed the right to have the assistance of an interpreter. The services provided by the interpreter at the court session shall be paid for from the State budget.

Administrative procedures shall be conducted in the official language, namely Lithuanian (Article 28 of the Law on Public Administration). When a person in whose respect the administrative procedure has been initiated or other interested persons do not speak or understand Lithuanian or are unable to make themselves understood because of a sensory or speech disorder, an interpreter must be present at the administrative procedure. An entity of public administration that has initiated the administrative procedure or a person in whose respect the administrative procedure has been initiated shall invite an interpreter at their own initiative.

9) Any other relevant rules?
No additional information.

[1] The Law on Environmental Protection defines public concerned as one or more natural or legal persons affected or likely to be affected by, or having an interest in, the taking of decisions, acts or omissions in the field of the environment and protection thereof as well as utilisation of natural resources. For the purposes of this definition, the associations and other public legal persons (with the exception of the legal persons established by the State or a municipality or institutions thereof) established in accordance with the procedure laid down by legal acts and promoting environmental protection shall in any case be deemed the public concerned.

[2] See for example, the ruling of the Constitutional Court of the Republic of Lithuania of 1 June, 1998.

[3] See also case C-529/15.
acted within the limits of its discretion, and whether or not the legal act or action (omission) complies with the objectives and tasks for which purpose the institution has been set up and vested with powers.

The administrative court is not bound to allegations specifically presented in the appeal. The court is obliged to “actively” participate in the proceeding. It can review all aspects of the contested decision.

6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

According to the Law on Administrative Proceedings, each party has equal rights in the procedure. The court must explain to the parties their procedural rights and duties, warn them of the consequences of the performance of or non-performance of procedural actions, and assist said persons in exercising their procedural rights (Article 12 of the Law on Administrative Proceedings). Administrative courts have an obligation to give guidance to the parties in order to ensure that all parties have equal opportunities to present their arguments and submit evidence.

7) How is the notion of “timely” implemented by the national legislation?

There are several categories of case which should be resolved within the time limit set by special laws (e.g. cases about the refusal to issue permits for residence and work in Lithuania or withdrawal of such permits, refusal or cancellation of asylum, cases about dismissal of a public or municipal servant). Environmental cases are not assigned to urgent cases.

The Law on Administrative Proceedings sets out the time limits for the court and for the parties, e.g.: after the court has received a complaint/application/petition, the president or the judge of the administrative court shall, within 7 business days, decide on the issue of acceptance thereof (Article 33 (1) of the Law on Administrative Proceedings); as a rule, the preparation of administrative cases for hearing in the court must be completed within one month from the day of acceptance of the complaint/application/petition (Article 64 (2) of the Law on Administrative Proceedings); the judge or the court shall hear the petition for securing the claim within no more than 3 business days from receipt thereof, without notifying the respondent and other participants in the proceedings (Article 70 (4) of the Law on Administrative Proceedings); after hearing the case, the court can defer adoption of the court decision and publication for no longer than 20 business days, and, after hearing the case regarding the legitimacy of regulatory administrative act, for no longer than one month (Article 84 (5) of the Law on Administrative Proceedings); the claimant shall have the right to specify, change the basis of complaint/application/petition or the subject matter within 14 calendar days from the day of receipt of the replies from the parties to the proceedings (Article 50 (3) of the Law on Administrative Proceedings); the respondent has to present to the court their opinions within the specified time limit, which is usually at least 14 calendar days from the day of receipt of a transcript (digital copy) of the complaint/application/petition (Article 67 (1) of the Law on Administrative Proceedings) etc. The Law on Territorial Planning and other implementing legal acts set out terms for the actions of the organiser of the particular plan, for the institutions and for the public participating in the planning procedure.

8) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

Injunctive relief is available in all administrative matters in the same manner. The claim shall be secured at any stage of the proceedings if the participant in the proceedings reasons provisions as to the claim and failure to take provisional measures may lead to irreparable damage or damage that would be difficult to repair. The court can take provisional measures to ensure the claim by the reasoned application of the participants in the proceedings or on its own initiative. The provisional measures may also be applied in cases of need of temporary regulation of the situation related to the disputed legal relations (Article 70 of the Law on Administrative Proceedings).

9) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court?

What are the safeguards against the costs being prohibitive, and do these include express statutory reference to a requirement that costs should not be prohibitive?

General rules of the Law on Administrative Proceedings apply. If the person submits an appeal to the administrative court, he should pay a stamp duty.

There are exemptions, however, in cases about complaints in order to protect the State or other public interests, in cases concerning compensation for material and moral damages inflicted by unlawful acts or omission in the sphere of public administration, for example. Other litigation-related costs include: costs paid to witnesses, experts and expert organisations; costs for lawyers or lawyers’ assistants; other necessary and reasonable expenses.

When submitting an appeal to the first instance administrative court, the applicant should pay a stamp duty in the amount of 30 EUR (in the electronic cases 75 per cent of the sum of stamp duty) (Article 35 of the Law on Administrative Proceedings). The stamp duty for the appeal of the first instance court’s judgment is 15 EUR.

The amount of stamp duty is the same for all categories of administrative cases. The court, taking into account the financial situation of a natural person, may decrease the amount of stamp duty or exempt the person from the obligation to pay the stamp duty (Article 37 of the Law on Administrative Proceedings).

The prevailing party to the proceedings shall be entitled to recover costs from the non-prevailing adverse party (Article 40 (1) of the Law on Administrative Proceedings).

There is a recommendation from Minister of Justice and the Chairman of Bar concerning lawyer fees (Ministry of Justice Order No. 1R-85 from 2004). Recommended maximum remuneration sizes are calculated using the coefficients which are based on the Lithuanian Government approved the minimum monthly salary. An estimation of lawyer fees in the case of the legal aid is regulated by Order of the Ministry of Justice No 1R-332 from 2020.

There is no express statutory reference to a requirement that costs should not be prohibitive.

1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[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?


Article 44 of the SEA Resolution sets the common rule that disputes in the area of SEA shall be examined in accordance with the procedure laid down by laws. There are no special rules on standing for individuals and NGOs. The common rules on access to justice of the Law on Administrative Proceedings shall be applied (e.g. one month term, protection of the infringed right or interest protected under law). The special standing rules are foreseen in the special legal acts, e.g. in the Law on the Territorial Planning.

According to Article 6 of the SEA Resolution, the SEA is performed in the cases of: preparation of a plan or programme (or amendment to the plan or programme) intended for the development of industry, energy, transport, telecommunications, tourism, agriculture, forestry, fishery, aquaculture, waste management, preparation of a special territorial planning document, detailed plan or land management project which sets the framework for the development of the economic activities listed in Annexes 1 and 2 of the Law on EIA and which is prepared for an area of more than 10 square kilometres; preparation or amendment of a general plan;
implementation of a plan or programme related to the Natura 2000 sites and the State Service for Protected Areas determines that implementation of such a plan or programme (separately or together with other plans or programmes) may have significant consequences on the Natura 2000 sites; during the screening, a decision is made that SEA of a plan or programme is required. The participation of the individuals and NGOs on decision-making in territorial planning procedure is regulated by the Law on Territorial Planning and the Resolution of the Government of the Republic of Lithuania on Public information, Consultation and Participation on Decision-Making in Territorial Planning (approved by Resolution No. 1079 of the Government from 1996). There are special rules regarding access to justice:

According to Article 49 (4) of the Law on Territorial Planning, representatives of the public concerned, other natural and legal persons concerned shall have the right to apply to court regarding the adopted administrative decision on the revocation of approval of a territorial planning document only in the cases where:

- they have been involved in the publicity procedures of territorial planning and have lodged complaints or reports regarding the decisions relating to territorial planning adopted by entities of public administration or regarding the failure to act of these entities to the institutions carrying out state supervision of territorial planning before the adoption of the appealed administrative decision on the approval of the territorial planning document, where in the course of the publicity procedures they were aware of or could have objectively foreseen the possible violation of their rights;
- due to reasons recognised by the court as serious, they could not have been involved in the publicity procedures of territorial planning and lodged complaints or reports regarding the decisions relating to territorial planning adopted by the entities of public administration or regarding the failure to act of these entities to the institutions carrying out state supervision of territorial planning before the adoption of the appealed administrative decision on the approval of the territorial planning document.

According to Article 49 (6) of the Law on Territorial Planning, the period of limitation for entities defending the public interest to make a claim in relation to contesting the approved territorial planning documents, their solutions or administrative acts approving them shall be 20 working days from the date of issuance of a document permitting construction based on the territorial planning document sought to be contested, but not later than two years from the date of entry into force of the approved territorial planning document. A limitation period of two years provided for in this paragraph shall be definitive.

There are different rules of standing regarding the individual administrative acts and normative (regulatory) administrative acts (plans and programmes fall into one of these categories). According to Article 112 (1) of the Law on Administrative Proceedings, the right to apply to the administrative court with an application for review of conformity of a regulatory administrative act (part thereof) with a law or a regulation issued by the Government shall be vested in the members of the Seimas, ombudsman of the Seimas, children rights protection ombudsman, equal opportunities ombudsman, the control officers of the State of the Republic of Lithuania, courts of general and specialised competency, prosecutors and professional self-government associations established according to the laws to perform public functions.

Other persons shall have the right to apply to the administrative court to review conformity of a regulatory administrative act (or part thereof) with the law or Government regulation when a specific case regarding infringement of their rights is heard before the court (Article 113 (1) of the Law on Administrative Proceedings). The public concerned does not have standing for the review of conformity of a regulatory administrative act (decision relating to general plan or to special territorial planning document).

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The administrative courts review the procedural legality and also the substantive legality of all administrative decisions. The courts study the material, technical findings and calculations when they are considered as belonging to the decision. The court is obliged „actively“ participate in the proceeding by asking for evidence, appointing witnesses, experts, etc. The court has no limited control. It can review all aspects of the contested decision. Annex 1 of the SEA Resolution sets the criteria for the determination of significance of the impact of plans and programmes. Annex 2 of the SEA Resolution determines information which shall be involved in the report on the SEA. These criteria and information can be controlled by the court.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

According to Article 33 (2) of the Law on Administrative Proceedings, the court shall by virtue of an order declare the complaint not receivable if the claimant has not complied with the procedure for extrajudicial consideration of the case established by the law for the cases of the said category. There is no common rule for all plans and programmes.

Having proof or legal basis for believing that the public interest specified in Article 8(1) of the Law on Territorial Planning has been violated, the public concerned shall have the right to defend the public interest in territorial planning and to apply to the institution protecting the public interest in the field in which the violation of the public interest has been committed or to the prosecutor requesting an investigation of the possible cases of violation of the public interest (Article 49 (5) of the Law on Territorial Planning). So the defence of the public interest in territorial planning is possible before the institution protecting the public interest or the prosecutor.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure — to make comments, participate at hearing, etc.?

In the procedure of the preparation of a territorial planning document representatives of the public concerned, other natural and legal persons concerned shall have the right to apply to court regarding the adopted administrative decision on the revocation of approval of a territorial planning document only in the cases where they have been involved in the publicity procedures of territorial planning and have lodged complaints or reports regarding the decisions relating to territorial planning adopted by entities of public administration or regarding the failure to act of these entities to the institutions carrying out state supervision of territorial planning before the adoption of the appealed administrative decision on the approval of the territorial planning document, where in the course of the publicity procedures they were aware of or could have objectively foreseen the possible violation of their rights (Article 49 (4) of the Law on Territorial Planning).

According to Article 37 of the Law on Territorial Planning, the proposals regarding territorial planning documents shall be submitted to the organiser of planning in writing. The reply provided by the organiser of planning may, within 10 working days, be appealed against to the respective institution carrying out state supervision of territorial planning.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

Injunctive relief is available in all administrative matters in the same manner. The claim shall be secured at any stage of the proceedings if the participant in the proceedings reasons the claim and failure to take provisional measures may lead to irreparable damage or damage that would be difficult to repair. The court can take provisional measures to ensure the claim by the reasoned application of the participants in the proceedings or on its own initiative. The provisional measures may also be applied in the event that temporary regulation of the situation related to the disputed legal relations is needed (Article 70 of the Law on Administrative Proceedings).
There is a special regulation regarding territorial planning documents for projects of importance to the State in Article 23 of the Law on Territorial Planning. No later than within 10 working days from the date of submission by the organiser of planning of the reply to the complaint, the court shall, by its ruling, resolve the issue of whether further procedures of preparation, coordination and approval of the territorial planning document of the project of importance to the State need to be suspended due to the complaint lodged (Article 23 (5) of the Law on Territorial Planning).

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

General rules of the Law on Administrative Proceedings apply. If the person submits an appeal to the administrative court, they should pay stamp duty. There are exemptions, however, in cases concerning complaints in order to protect the State or other public interests, in cases concerning compensation for material and moral damages inflicted by unlawful acts or omission in the sphere of public administration, for example. Other litigation-related costs include: costs paid to witnesses, experts and expert organisations; costs for lawyers or lawyers’ assistants; other necessary and reasonable expenses.

When submitting an appeal to the first instance administrative court, the applicant should pay stamp duty in the amount of 30 EUR (in electronic cases 75 per cent of the sum) (Article 35 of the Law on Administrative Proceedings). The stamp duty for the appeal of the first instance court’s judgment is 15 EUR.

The amount of stamp duty is the same for all categories of administrative case. The court, taking into account the financial situation of a natural person, may decrease the amount of stamp duty or exempt the person from the obligation to pay the stamp duty (Article 37 of the Law on Administrative Proceedings). The prevailing party to the proceedings shall be entitled to recover costs from the non-prevailing adverse party (Article 40 (1) of the Law on Administrative Proceedings).

There is a recommendation from the Minister of Justice and the Chairman of the Bar concerning lawyers’ fees (Ministry of Justice Order No. 1R-85 from 2004). Recommended maximum remuneration sizes are calculated using coefficients based on the Lithuanian Government’s approved minimum monthly salary. An estimation of lawyers’ fees in the case of legal aid is regulated by Order of the Ministry of Justice No. 1R-332 from 2020.

There is no express statutory reference to a requirement that costs should not be prohibitive.

1.3. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with the public participation requirements of Article 7 of the Aarhus Convention in respect of plans and programmes not submitted to the procedures set out in the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[3]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

Representatives of the public concerned and other natural and legal persons may be actively involved in the publicity procedures of territorial planning. These procedures should be guaranteed for all territorial planning documents which do not fall under the regulation of the SEA Resolution but under the regulation of the Law on Territorial Planning.

The participation of individuals and NGOs in decision-making in territorial planning procedure is regulated by the Law on Territorial Planning and the Resolution of the Government of the Republic of Lithuania on Public Information, Consultation and Participation in Decision-Making in Territorial Planning (approved by Resolution No. 1079 of the Government of 1996). There are special rules regarding access to justice.

According to Article 49 (4) of the Law on Territorial Planning, representatives of the public concerned, and other natural and legal persons concerned, shall have the right to apply to court regarding the adopted administrative decision on the revocation of approval of a territorial planning document only in the cases where:

- they have been involved in the publicity procedures of territorial planning and have lodged complaints or reports regarding the decisions relating to territorial planning adopted by entities of public administration or regarding the failure of these entities to act to the institutions carrying out state supervision of territorial planning before the adoption of the appealed administrative decision on the approval of the territorial planning document, where in the course of the publicity procedures they were aware of or could have objectively foreseen the possible violation of their rights;

- for reasons recognised by the court as serious, they could not have been involved in the publicity procedures of territorial planning and lodged complaints or reports regarding the decisions relating to territorial planning adopted by the entities of public administration or regarding the failure of these entities to act to the institutions carrying out state supervision of territorial planning before the adoption of the appealed administrative decision on the approval of the territorial planning document.

According to Article 49 (6) of the Law on Territorial Planning, the period of limitation for entities defending the public interest to make a claim in relation to contesting the approved territorial planning documents, their solutions or administrative acts approving them shall be 20 working days from the date of issuance of a document permitting construction based on the territorial planning document sought to be contested, but not later than two years from the date of entry into force of the approved territorial planning document. A limitation period of two years provided for in this paragraph shall be definitive.

There are different rules of standing regarding the individual administrative acts and normative (regulatory) administrative acts. According to Article 112 (1) of the Law on Administrative Proceedings, the right to apply to the administrative court for review of conformity of a regulatory administrative act (or part thereof) with a law or regulation issued by the Government shall be vested in the members of the Seimas, the ombudsperson of the Seimas, the children’s rights protection ombudsperson, the equal opportunities ombudsperson, the control officers of the State of the Republic of Lithuania, courts of general and specialised competency, prosecutors and professional self-government associations established according to the law to perform public functions. Other persons shall have the right to apply to the administrative court for review of conformity of a regulatory administrative act (or part thereof) with the law or Government regulation where a specific case regarding infringement of their rights is heard before the court (Article 113 (1) of the Law on Administrative Proceedings).

There are other plans and programmes which are not territorial planning documents, e.g. land holding projects (land use planning projects for land reform; projects of formation and rearrangement of land parcels; projects for taking land for public needs; land consolidation projects) (Article 37 of the Law on Land); plans on protection zones etc.

According to Article 44 of the Law on Land, disputes regarding decisions taken by state and municipal institutions related to land management shall be investigated in accordance with the procedure laid down in the Law on Administrative Proceedings. The land owner or another user may apply for compensation for damage incurred due to the actions of a state or municipal institution when drafting and implementing the land use planning documents to the institution that has taken the decision to approve the land use planning document, or shall have the right to claim damages in the court proceedings. A person must apply to the institution that has taken the decision to approve the land use planning documents not later than within one month after the day they found out about the occurrence of the damage. Disputes regarding the amount of and compensation for damage shall be settled in court in the manner prescribed by law.
There are several legal acts regulating the participation of the public. E.g., according to Articles 58-61 of the Rules of the Projects of Formation and Rearrangement of Land Parcels, approved by Order of the Minister of Agriculture and the Minister of Environment No. 3D-452/D1-51 of 2004, proposals of representatives of the public regarding projects of formation and rearrangement of land parcels shall be submitted to the project organiser in writing. The reply provided by the project organiser may, within 10 working days, be appealed to the National Land Service. A decision of the National Land Service shall be revoked by the court.

In light of the national case-law, access to national courts can be considered effective.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The administrative courts review the procedural legality and also the substantive legality of all administrative decisions. The courts study the material, technical findings and calculations where they are considered as belonging to the decision. The court is obliged to “actively” participate in the proceedings by asking for evidence, appointing witnesses, experts, etc. The court has no limitation on its control. It can review all aspects of the contested decision.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

According to Article 33 (2) of the Law on Administrative Proceedings, the court shall, by means of an order, declare the complaint not receivable if the claimant has not complied with the procedure for extrajudicial consideration of the case established by the law for cases of the said category. There is no common rule for all plans and programmes.

Having proof or legal basis for believing that the public interest specified in Article 8(1) of the Law on Territorial Planning has been violated, the public concerned shall have the right to defend the public interest in territorial planning and to apply to the institution protecting the public interest in the field in which the violation of the public interest has been committed, or to the prosecutor requesting an investigation of possible cases of violation of the public interest (Article 49 (5) of the Law on Territorial Planning).

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

In the procedure of the preparation of a territorial planning document, representatives of the public concerned, and other natural and legal persons concerned, shall have the right to apply to court regarding the adopted administrative decision on the revocation of approval of a territorial planning document only in cases where they have been involved in the publicity procedures of territorial planning and have lodged complaints or reports regarding the decisions relating to territorial planning adopted by entities of public administration or regarding the failure of these entities to act to the institutions carrying out state supervision of territorial planning before the adoption of the appealed administrative decision on the approval of the territorial planning document where, in the course of the publicity procedures, they were aware of, or could have objectively foreseen, the possible violation of their rights (Article 49 (4) of the Law on Territorial Planning).

There are several other legal acts which set a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures. E.g., proposals of representatives of the public regarding projects of formation and rearrangement of land parcels shall be submitted to the project organiser in writing. The reply provided by the project organiser may, within 10 working days, be appealed to the National Land Service. A decision of the National Land Service shall be revoked by the court. According to Article 37 of the Law on Territorial Planning, proposals regarding territorial planning documents shall be submitted to the planning organiser in writing. The reply provided by the planning organiser may, within 10 working days, be appealed to the respective institution carrying out state supervision of territorial planning.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

Injunctive relief is available in all administrative matters in the same manner. The claim shall be secured at any stage of the proceedings if the participant in the proceedings reasons the claim and failure to take provisional measures may lead to irreparable damage or damage that would be difficult to repair. The court can take provisional measures to ensure the claim by the reasoned application of the participants in the proceedings or on its own initiative. The provisional measures may also be applied in the event that temporary regulation of the situation related to the disputed legal relations is needed (Article 70 of the Law on Administrative Proceedings).

There is a special regulation regarding territorial planning documents of projects of importance to the State in Article 23 of the Law on Territorial Planning. Not later than within 10 working days from the date of submission by the planning organiser of the reply to the complaint, the court shall, by its ruling, resolve the issue of whether further procedures of preparation, coordination and approval of the territorial planning document of the project of importance to the State need to be suspended due to the complaint lodged (Article 23 (5) of the Law on Territorial Planning).

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court?

What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

General rules of the Law on Administrative Proceedings apply. If the person submits an appeal to the administrative court, they should pay stamp duty. There are exemptions, however, in cases about complaints in order to protect the State or other public interests, in cases concerning compensation for material and moral damages inflicted by unlawful acts or omissions in the sphere of public administration, for example. Other litigation-related costs include: costs paid to witnesses, experts and expert organisations; costs for lawyers or lawyers’ assistants; other necessary and reasonable expenses.

When submitting an appeal to the first instance administrative court, the applicant should pay stamp duty in the amount of 30 EUR (in electronic cases 75 per cent of the sum) (Article 35 of the Law on Administrative Proceedings). The stamp duty for the appeal of the first instance court’s judgment is 15 EUR. The amount of stamp duty is the same for all categories of administrative cases. The court, taking into account the financial situation of a natural person, may decrease the amount of stamp duty or exempt the person from the obligation to pay the stamp duty (Article 37 of the Law on Administrative Proceedings).

There is no express statutory reference to a requirement that costs should not be prohibitive.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the content of the plan (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The procedure of preparing plans and programmes does not depend on whether the basis for the preparation of such plans and programmes comes from the EU, international or national law. The possibility of administrative review or legal challenge before the national courts depends on the type of document and its legal status.

There are different rules of standing regarding the individual administrative acts and normative (regulatory) administrative acts. According to Article 112 (1) of the Law on Administrative Proceedings, the right to apply to the administrative court for review of conformity of a regulatory administrative act (or part thereof) with a law or regulation issued by the Government shall be vested in the members of the Seimas, the ombudsman of the Seimas, the children’s rights protection ombudsman, the equal opportunities ombudsman, the control officers of the State of the Republic of Lithuania, courts of general and specialised competency, prosecutors and professional self-government associations established according to the law to perform public functions.
Other persons shall have the right to apply to the administrative court for review of conformity of a regulatory administrative act (or part thereof) with the law or Government regulation where a specific case regarding infringement of their rights is heard before the court (Article 113 (1) of the Law on Administrative Proceedings). The persons have the right to apply for review of the normative (regulatory) administrative act only if there is a case regarding the breach of their rights initiated before the court.

According to Article 7 (8) of the Law on Environmental Protection, one or more natural or legal persons and the public concerned shall have the right to file, in accordance with the procedure laid down by laws of the Republic of Lithuania, a complaint/application demanding that appropriate action be taken to prevent or minimise environmental damage or restore the environment to its baseline condition, and that the persons guilty of causing a harmful effect on the environment and the officials whose decisions or acts/failure to act have violated the rights of citizens, the public concerned, other legal and natural persons or the interests protected under law be punished.

The persons have the right to file a complaint regarding the protection of the environment and to ask the court to initiate the review of the normative (regulatory) administrative act.

If there is a special territorial planning document or detailed plan, the information, consultation and participation procedure is regulated by the Resolution of the Government of the Republic of Lithuania on Public Information, Consultation and Participation in Decision-Making in Territorial Planning (approved by Resolution No. 1079 of the Government of 1996).

There is a special legal act which sets out the rules regarding the informing and participation of the public in decision-making in the preparation of plans and programmes in the areas of air and water protection and waste management (approved by Order of the Minister of Environment No. D1-381 from 2005).

According to Article 7 of this Order, representatives of the public have a right to submit proposals to the institution which is preparing the plan or programme. According to Articles 12 and 13 of the Order, the institution shall, on its website, provide persons who have submitted proposals with a reasoned reply and shall inform the public about the adoption of the plan or programme and about the reasons.

There are no other special legal standing rules foreseen in the aforementioned acts.

2) Does the form in which the plan or programme is adopted make a difference in terms of legal standing (see also Section 2.5 below)?

There are different rules of standing regarding individual administrative acts and normative (regulatory) administrative acts. According to Article 112 (1) of the Law on Administrative Proceedings, the right to apply to the administrative court for review of conformity of a regulatory administrative act (or part thereof) with a law or regulation issued by the Government shall be vested in the members of the Seimas, the ombudsperson of the Seimas, the children’s rights protection ombudsperson, the equal opportunities ombudsperson, the control officers of the State of the Republic of Lithuania, courts of general and specialised competency, prosecutors and professional self-government associations established according to the law to perform public functions.

Other persons shall have the right to apply to the administrative court for review of conformity of a regulatory administrative act (or part thereof) with the law or Government regulation where a specific case regarding infringement of their rights is heard before the court (Article 113 (1) of the Law on Administrative Proceedings). The persons have the right to apply for review of the normative (regulatory) administrative act only if there is a case regarding the breach of their rights initiated before the court.

If there is a territorial planning document, Article 49 (4) of the Law on Territorial Planning sets out the requirement for participation in the publicity procedures of territorial planning, including administrative review.

If there are plans and programmes in the areas of air and water protection and waste management which fall under the regulation of Order of the Minister of Environment No. D1-381, the submission of the proposals to the institution which is preparing the plan or programme is a requirement for the judicial review.

5) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

In the procedure of the preparation of a territorial planning document, representatives of the public concerned, and other natural and legal persons concerned, shall have the right to apply to court regarding the adopted administrative decision on the revocation of approval of a territorial planning document only in cases where they have been involved in the publicity procedures of territorial planning and have lodged complaints or reports regarding the decisions relating to territorial planning adopted by entities of public administration or regarding the failure of these entities to act to the institutions carrying out state supervision of territorial planning before the adoption of the appealed administrative decision on the approval of the territorial planning document where, in the course of the publicity procedures, they were aware of, or could have objectively foreseen, the possible violation of their rights (Article 49 (5) of the Law on Territorial Planning).

6) Are there some grounds/arguments precluded from the judicial review phase?

According to Article 3 of the Law on Administrative Proceedings, the administrative court shall settle disputes over issues of law in public administration. The court shall not offer assessment of the disputed legal acts and actions (omissions) from the point of view of political or economic expediency and shall only establish whether or not, in a particular case, there has been violation of a law or any other legal act, whether or not the entity of public administration has acted within the limits of its discretion, and whether or not the legal act or action (omission) complies with the objectives and tasks for which purpose the institution has been set up and vested with powers.

The administrative court is not bound to allegations specifically presented in the appeal. The court is obliged to “actively” participate in the proceeding. It can review all aspects of the contested decision.

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

According to the Law on Administrative Proceedings, each party has equal rights in the procedure. The court must explain to the parties to the proceedings their procedural rights and duties, warn them of the consequences of the performance or non-performance of procedural actions, and assist said persons in exercising their procedural rights (Article 12 of the Law on Administrative Proceedings). Administrative courts have an obligation to give guidance to the parties in order to ensure that all parties have equal opportunities to present their arguments and submit evidence.

8) How is the notion of “timely” implemented by the national legislation?

There are several categories of case which should be resolved within the time limit set by special laws (e.g. cases about the refusal to issue permits for residence and work in Lithuania or withdrawal of such permits, refusal or cancellation of asylum, cases about dismissal of a public or municipal servant). Environmental cases are not assigned to urgent cases.
The Law on Administrative Proceedings sets out the time limits for the actions of the court and for the parties, e.g.: after the court has received a complaint/application/petition, the president or the judge of the administrative court shall, within 7 business days, decide on the issue of acceptance thereof (Article 33 (1) of the Law on Administrative Proceedings); as a rule, the preparation of administrative cases for hearing in the court must be completed within one month from the day of acceptance of the complaint/application/petition (Article 64 (2) of the Law on Administrative Proceedings); the judge or the court shall hear the petition for securing the claim within not more than 3 business days from receipt thereof, without notifying the respondent and other participants in the proceedings (Article 70 (4) of the Law on Administrative Proceedings); after hearing the case, the court can defer adoption of the court decision and publication for no longer than 20 business days, and, after hearing the case regarding the legitimacy of regulatory administrative act, for no longer than one month (Article 84 (5) of the Law on Administrative Proceedings); the claimant shall have the right to specify, change the basis of complaint/application/petition or the subject matter within 14 calendar days from the day of receipt of the replies from the parties to the proceedings (Article 50 (3) of the Law on Administrative Proceedings); the respondent has to present to the court their opinions within the specified time limit, which is usually at least 14 calendar days from the day of receipt of a transcript (digital copy) of the complaint/application/petition (Article 67 (1) of the Law on Administrative Proceedings). The Law on Territorial Planning and other implementing legal acts set out terms for the actions of the organiser of the particular plan, for the institutions and for the public participating in the planning procedure. E.g., according to Article 25 (4) of the Law on Territorial Planning, prior to commencing the preparation of a document of complex territorial planning, the planning organiser, or a person authorised by them, shall apply in writing to the institutions specified in the Rules for the Preparation of Documents of Complex Territorial Planning requesting that they issue planning conditions within 15 working days (in the case of documents of municipal-level and local-level territorial planning, within ten working days) from the date of receipt of the application. If the planning conditions have not been issued within the set time limit and the planning organiser has not been informed of the reasons for refusal, the planning organiser shall have the right to commence the preparation of the document of complex territorial planning; according to Article 37 (2) of the Law on Territorial Planning, the reply provided by the planning organiser may, within ten working days, be appealed to the respective institution carrying out state supervision of territorial planning, etc.

9) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

Injunctive relief is available in all administrative matters in the same manner. The claim shall be secured at any stage of the proceedings if the participant in the proceedings reasons the claim and failure to take provisional measures may lead to irreparable damage or damage that would be difficult to repair. The court can take provisional measures to ensure the claim by the reasoned application of the participants in the proceedings or on its own initiative. The provisional measures may also be applied in the event that temporary regulation of the situation related to the disputed legal relations is needed (Article 70 of the Law on Administrative Proceedings).

There is a special regulation regarding territorial planning documents of projects of importance to the State in Article 23 of the Law on Territorial Planning. Not later than within 10 working days from the date of submission by the planning organiser of the reply to the complaint, the court shall, by its ruling, resolve the issue of whether further procedures of preparation, coordination and approval of the territorial planning document of the project of importance to the State need to be suspended due to the complaint lodged (Article 23 (5) of the Law on Territorial Planning).

10) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

General rules of the Law on Administrative Proceedings apply. If the person submits an appeal to the administrative court, they should pay stamp duty. There are exemptions, however, in cases about complaints in order to protect the State or other public interests, in cases concerning compensation for material and moral damages inflicted by unlawful acts or omissions in the sphere of public administration, for example. Other litigation-related costs include: costs paid to witnesses, experts and expert organisations; costs for lawyers or lawyers’ assistants; other necessary and reasonable expenses. When submitting an appeal to the first instance administrative court, the applicant should pay stamp duty in the amount of 30 EUR (in electronic cases, 75 per cent of the sum) (Article 35 of the Law on Administrative Proceedings). The amount of stamp duty for the appeal of the first instance court’s judgement is 15 EUR. The amount of stamp duty is the same for all categories of administrative case. The court, taking into account the financial situation of a natural person, may decrease the amount of stamp duty or exempt the person from the obligation to pay the stamp duty (Article 37 of the Law on Administrative Proceedings).

There is no express statutory reference to a requirement that costs should not be prohibitive.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[5]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedure for adopting or the content of the decision, act or omission of the national regulatory act (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The EU regulatory acts in the environmental area are implemented through laws, resolutions and decisions of the Government, regulatory acts of ministers, heads of Government bodies and other state institutions and bodies and collegial institutions, regulatory acts of municipal institutions. These are normative (regulatory) legal acts. Only subjects foreseen in the Constitution and in the Law on Administrative Proceedings have a right to challenge normative (regulatory) legal acts before courts.

According to Article 105 of the Constitution, the Constitutional Court shall consider and adopt a decision whether the laws of the Republic of Lithuania and other acts adopted by the Seimas are not in conflict with the Constitution of the Republic of Lithuania. The Constitutional Court shall also consider if the following are not in conflict with the Constitution and laws: acts of the President of the Republic; acts of the Government of the Republic. The President of the Republic, the Government, not less than 1/5 of all the members of the Seimas and the courts shall have the right to apply to the Constitutional Court. The right to file a petition with the Constitutional Court concerning the constitutionality of all above-mentioned legal acts is also granted to any person who believes that a decision adopted on the basis of such a legal act has violated their constitutional rights or freedoms and the person has exhausted all legal remedies. Such a person may apply to the Constitutional Court only where, in the case concerning the decision violating their constitutional rights or freedoms, the final and non-appealable decision on the merits of the case or on rejecting the complaint is adopted by a court of general competence or an administrative court, i.e. such a decision of a court is adopted that precludes any further defence of the violated rights or freedoms of the person before the courts of general competence or the administrative courts. A petition concerning the violated constitutional rights or freedoms may be filed with the Constitutional Court not later than within 4 months of the day that the final and non-appealable decision of the court came into force. According to Article 112 (1) of the Law on Administrative Proceedings, the right to apply to the administrative court with an application for review of conformity of a regulatory administrative act (or part thereof) with a law or regulation issued by the Government shall be vested in the members of the
Seimas, the ombudsperson of the Seimas, the children’s rights protection ombudsperson, the equal opportunities ombudsperson, the control officers of the State of the Republic of Lithuania, courts of general and specialised competency, prosecutors and professional self-government associations established according to the law to perform public functions. The right to apply to the administrative court with a petition for review of conformity of a regulatory administrative act issued by the entity of municipal administration with a law or Government regulation shall also be vested in the Government representatives supervising the activities of municipalities (Article 112 (2) of the Law on Administrative Procedings).

Other persons shall have the right to apply to the administrative court to review conformity of a regulatory administrative act (or part thereof) with the law or Government regulation where a specific case regarding infringement of their rights is heard before the court (Article 113 (1) of the Law on Administrative Procedings).

The persons have the right to apply for review of the normative (regulatory) administrative act only if there is a case regarding the breach of their rights initiated before the court. The right to file a petition with the Constitutional Court concerning the constitutionality of laws of the Republic of Lithuania and other acts adopted by the Seimas, the Government or the President of the Republic is also granted to any person who believes that a decision adopted on the basis of such a legal act has violated their constitutional rights or freedoms and the person has exhausted all legal remedies.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The competence of the courts regarding review of normative (regulatory) acts is the same as in other administrative matters. Both procedural and substantive legality of the challenged normative (regulatory) act can be reviewed.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

The requirement of the constitutional complaint is the exhaustion of all legal remedies. There is a requirement of exhaustion of administrative review procedures for contesting of territorial planning documents (general plans, special plans).

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

The Law on Legislative Framework sets out the principle of public consultation. According to Article 7 of the Law on Legislative Framework, the public shall have a possibility to submit proposals relating to the legislative initiatives and draft legal acts published in the Legislative Information System, as well as to monitor the carrying out of the legal regulation. The public must be consulted in due time and on essential issues (effectiveness of consultation), and to the extent necessary (proportionality of consultation). Methods of public consultation and ways of recording the results shall be selected by the entities initiating public consultation. Information on the results of public consultation must be provided to the entity adopting a legal act. Participation in the public consultation phase is not necessary.

The special legal act sets out a requirement for participation in the public consultation phase, it is the requirement for legal standing before the national courts.

In the procedure of the preparation of a territorial planning document, representatives of the public concerned, and other natural and legal persons concerned, shall have the right to apply to court regarding the adopted administrative decision on the revocation of approval of a territorial planning document only in cases where they have been involved in the publicity procedures of territorial planning and have lodged complaints or reports regarding the decisions relating to territorial planning adopted by entities of public administration or regarding the failure of these entities to act to the institutions carrying out state supervision of territorial planning before the adoption of the appealed administrative decision on the approval of the territorial planning document where, in the course of the publicity procedures, they were aware of, or could have objectively foreseen, the possible violation of their rights (Article 49 (5) of the Law on Territorial Planning).

According to Article 37 of the Law on Territorial Planning, the proposals regarding territorial planning documents shall be submitted to the planning organiser in writing. The reply provided by the planning organiser may, within 10 working days, be appealed to the respective institution carrying out state supervision of territorial planning.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

According to Article 67-2 of the Law on the Constitutional Court, having regard to a reasoned request submitted by the petitioner to suspend the execution of the decision of the court, the Constitutional Court may suspend the execution of the decision of the court in exceptional circumstances where the constitutional rights or freedoms of the petitioner would be irreparably violated due to the execution of the decision of the court or where suspending the execution of the decision of the court is necessary for reasons of public interest. A request to suspend the execution of the decision of the court must be submitted together with the respective petition requesting an investigation into the compliance of a legal act with the Constitution or laws.

According to Article 26 of the Law on the Constitutional Court, in cases where the Constitutional Court receives a submission by the President of the Republic or a resolution of the Seimas, the Constitutional Court shall carry out a preliminary investigation within three days. If the Constitutional Court adopts a decision to accept the petition for consideration, the President of the Constitutional Court shall immediately announce that the validity of the act in question is suspended from the day of the official publication of this announcement in the Register of Legal Acts until the ruling of the Constitution Court concerning this case is published.

According to Article 70 (3) of the Law on Administrative Proceedings, provisional measures may be as follows:

- granting of a restraining injunction against certain actions;
- stay of execution under the writ of execution;
- temporary suspension of the validity of the disputed individual legal act, as well as the granting of subjective rights to another person (not the claimant);
- other measures applied by the court or the judge.

The administrative courts have no possibility to suspend the validity of a disputed normative (regulatory) legal act until the announcement of the effective decision of the administrative court on recognition of the relevant regulatory administrative act (or part thereof) as illegal. Where necessary, the administrative court may suspend the validity of the regulatory administrative act (or part thereof) recognised as illegal until the coming into effect of the court decision (Article 118 (3) of the Law on Administrative Proceedings).

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court?

What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

If the person submits an appeal to the administrative court regarding the breach of their rights or interests, general rules of the Law on Administrative Proceedings regarding stamp duty and other costs apply.

In the case of an abstract application for review of legality of a regulatory administrative act, no stamp duty is required.

According to Article 39 of the Law on the Constitutional Court, expenses incurred by the institutions participating in the case in relation to their attendance and participation in proceedings before the Constitutional Court shall be compensated by the institutions and establishments that they represent.
After, subsequent to a petition by a person, a law or other act of the Seimas, an act of the President of the Republic, or an act of the Government that served as a basis for adopting a decision violating the constitutional rights or freedoms of the person is declared by the Constitutional Court to be in conflict with the Constitution or laws, the necessary and justified expenses incurred by the petitioner in relation to participation in the proceedings before the Constitutional Court shall be compensated by the state institution that adopted the legal act (or part thereof) declared to be in conflict with the Constitution. The Government, or an institution authorised by it, shall determine the maximum amounts of compensation for expenses relating to participation in proceedings before the Constitutional Court and the procedure for their payment. Maximum amounts of compensation for expenses are regulated by Order of the Minister of Justice No. 1R-261 in 2019.

7) Is it possible to bring a legal challenge before a national court concerning any related EU regulatory act with a view to a validity reference under Article 267 TFEU, and if so how?[6]

Only subjects foreseen in the Law on Administrative Proceedings can challenge national normative (regulatory) legal acts directly by appeal in court. Other subjects have the right to ask the court to apply to the administrative court to review conformity of a regulatory administrative act (or part thereof) with the law or Government regulation where a specific case regarding infringement of their rights is heard before the court.

It is only one option to apply directly to the court regarding the decision of the European Commission foreseen in the Law on Administrative Proceedings - the State Data Protection Inspectorate shall submit a petition to apply to a competent legal authority of the European Union regarding the decision of the European Commission to the Supreme Administrative Court of Lithuania in cases specified in the Law on the Legal Protection of Personal Data (Article 1221 of the Law on Administrative Proceedings). Having examined the Petition on the Decision of the European Commission, the Supreme Administrative Court of Lithuania shall adopt one of the following decisions: 1) to apply to a competent judicial authority of the European Union with a petition to adopt a prejudicial decision according to Article 267 TFEU; 2) to reject the petition of the State Data Protection Inspectorate on the Decision of the European Commission (Article 1223 of the Law on Administrative Proceedings).

In other cases, the court applies to a competent judicial authority of the European Union for the prejudicial decision on the issue of interpretation or validity of the laws of the European Union. Any party in the proceedings may request that the court apply to a competent judicial authority of the European Union for the prejudicial decision, but this is at the discretion of the court.

[1] This category of case reflects recent case-law of the CJEU such as Protect C-864/15, the Slovak brown bear case C-240/09, see as described under Commission Notice C/2017/2616 on access to justice in environmental matters
[2] The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.
[3] See findings under ACCC/C/2010/54 for an example of a plan not submitted to SEA but subject to the public participation requirements of Article 7 of the Aarhus Convention.
[4] These fall within the scope of both Article 7 and Article 9(3) of the Aarhus Convention. See also relevant case-law of the Court of Justice of the European Union such as Case C-237/97, Janecek and cases such as Boxus and Solvay C-128/09-C-131/09 and C-162/10, as referred to under Commission Notice C/2017/2616 on access to justice in environmental matters.
[5] Such acts come within the scope of Article 8 and Article 9(3) of the Aarhus Convention. An example of such an act concerns the decision of the national administration that featured in Case C-281/16, Vereniging Hoekschewaardens Landschap, ECLI:EU:C:2017:274.
[6] For an example of such a preliminary reference, see Case C-281/16, Vereniging Hoekschewaardens Landschap, ECLI:EU:C:2017:274.

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Other relevant rules on appeals, remedies and access to justice in environmental matters

According to Article 7 (8) of the Law on Environmental Protection, one or more natural or legal persons and the public concerned shall have the right, in accordance with the procedure laid down by laws of the Republic of Lithuania, to file a complaint/application demanding that appropriate action be taken to prevent or minimise environmental damage or restore the environment to its baseline condition, and that the persons guilty of causing a harmful effect on the environment and the officials whose decisions or acts/failure to act have violated the rights of citizens, the public concerned, other legal and natural persons or the interests protected under law be punished.

If the entity of public administration fails to perform its duties or delays the consideration of a certain issue and fails to resolve it by the due date, a complaint about such failure to act (delay in performance) may be lodged within two months from the day of expiry of the time limit set by a law or any other legal act for settlement of the issue (Article 29 (2) of the Law on Administrative Proceedings).

Personal standing rules are the same as for any other administrative or judicial review procedure. Only those persons whose rights are being breached have standing to challenge the failure to act, whereas standing is granted for environmental NGOs in cases related to their aims and activities.

- Penalties that the judiciary or any other independent and impartial body (information commissioner, ombudsman, prosecutor, etc.) can impose on the public administration for failing to provide effective access to justice.

According to Article 99 of the Law on Administrative Proceedings, after the court decision whereby the complaint/application/petition is met becomes effective, the approved copy (transcript) thereof shall be sent for enforcement by the entity of public administration or other persons whose legal acts or actions (inactions) or delay to perform actions were appealed, or to the entity of public administration representing the State (Government) in the case, as well as the claimant. If the entity of public administration or any other person fails to perform the decision within 15 calendar days or within the time limit set by the court, at the request of the claimant the administrative court which adopted the decision issues a letter of enforcement by also ordering the enforcement thereof by the bailiff according to the location of the seat of the respondent in accordance with the procedure laid down by the Code of Civil Procedure. Where the sums are recovered to the state budget, or in the case of recovery of damage resulting from illegal actions of entities of public administration, as well as in the case of recovery of sums associated with Office-related legal relations or payment of pensions, the court shall issue a letter of enforcement to the recovering entity without the request thereof.

The Seimas Ombudsman shall investigate complainants’ complaints about the abuse of office by and bureaucracy of officials or other violations of human rights and freedoms in the sphere of public administration (Article 12 of the Law on the Seimas Ombudsman). When performing his duties, the Seimas Ombudsman shall have the right to draw up a record of administrative violations of law for failure to comply with the demands of the Seimas Ombudsman or for interfering in any other way with fulfilment by the Seimas Ombudsman of the rights granted to him (Article 19 (9) of the Law on the Seimas Ombudsman).
The state control of environmental protection and utilisation of natural resources shall be exercised by officials of the system of the Ministry of Environment – state inspectors of environmental protection. According to Article 18 of the Law on Environmental Protection, state inspectors of environmental protection in the cases, and in accordance with the procedure, specified by the Law on State Control of Environmental Protection shall have the right to issue mandatory instructions; draw up statements, acts and other documents in the specified format; hear cases of administrative offences and impose administrative penalties; hear cases of economic sanctions and impose economic sanctions.

The state control of environmental protection and utilisation of natural resources shall be exercised by officials of the system of the Ministry of Environment – state inspectors of environmental protection. According to Article 31 of the Law on Environmental Protection, state inspectors of environmental protection shall have the right to suspend the construction or reconstruction of objects of economic and other activities, suspend or restrict the activities of legal and natural persons where laws on environmental protection are being violated or where these activities do not comply with the normative standards, rules, limits and other conditions established in respect of environmental protection; in the cases, and in accordance with the procedure specified by the Law on State Control of Environmental Protection and other laws, to issue mandatory instructions, draw up statements, acts and other documents in the specified format; hear cases of administrative offences and impose administrative penalties; hear cases of economic sanctions and impose economic sanctions.

A state or municipal institution or agency which has compensated for damage caused by a civil servant shall have the right of recourse against said civil servant to the amount paid by it, but not in excess of 9 average salaries of the civil servant. If the civil servant caused the damage deliberately, a state or municipal institution or agency which has compensated for the damage caused by a civil servant shall have the right of recourse against said civil servant to the full amount paid by it (Article 39 of the Law on Civil Service).

- Penalties for the de-facto contempt of the court, e.g. when the judgment of the court is not followed and respected.

There are no penalties for the competent body in the event that it does not follow and respect the judgment of the court.

The execution of the court decision is regulated by the Law on Administrative Proceedings and the Code of Civil Procedure. If the court revokes the contested act (or part thereof) and/or obligates the appropriate entity of administration to remedy the committed violation or carry out other orders of the court (e.g. to guarantee access to justice), the claimant can request that the court issue a letter of enforcement. The claimant can also initiate a new suit challenging this omission/failure and/or asking the court to award damages caused by unlawful actions of public administration entities.

According to Article 83 of the Law on Administrative Proceedings, the judge or the court which hears an administrative case shall be entitled to impose fines if:

- officers and persons fail to meet, by the set time and without good reason, the requests by the judge or the court for a reply to the complaint/application /petition, documents and other material, or fail to comply with other requirements laid down by the judge/court related to the hearing of the case;
- a witness, specialist or expert fails to appear, without good reason, before the judge preparing the case for hearing or at the court hearing;
- after having been given a warning, persons participating in the proceedings again speak out of turn or insult other persons participating in the court proceedings;
- persons present in the courtroom fail to observe order or disregard the demands of the presiding judge that order be observed;
- persons abuse the right of disqualification;
- persons abuse the administrative proceedings. The administrative court may recognise the submission of a clearly unreasoned procedural document, or an objectively unfair action or inaction directed against cost-efficient, expedient and fair examination or resolution of the case as abuse of administrative proceedings.

The court which hears the administrative case shall have the right to impose on natural persons and legal persons and their representatives a fine in the amount of up to 300 EUR, and on officers or representatives of institution or agencies in the amount of up to 600 EUR for each case of violation, except for the case referred to in paragraph 1 subparagraph 5 of this Article. The court shall have the right to impose a fine on a person abusing the right of disqualification in the amount of up to 1,500 EUR. A separate appeal may be filed against the order of the court of first instance concerning the imposition of a fine.

There are several special norms:

If a person summoned to court fails to appear, they may be brought to the court upon the order of the court or judge. Failure to appear in court or refusal to give evidence, explanations or opinions in the court may be punishable by a fine in the amount of up to 300 EUR or detention in custody for the term of up to one month (Article 58 (1) of the Law on Administrative Proceedings);

Where injunctions applied as provisional measures are not complied with, the guilty persons shall be given a fine by court order in the amount of up to 300 EUR. A separate appeal may be filed against the order of the court concerning the imposition of a fine (Article 70 (12) of the Law on Administrative Proceedings);

The court shall have the right to impose a fine of up to 60 EUR on participants in the proceedings for failure to perform the obligation to inform the court of changes in address, email address, telephone and fax numbers, as well as addresses of other means of electronic communication if they are necessary in order to receive the procedural documents by means of electronic communication, where such failure to notify results in deferral of the hearing of the case (Article 76 (2) of the Law on Administrative Proceedings).

According to Article 72 of the Law on the Constitutional Court, a law (or part thereof) or other act (or part thereof) of the Seimas, an act of the President of the Republic, or an act (or part thereof) of the Government may not be applied from the day of the official publication of the ruling of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution of the Republic of Lithuania. The same consequences shall arise where the Constitutional Court gives a ruling that an act of the President of the Republic or an act (or part thereof) of the Government is in conflict with laws. All state institutions, as well as their officials, must annul the substatutory acts adopted by them, or provisions of these substatutory acts, if they are based on a legal act that has been ruled to be unconstitutional. Decisions based on legal acts that have been ruled to be in conflict with the Constitution or laws must not be executed if they had not been executed before entry into force of the respective ruling of the Constitutional Court. The legal force of a ruling of the Constitutional Court to declare a legal act or part thereof unconstitutional may not be overruled by the repeated adoption of a like legal act or part thereof.

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Access to justice in environmental matters – Luxembourg

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
3. Other relevant rules on appeals, remedies and access to justice in environmental matters

Access to justice at Member State level

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 levels 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 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 claims 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 2 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

1.3. Organisation of justice at administrative and judicial level

1) System of the administrative procedure (ministries and/or specific state authorities)
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.


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 (ombudsman (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 to accept or reject the evidence produced.

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.
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 & umwelt 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 Milërderral-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 références 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 filling 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:

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


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 (NGO, 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) 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.

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:

- 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

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<td>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?</td>
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<td>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.</td>
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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 national courts, it is 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 référendaires-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 fulfill 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. 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.

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 (“juges 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.

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 fulfill 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 référendaires 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 disbursment 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

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 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 fulfill 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 référents 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.
[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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**Access to justice in environmental matters - Hungary**

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
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 Hungary, the regulation of environmental protection and overseeing of compliance therewith, as well as the planning and direction of environmental protection, are performed by state bodies and local governments. The Parliament enforces environmental interests in its legislative work, adopts the National Environmental Program, determines the environmental duties of the Government and the local governments, and approves the funds used to achieve environmental objectives and control the use thereof.

The Government directs the implementation of the state's responsibilities regarding environmental protection, and it determines and coordinates the environmental protection activities of the ministries and the bodies directly subordinate to the Government.

The minister with responsibility for environmental protection (at present the Minister for Agriculture) directs the environmental protection activities assigned to them and the administration of environmental protection within their jurisdiction. It should be noted that, with regard to water as an environmental medium, these tasks are carried out by the minister with responsibility for the protection of water as an environmental medium (the ‘Minister responsible for water protection'), at present the Minister for the Interior).

The activities of environmental protection administration directed by the Minister cover the activities of the environmental protection authority and, in particular, licensing of the use of the environment and enforcement of the administrative legal responsibility for the environment, data management and information tasks related to operation of the Environmental Information System, organisation of tasks aimed at averting environmental damage, and drawing up and monitoring of the execution of measures and programmes for the protection, improvement and restoration of the environment.

Natural and legal persons and unincorporated entities are entitled to participate in non-regulatory procedures concerning the environment, and everyone has the right to call the attention of users of the environment and the authorities to the fact that the environment is being endangered, damaged or polluted. The right to public participation may be exercised in person or through a representative, associations or municipal local governments respectively.

Although there are differences in the conditions relating to legal standing, in administrative proceedings and judicial procedures the legal standing is provided for anyone (natural or legal persons) directly affected by the case. Environmental associations fulfilling the requirements stipulated by law may act as a client (a person whose rights or rightful interests are affected by the case and who has legal standing) in the administrative proceedings and/or as a party in the judicial procedures aimed at reviewing the definitive decision of the environmental authority. Furthermore, environmental and nature conservation associations can bring to court an action against the polluter if the environment is threatened or damaged.

2) Constitution – main (content of + including references) provisions on environment and access to justice in the national constitution (if applicable) including procedural rights

The Fundamental Law of Hungary[1] was adopted on 25 April 2011, replacing the former Constitution, which had been in force since 1949. Article XXI of the Fundamental Law lays down that Hungary recognises and implements the right of all to a healthy environment. This provision also stipulates the 'polluter pays principle', which provides that any person causing environmental damage shall be liable to take the necessary remedial actions and/or pay for remediation. Implementation of the right to a healthy environment is principally the obligation of the State, though this right can be relied on directly where the legislation or the state administration fails to enforce it.

According to Articles XXIV and XXV of the Fundamental Law, everyone shall have the right to have their affairs handled impartially, fairly and within a reasonable time by the authorities, and to submit – either individually or jointly with others – a written request, complaint or proposal to any organ exercising executive powers. The right to seek remedy against judicial, administrative or other official decisions is ensured by Article XXVIII.

The Fundamental Law also ensures the right to have access to and disseminate information of public interest (Article VI, Paragraph (3)). As explained below, the national legislation sets out that environmental information shall be regarded as data of public interest, therefore access to such information is ensured by the Fundamental Law and other national acts.

The Constitutional Court is the principal organ for the protection of the Fundamental Law, and the proceedings thereof are governed by the Act on the Constitutional Court[2].

3) Acts, Codes, Decrees, etc. – main provisions on environment and access to justice, national codes, acts

Beyond the national provisions referred to in the previous section, the following pieces of legislation shall be considered as the most relevant in respect of environmental protection and access to justice in environmental matters in Hungary.

**Act LIII of 1995 on the general rules of environmental protection** ([‘the Kvt.’][3] lays down the fundamental principles of environmental protection, access to environmental information and participatory rights in environmental administrative proceedings. In accordance with the Kvt., specific pieces of legislation...
acts, governmental and ministerial decrees) govern the protection of specific environmental elements, regulate certain activities impacting on the environment, and establish the system of environmental administration.

In its Article 98, the Kvt. ensures that environmental NGOs (determined by the Kvt. as ‘associations formed to represent environmental interests’) which are active in the impact area are entitled, in their area of operation, to the legal status of a client in environmental administrative procedures, in particular in environmental impact assessments, environmental audits, consolidated environmental use permit procedures and procedures where the environmental authority acts as an expert authority[4]. In the event that the environment is being threatened or damaged, environmental associations are entitled to initiate the procedure of the competent authorities and/or bring to court an action against the polluter.

In line with the Kvt., environmental NGOs also have the right to cooperate in drawing up regional development plans, zoning plans and environmental protection programmes that affect their area of operation or activity, to give their opinion on legislative bills before Parliament and local government draft laws, and to opine on the draft version of plans and programmes that affect their area of operation and activity.

Act CL of 2016 on the General Public Administration Procedures (the Âkr.)[5] governs administrative procedures in Hungary and its provisions also apply to environmental procedures. In applying the Âkr., based on its Article 10 a client is, inter alia, any natural or legal person, or other entity, whose rights or legitimate interests are directly affected by a case. In addition to this general rule, Paragraph (2) of Article 10 of the Âkr. sets out that an act or government decree may define the persons and entities who shall be treated as clients in connection with certain specific types of case. In environmental administrative procedures, Article 98 of the Kvt. provides participatory rights for environmental NGOs in accordance with Article 10(2) of the Âkr.

Governmental Decree No 314/2005 on environmental impact assessment and consolidated environmental use permits (the Khvr.)[6] transposes into national law Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment (the ‘EIA Directive’) and Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (the ‘IED’). The Khvr. sets out the scope of activities subject to these EU Directives and the specific procedural requirements of environmental authorisation. As regards the scope of persons having participatory rights in the procedures conducted under this Decree, account shall be taken of the Khvr.’s term ‘public concerned’, which covers any natural person, legal person or organisation without a legal personality that is affected, or may be affected, by the decision of the environmental authority, or which otherwise has an interest, including environmental organisations specified in Article 98 (1) of the Kvt.

Act I of 2017 on the Code of Administrative Litigation (the ‘Kp.’)[7] lays down the rules concerning administrative lawsuits aimed at ensuring efficient legal protection against the violation of law through administrative activity or omission. In certain cases, the Kp. only orders application of the provisions of Act CXXX of 2016 on the Code of Civil Procedures (the ‘Pp.’)[8], which establishes the general framework of civil court proceedings.

With respect to access to environmental justice, points a) and d) of Article 17 of the Kp. must be mentioned. These provisions ensure the possibility of legal standing for any person whose rights or lawful interests are directly affected by the administrative activity and for any non-governmental organisation, in the cases specified in law or government decree, that has been pursuing its registered activity in order to protect any fundamental right or enforce any public interest in a geographical territory affected by the administrative activity for at least one year, if the administrative activity affects its registered activity; these persons and entities shall have the right to bring to court an action, i.e. to initiate an administrative lawsuit against the decision (or omission) of the competent administrative authority.

Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment (the ‘SEA Directive’) has been transposed into Hungarian legislation by amendment of the Kvt. and by adoption of Governmental Decree No. 2/2005 on the Environmental Assessment of Certain Plans and Programmes (the ‘Skvr.’)[9]. The national legislation ensures the participation of the public in SEA procedures, however it does not expressly provide for the administrative or judicial review of infringements of SEA requirements. The plans and programmes subject to an SEA can be adopted by various public bodies and by norms which can be legally non-binding or can have the force of law. Where the conditions stipulated by Act CLI of 2011 on the Constitutional Court (‘Act CLI/2011’)[10] are met, the legal review of laws and normative resolutions can be initiated before the Constitutional Court.

In Hungary, there are several acts regulating the issue of access to environmental information and access to justice in environmental matters. The basic rights are laid down by the Kvt. and Act CXXII of 2011 on Informational Self-Determination and Freedom of Information (the Infotv.)[11]. Governmental Decree 311/2005 on the rules governing public access to environmental information[12]. Mostly, these regulations have transposed into national law the requirements of Directive 2003/4/EC. In accordance with Article 12 of the Kvt., and under the specific conditions set out by Gov. Decree 311/2005, information relating to the environment shall be considered as data of public interest. As a main rule, Article 28(1) of the Infotv. stipulates that information of public interest (including environmental information) shall be made available to anyone upon a request presented verbally, in writing or by electronic means. In the event of failure to meet the deadline for compliance or refusal of compliance with a request for access to public information, or for having the fee charged for compliance with the request reviewed, the requesting party may bring the case before the courts.

4) Examples of national case-law, role of the Supreme Court in environmental cases

The Curia (formerly the Supreme Court of Hungary) has the competence to decide on appeals filed against decisions of the general courts and courts of appeal, as well as motions for review. The Curia adopts uniformity decisions, which are binding upon all courts of law, and performs jurisprudence analysis of cases closed by final or definitive decision of courts and explores the judicial practice of courts. This body decides on the legality of municipal decrees and, where appropriate, annuls them. The Curia adjudicates on uniformity complaints, which will be a new instrument for legal remedy applicable in specific cases. Uniformity decisions are adopted where necessary for the development of, or to ensure the uniformity of, judicial practice. All uniformity decisions are published in the Official Journal (the ‘Magyar Közlöny’). As regards the legal standing of environmental associations in environmental administrative and judicial proceedings, administrative uniformity decision KJE 4/2010 (X.20.) of the Supreme Court states that such associations may act as clients in environmental administrative procedures, where the main decision-making body is the environmental authority or where that authority proceeds as an expert authority. The practical ramification of this statement is that e.g. the proceedings of the water management authority or the forest authority are not regarded as environmental administrative proceedings unless the environmental authority appointed by Gov. Decree 71/2015 is participating as an expert authority providing its opinion on environmental questions specified by 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?

The parties to the administrative procedure cannot directly rely on international environmental agreements. National administrative authorities exercise their powers within the framework of the national law. Likewise, the courts shall in principle interpret the national laws in accordance with their objective and with the Fundamental Law. In the case of administrative court proceedings (judicial review of administrative decisions), the provisions of Article 34 of the Kp. provide that the court may, ex officio or upon petition, ask the Court of Justice of the European Union to provide a preliminary opinion, or the Constitutional Court to commence its proceedings for declaring that a legal regulation, statutory provision, means of regulation of public-law organisations or uniformity decision is contrary to the Fundamental Law and contrary to international agreements.

1.2. Jurisdiction of the courts

1) Number of levels in the court system
Justice is administered by the following courts in Hungary:

- the Curia;
- the courts of appeal;
- the general courts;
- the district courts and Budapest district courts (collectively ‘district courts’); and administrative and labour courts.

After 31 March 2020, administrative and labour courts will be integrated and operated within the structure of general courts.

The Constitutional Court of Hungary is the supreme organ for the protection of the Fundamental Law. The Constitutional Court is entitled to examine whether the acts adopted by the Parliament are in accordance with the Fundamental Law (ex-ante examination). On the basis of a constitutional complaint, the Constitutional Court reviews laws to be applied in a specific case or a judicial decision with regard to its conformity with the Fundamental Law. This body performs the ex-post review of laws at the initiative of the Government, one fourth of all Members of Parliament, the President of the Curia, the Prosecutor General or the Commissioner of Fundamental Rights. It also examines the conformity of national legislation with international treaties.

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)?

As a main rule, district courts shall proceed in the first instance. Administrative and labour courts shall proceed in the first instance in cases of the judicial review of administrative decisions, in actions relating to contracts of employment and other similar relationships, and in other cases delegated to it by law.

Administrative colleges functioning within the general courts shall proceed in the first instance in the judicial review of administrative decisions after 31 March 2020.

The general courts proceed in the first instance in cases defined by law, and in the second instance they hear appeals lodged against decisions of the district courts and administrative and labour courts.

The Curia is the first instance in the review of certain administrative decisions and the second instance in the review of decisions taken by the administrative colleges of the general courts in the first instance.

According to the provisions of the Kp., if there is not another court with exclusive jurisdiction, the court having jurisdiction is determined based on the location of the immovable property in question in the case of any right or obligation relating to immovable property or a legal relationship with the immovable property;

- the place where the activity is or is planned to be exercised in the case of notification or authorisation of an activity;
- with the exception of the cases set out above, the permanent residence, habitual residence or registered office of the plaintiff in the case of an authority acting with administrative competence covering more than one county;
- with the exception of the cases set out above, the seat of the administrative body in the case of omission;
- or the place where the administrative action was realised.

In the event that the administrative activity was realised abroad, the Capital Administrative and Labour Court (after 31 March 2020, the Capital General Court) exercises exclusive jurisdiction to proceed.

If the claim was submitted jointly and more than one court proceeding in administrative cases has the competence and jurisdiction to petition, the higher-level court or, in the case of courts of identical level, the court having exclusive jurisdiction over a certain petition of claim, shall proceed.

In the event of any conflict of competence or jurisdiction, or if the competent court cannot be identified or is disqualified, the court has to be delegated within thirty days. If the competent court cannot be identified, the party may submit a request for delegation at any administrative and labour court; otherwise the court proceeding in the action shall present a motion for the delegation ex officio. The court having competence and jurisdiction will be delegated and instructed to conduct the proceedings by the Curia.

The general rules on competence and jurisdiction in civil court procedures are laid down by the Pp. The court in whose area of jurisdiction the defendant’s home is located has to proceed. In the event that the defendant has no permanent residence in Hungary, jurisdiction shall be determined according to the defendant’s habitual residence in Hungary. Where the defendant’s habitual residence is not known, or if it is located abroad, the last-known domestic residence shall apply or, if this cannot be identified or if the defendant has never had a permanent residence in Hungary, jurisdiction shall be based on the plaintiff’s home address in Hungary or, failing this, on the plaintiff’s habitual residence in Hungary or, if other than a natural person, on the plaintiff’s Hungarian registered office.

In actions against entities other than natural persons, general jurisdiction is based on the place where the entity’s representative body appointed for the case in dispute or department operates in addition to the registered office of the entity. If the legal entity has no registered office in Hungary in an action where the plaintiff is a resident legal person, jurisdiction is determined based on the plaintiff’s registered office or its place of operation. Jurisdiction of a court is established based on the time when the statement of claim is submitted.

The court takes into consideration its lack of jurisdiction ex officio. Furthermore, in the event of any conflict of competence or jurisdiction where the competent court cannot be identified or is disqualified, priority is given to designating the court of competent jurisdiction.

In the matter of designation, the decision lies with the general court if the conflict occurs between district courts within its territorial jurisdiction, and, if a district court is disqualified within its territorial jurisdiction, another district court can be appointed. In other cases, the decision lies with the court of appeal if the conflict occurs between district courts and general courts within its territorial jurisdiction, and, if the district court or the general court is disqualified within its territorial jurisdiction, another district court or general court can be appointed. In further cases, the Curia shall designate the court which is to conduct the proceedings.

For cases in connection with private law relationships containing a foreign component, the provisions of Act XXVIII of 2017 on Private International Law (Nml.[13] apply. This Act lays down that where proceedings between the parties are pending – at the time the proceedings are instituted – before a foreign court brought for the same subject under the same cause of action, the Hungarian court may suspend its proceedings of its own motion or upon request, provided that recognition of the foreign court’s judgment in Hungary is not precluded. The Hungarian court continues the proceedings that were terminated by a foreign court without a decision on the merits. If the foreign court has adopted a decision on the merits of the case, and such decision can be recognised in Hungary, the Hungarian court shall terminate its proceedings.

In the case of administrative court proceedings, the national legislation does not provide rules for determining the court having jurisdiction where there is conflict between different national tribunals in different Member States. Administrative lawsuits can be initiated against the administrative actions (or omissions) of national authorities. In the case of activities having transboundary environmental impacts, the specific legislations on environmental assessments – covering the rules on consultations with other Member States concerned – shall apply.

3) Specialties as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges

There are no special provisions on court proceedings regarding the environmental sector.

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.
The court has to judge the dispute within the framework of the petition of claim, the applications and legal statements submitted by the parties. The court will take account of the applications and statements in accordance with their content and not in accordance with their specification in terms of form. The court may order an examination or taking of evidence ex officio only in cases specified by law.

Several requirements of the Kp. provide for own motion of the court, e.g. the court may, upon request or ex officio, bring any person into the action as a person concerned whose rights or lawful interests are affected by the judgment to be passed in the action if the court deems that their involvement in the action is necessary in order to resolve the dispute.

The court may, ex officio or upon petition, ask the Court of Justice of the European Union to provide a preliminary opinion, or request the Constitutional Court to commence its proceedings for declaring that a legal regulation, statutory provision, means of regulation of public-law organisations or uniformity decision is contrary to the Fundamental Law and contrary to international treaties. Furthermore, the court may order the taking of evidence ex officio with respect to evidence to support any fact or circumstance that must be taken into consideration ex officio, or in the case of reference made to legal injury jeopardising the interests of a minor or a person entitled to disability benefit, or if the law so provides.

The court examines the lawfulness of the administrative activity within the limits of the petition of claim; however, the court must ex officio take into consideration the grounds for nullity or other legally stipulated grounds for invalidity of the disputed administrative act and any material deficiency in formal requirements owing to which the administrative act is to be considered as non-existing, the fact that the administrative act is based on a legal regulation that is not applicable in the case, and other facts and circumstances stipulated in law.

Where the legal injury is declared, the court shall ex officio require the administrative body to eliminate the consequences of the activity that injures rights.

### 1.3. Organisation of justice at administrative and judicial level

#### 1) System of the administrative procedure (ministries and/or specific state authorities)

Governmental Decree 71/2015 on the appointment of public administrative authorities of environmental and nature protection (Gov. Decree 71/2015) sets out the structure and competences of environmental authorities and the competences and jurisdiction thereof in Hungary. The minister with responsibility for environmental and nature protection (the ‘Minister’), County Government Offices, district environmental authorities, the National Meteorological Service, mayors and notaries are appointed as having competences in environmental administration. County Government Offices proceed as territorial environmental authorities in most environmental administrative cases. In specific cases stipulated by law, the Government Office of Pest County or the Minister shall proceed as the environmental authority of nationwide competence.

#### 2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?

Administrative decisions of the environmental authority are taken in single-instance proceedings, i.e. the decision of the environmental authority is definitive (there is no administrative review procedure) and can be challenged before the court in accordance with the provisions of the Ákr. and the Kp. An action can be initiated by lodging a statement of claim, the content of which is provided by Article 37 of the Kp. The documents, or a copy thereof, which are referred to by the plaintiff as evidence supporting the claim, or which are required to verify the facts and circumstances to be taken into consideration by the court ex officio, have to be enclosed with the claim. Several petitions of claim may be submitted jointly if they arise from the same legal relation or legal relations connected on the basis of facts and legal basis.

In the claim, the plaintiff may request abrogation, annulment or changing of the administrative act, declaration of omission of the administrative act, prohibition of realisation of the administrative act, obligation to fulfil the duty arising from administrative legal relation, obligation to reimburse the damage caused in relation to an administrative contract legal relation or civil service legal relation or the declaration of the fact of legal injury brought about by the administrative activity or ascertaining of other facts essential in terms of the administrative legal relation.

The statement of claim shall be lodged with the administrative body realising the disputed act within thirty days from disclosure of the disputed administrative act. The administrative body forwards the statement of claim to the court. Unless otherwise provided by law, the statement of claim shall have no suspensive effect on the administrative act taking effect.

A specific rule on environmental fines is provided by Article 96/C of the Kv., which stipulates that the lodging of a statement of claim against a resolution of the authority on imposing a fine shall have suspensive effect on enforcement. In other environmental cases, lodging a statement of claim against the decision of the environmental authority does not have suspensive effect.

Based on the principle of concentration of actions laid down by the Pp. as well as the Kp., the court and the parties shall aim to ensure that all facts and evidence are made available within such a timeframe that a judgment in the dispute can be delivered after one hearing only. The national acts do not stipulate an exact time limit for adopting a decision in the court proceedings, the duration of which depends on several factors (e.g. obtaining the opinion of judicial experts). The official website of the Hungarian Courts provides a calculator for determining the length of court proceedings which can be reasonably expected.

#### 3) Existence of special environmental courts, main role, competence

There are no special environmental courts in Hungary.

#### 4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)

Anyone having the legal status of a client in the administrative procedure is entitled to bring to court an action against definitive decisions of the authority. Administrative decisions of the environmental authority are taken in single-instance proceedings, i.e. the decision of the environmental authority is definitive (and enforceable) and can be challenged before the general court in accordance with the provisions of the Ákr. and the Kp. For any appeals against first-instance decisions taken by the general court, the second instance is the Curia. In administrative lawsuits, in most cases there is no appeal against the first-instance judgement, only petition for review before the Curia, which is an extraordinary remedy.

#### 5) Extraordinary ways of appeal. Rules in the environmental area. Rules for introducing preliminary references

Based on the provisions of the Kp., extraordinary forms of legal remedy are the review procedure of the Curia and retrial. A motion for the review of a final judgment and a final ruling for rejecting the statement of claim or for dismissal of the proceedings may be submitted — with reference to violation of law — by the party, the person concerned and any person to whom any provision of the decision may be of concern, against the appropriate section. The petition for review has to be submitted to the court that rendered the decision in the first instance within thirty days from service of the final decision through a legal representative.

The Curia admits the petition for review if the examination of the violation of law affecting the merits of the case is justified owing to ensuring the uniformity or improvement of the practice of law, the special weight or social significance of the legal issue raised, the necessity of the proceedings of the Court of Justice of the European Union to provide a preliminary opinion, or any provision of judgment different from the published practice of judgment of the Curia.

Submission of the petition for review shall have no suspensive effect on the court decision and the underlying administrative decision. Simultaneously with the petition for review, a request for immediate legal protection may also be submitted. The Curia shall adopt a decision on the request for immediate legal protection no later than adopting the ruling on admittance.
provides the right to initiate and Governmental Decree 275/2004 on the nature must be taken into account. In this case, the term “public concerned” does not explicitly cover representatives of the public, standing for foreign NGOs, etc.)

3) Standing rules applicable for NGOs and individuals (in administrative procedure and at judicial level, for organisations with legal personality, ad hoc groups)

As regards nature conservation cases, the provisions of Act LIII of 1996 of Nature Conservation areas of operation, to the legal status of a party in the case in environmental administration procedures. Therefore, environmental associations meeting the ced to represent environmental interests, other than political parties, and interest representations which are active in the impact area are entitled, in their certain specific cases provided by law, the rights of clients may also be vested upon other persons or organisations. The Kvt. ensures that associations formed to represent environmental interests, other than political parties, and interest representations which are active in the impact area are entitled, in their areas of operation, to the legal status of a party in the case in environmental administration procedures. Therefore, environmental associations meeting the requirements provided by the Kvt. can bring an action to the courts.

1.4. How can one bring a case to court?

1) Who can challenge an environmental administrative decision (relevance of the concept concerned public and NGOs)?

In this respect, the provisions of the Ákr. and the Kp. shall be taken into consideration. According to the Kp., the judicial review of administrative decisions and omissions is provided for those having the legal status of a client in the administrative proceedings. In addition, the Kp. stipulates that any person whose rights or lawful interests are directly affected by the administrative activity can institute an action against the administrative act.

In the terminology of the Ákr., a client is any natural or legal person, or other entity, whose rights or legitimate interests are directly affected by the act. In certain specific cases provided by law, the rights of clients may also be vested upon other persons or organisations. The Kvt. ensures that associations formed to represent environmental interests, other than political parties, and interest representations which are active in the impact area are entitled, in their areas of operation, to the legal status of a party in the case in environmental administration procedures. Therefore, environmental associations meeting the requirements provided by the Kvt. can bring an action to the courts.

The concept of public concerned is provided by the sectoral environmental legislations. Article 2(1) of the Khvr. – transposing correctly the concept of public concerned as set out by the EIA Directive and the IED – read together with Art. 10 of the Ákr. ensures that members of public concerned can have the legal status of a client, and thereby exercise the right to judicial review.

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?

In administrative proceedings, the provisions of the Ákr. and the Kp. – explained under point 1.4.1. – shall apply.

In addition, the sectoral legislations may designate the personal scope of the public concerned. As mentioned above, in EIA and IED proceedings, environmental associations and members of the public concerned can have the legal status of a client and initiate a judicial review (bring an action) against the definitive decision of the environmental authority.

As regards nature conservation cases, the provisions of Act LIII of 1996 of Nature Conservation and Governmental Decree 275/2004 on the nature conservation areas with European Community Importance must be taken into account. In this case, the term “public concerned” does not explicitly cover nature conservation associations, however it does cover any natural and legal persons likely to be concerned by the decision of the nature protection authority.

In the case of administrative proceedings – e.g. in the field of water management or waste – where the sectoral legislation does not provide a specific definition of public concerned and/or does not specify the term client, the definition of client set out by the Ákr. and the provisions of the Kp. on legal standing must be taken into account.

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.)
In administrative proceedings, according to Article 10(1) of the Ákr, the term “client” covers any natural or legal person, or other entity, whose rights or legitimate interests are directly affected by a case, who is the subject of any data contained in official records and registers, or who is subject to regulatory inspection. Furthermore, an act or government decree may define the persons and entities who are to be treated as clients in connection with certain specific types of case.

In environmental administrative proceedings, the above-mentioned provision of the Ákr. ensure the legal standing of individuals whose legal interests are affected, and Article 98 of the Kvt. provides that environmental associations can also participate as clients. Other legal entities, members of ad hoc groups and foreign NGOs may be treated as clients if the conditions laid down by Article 10(1) of the Ákr. are met.

As regards judicial proceedings, the Kp. lays down the requirements for legal standing of the plaintiff, who can be any person whose rights or lawful interests are directly affected by the administrative activity (i.e. the decision), the public prosecutor’s office or the body exercising regulatory supervision or legal control, any administrative body that did not take part in the prior proceedings if its competence is affected by the administrative activity, any non-governmental organisation, in the cases specified in law or government decree, that has been pursuing its registered activity in order to protect any fundamental right or enforce any public interest in a geographical territory affected by the administrative activity for at least one year. If the administrative activity affects its registered activity, any interest-representation organisation or body whose activity is affected by the administrative activity. These parties have the right to institute an action. Any person whose rights or lawful interests are directly affected by the disputed administrative activity, or might be directly affected by the judgment, may have the legal standing of “person concerned”. Furthermore, any person who took part in the prior proceedings as a client who did not bring the action to court, may join the action as a person concerned. As a main rule, the person concerned shall be entitled to, and bound by, the same rights and obligations as the party and is entitled to take any legal action without prejudice to the parties’ right of disposal, which shall also be effective if it is contrary to the parties’ acts.

4) What are the rules for translation and interpretation if foreign parties are involved?

Court proceedings are conducted in the Hungarian language. Furthermore, submissions addressed to the court shall be made out, and the court shall deliver such submissions and its decision, in Hungarian.

However, the Pp. provides that, in court proceedings, including those conducted under the Kp., all parties are entitled, in oral communications, to use their native language, the language of their respective nationality, or the language of their region or nationality to the extent provided for by international agreement.

Further, any person who is hearing impaired or deafblind may use sign language or other special communication methods provided for by law that are known by them. Upon request, hearing- or speech-impaired persons shall be allowed to make a written statement instead of being interviewed.

In civil as well as administrative court proceedings, the court shall appoint an interpreter, sign language interpreter or translator. The costs arising in relation to interpreters or translators are counted as costs of the court proceedings and – as a main rule – are paid by the losing party. Where there is a need for translation, non-certified translations shall suffice; however, if there is any doubt as to the accuracy and completeness of the translated text, a certified translation shall be obtained.

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 proceedings, if the available information is insufficient to reach a decision, the authority shall initiate a procedure for taking evidence. The administrative authority is free to define the means and extent of the evidentiary procedure. All evidence is admissible that is suitable for ascertaining the relevant facts of the case, however any evidence illegally obtained by the authority is inadmissible. The facts which are officially known by the authority and of common knowledge shall not be evidenced. Clients of the proceedings are also entitled to submit evidence to the administrative authority, which evaluates the available evidence at its own discretion.

If special knowledge is required in the case and the competent authority does not have sufficient expertise, an expert shall be consulted or an expert opinion obtained; however, no expert may be appointed if the opinion of a specialist authority is to be obtained for the subject matter in question.

In the administrative court proceedings, the courts assess the evidence severally and in its totality, compared with the facts established in the prior proceedings. As a main rule, a request for taking of evidence may be submitted and means of proof may be made available in the first hearing at the latest. The court may order the taking of evidence on its own motion with respect to evidence to support any fact or circumstance that must be taken into consideration ex officio and/or in the case of reference made to legal injury jeopardising the interests of a minor or a person entitled to disability benefit. In this case, the court informs the parties that it has ordered the taking of evidence and calls them to submit their comments and supporting evidence or the evidence determined by the court.

2) Can one introduce new evidence?

In administrative proceedings, clients and members of public concerned (not acting as clients) may submit their comments and opinions, and provide evidence to the authority.

In the judicial proceedings, the Kp. stipulates as a main rule that a request for taking of evidence may be submitted and means of proof may be made available in the first hearing at the latest. However, the court may allow taking of evidence within 15 days if the statement of claim was modified at the first hearing or it becomes necessary with respect to the substantive conduct of proceedings.

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts.

In the judicial proceedings, an expert has to be engaged if specific expertise is considered necessary for defining the framework of the dispute or for establishing or ascertaining facts considered material to the case. The experts provided for in Act XXIX of 2016 on the Activities of Forensic Experts, or ad hoc experts therein specified, may be engaged. As a main rule, an expert may be engaged, if appointed by the party or by way of assignment of the court, upon recommendation. A database of forensic experts is available on the official site of the Government.

3.1) Is the expert opinion binding on judges, is there a level of discretion?

The opinion of an expert who was dismissed or excluded from the proceedings, a private expert’s report or the opinion of an appointed expert that is considered to give cause for concern, and a private expert’s report or the opinion of an expert appointed for other proceedings, if filed notwithstanding the provisions of an act or in breach of the relevant legal provisions, is inadmissible in the action as evidence. Therefore, in the event that the expert fulfils their obligations set out by law and their opinion does not give any cause for concern, the expert’s opinion shall be considered by the court as evidence.

3.2) Rules for experts being called upon by the court.

As a main rule, the party may propose the submission of the opinion of an expert who is commissioned by the party (a private expert’s report) or the party may propose to use the opinion of an expert appointed in another proceeding.
At the proposal of the party having the burden of proof, the court shall appoint an expert if, with regard to a specific issue, neither of the parties proposed to involve a private expert or an expert appointed for other proceedings, or the private expert’s report contains cause for concern, or it is necessary to receive information so as to address any concern that may exist with respect to the opinion of the expert appointed for other proceedings, or to receive answers to questions proposed to be asked. As a general principle, the court shall appoint one expert for the same specific issue.

The motion for the appointment of an expert shall contain the definitive questions which the expert is required to answer. The adversary party may also propose questions to be asked.

The court may put questions to the expert with regard to factual claims affected by the questions the parties have indicated and must discount questions not connected with the case and for which the expert is not qualified. The appointed expert is allowed to appear at the hearing or at the taking of evidence, and to propose putting questions to the parties and to contributors. The court delivers the appointed expert’s written report to the parties, who may propose putting questions to the expert having regard to the expert opinion or to material information which had not been disclosed to the expert, and to instruct the expert to convey the necessary information to address any concern that may exist with respect to the expert’s report. If the appointed expert’s opinion contains any cause for concern, and such cause for concern could not have been eliminated despite the information given by the expert, the court shall appoint a new expert upon request.

3.3) Rules for experts called upon by the parties.

The party may propose the submission of the opinion of an expert ("private expert’s report") the party has commissioned. If the motion is granted, the private expert’s report must be presented within the time limit specified by the court. Two or more parties adducing evidence, or two or more opposing parties of the party adducing evidence, may engage only one private expert for the same subject matter.

The party adducing evidence may propose using the opinion of an expert appointed in other proceedings prepared with regard to the specific issue. Where an appointed expert or a private expert provided an opinion, an expert appointed for other proceedings may not be engaged for the same subject matter. The court delivers the private expert’s report to the adversary party, which is entitled to put questions to the private expert regarding the private expert’s report. The party may propose that the private expert’s submitted report be supplemented in writing or orally.

If there is any contradiction in the private expert’s reports in specific issues, either of the parties may propose to ask the private experts to explain their reports verbally at the same hearing in order to explain the cause of the contradiction.

3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?

Appointed experts are entitled to be compensated for their expenses incurred in connection with their contribution, and to appropriate remuneration if such contribution manifests in exercising their profession.

As a main rule, the costs of evidentiary shall be advanced by the party adducing evidence. The expert’s fee shall be advanced by the requesting party in the event that the court appoints expert because each private expert’s report contains cause for concern, or if it is necessary to receive information so as to address any concern that may exist with respect to the opinion of the expert appointed for other proceedings, or to receive answers for questions proposed to be asked. The court shall order a sufficient sum to be deposited that is estimated to cover the remuneration of the appointed expert’s fee. The party may request recovery of the costs of proceedings by way of charging. In the process of charging, the amount of the costs to be recovered shall be indicated, as well as the material circumstances as to how they were incurred and the related right in dispute. These shall also be supported by documentary evidence at the time of charging, where deemed appropriate.

The cost that may be determined by the court in its decision closing the proceedings may be charged by way of reference to the statutory provision governing the amount thereof.

The cost of drawing up the work plan of the expert shall be advanced by the party adducing evidence. If the party adducing evidence did not request the expert to carry out the assignment or fails to deposit the expert’s fee indicated in the action plan, the costs of the action plan may not be included among court costs. Where so justified by the high cost estimated for the work of the expert, the court – at the party’s request – shall instruct the expert in the appointment to draw up a preliminary action plan outlining their functions and the estimated costs and expenses involved.

The remuneration and expenses of the appointed expert are part of the court costs. The main rule is that the court costs of the successful party shall be covered by the unsuccessful party. Where a party only succeeds in part, it must cover the costs of the opposing party proportionate to the loss. The fee of the private expert must be paid by the party commissioning the expert. If the private expert’s report is considered to give cause for concern, the party shall not be allowed to include the private expert’s fee among court costs.

1.5. 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

In judicial proceedings of the administrative and labour court (the administrative collegium of the general court after 31 March 2020) aimed at reviewing the definitive decision of the environmental authority, legal representation is not compulsory.

The official website of the Hungarian Bar Association: [https://www.mük.hu/](https://www.mük.hu/)

1.1 Existence or not of pro bono assistance

In addition to pro bono assistance provided by legal assistance services operating within Government Offices in accordance with Act LXXX of 2003 on Legal Aid[18], NGOs providing legal assistance to individuals and other NGOs in environmental cases must also be mentioned.

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.)?

Elements of and conditions for receiving pro bono assistance depend on the given organisation providing such a service.

- **Védegyőr**
- **Levegő Munkacsoport** (in English)
- **MTVSZ**
- **EMLA Egyesület** (in English)
- **Reflex Környezetvédelmi Egyesület**

1.3 Who should be addressed by the applicant for pro bono assistance?

This depends on the given organisation providing pro bono assistance. In general, the websites of these organisations contain contact information which can be used for submitting an application.

2) Expert registries or publicly available websites of bars or registries that include the contact details of experts

The official website of the National Chamber of Forensic Experts can be found [here.](https://www.mük.hu/)

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible

- **Védegyőr**
- **Levegő Munkacsoport** (in English)
- **MTVSZ**
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).
As there is no longer an administrative review for environmental decisions in Hungary, this is not applicable.

2) Time limit to deliver decision by an administrative organ
As there is no longer an administrative review for environmental decisions in Hungary, this is not applicable.

3) Is it possible to challenge the first level administrative decision directly before court?
Clients may bring before the courts an administrative action against definitive decisions. If the decision can be appealed, an administrative action may be brought if either of the entitled parties filed an appeal and the appeal has already been determined by the second instance. Where there is a single-instance procedure, i.e. in environmental administrative proceedings, the first-instance decision is considered definitive with its delivery and it can be directly challenged before the court.

In the case of non-compliance with the deadline prescribed by the prosecutor in his intervention to bring the infringement to an end, the public prosecutor may also bring administrative action against the authority’s definitive decision.

4) Is there a deadline set for the national court to deliver its judgment?
There is no exact time limit provided by the national legislation in this regard, however the principle of concentration of actions applies in court proceedings. This principle requires the court and the parties to ensure that all facts and evidence required for determining the case is made available within a specific timeframe so that a judgment can be delivered in the course of one hearing only.

5) Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)
The Ákr. and the sectoral environmental legislations stipulate the time limits applicable in the given environmental administrative proceedings, and the Pp. and the Kp. provide the relevant time limits in relation to court procedures.

As regards the general rules of administrative proceedings, beyond the time limit to deliver the decision the Ákr. does not set out deadlines for clients. If there is a need to remedy deficiencies in the application documentation, the competent authority must advise the applicant on one occasion to remedy the deficiencies within the time limit prescribed by the authority.

In addition, it should be noted that, where the time limit for the execution of a procedural step is not specified by law, the authority, the client and other parties to the proceedings must take action without delay and at the latest within 8 days.

For the time limits applicable in specific environmental administrative proceedings, please see the respective parts of point 1.8.

In administrative court proceedings, the petition of claim must be submitted to the administrative body realising the disputed act within 30 days. The statement of claim has to be forwarded to the competent court within 15 days from its lodging, together with the documents relating to the case. Where the statement of claim also contains a request for immediate legal protection, the statement of claim must be forwarded to the court within 5 days from its lodging, together with the documents relating to the case.

The holding of a hearing may be requested by the plaintiff in the statement of claim and by the defendant in the document of defence. The holding of a hearing may be requested in the request for joining the action and also within 15 days from being joined in the action.

The court proceeds to have the day in court set within 30 days from the time it receives the statement of claim. The first hearing is scheduled to allow at least 15 days to elapse between the time the document of defence is delivered to the plaintiff and the date of the hearing. In urgent cases, this period may be reduced by the court.

The court summons the parties to appear in court. The writ of summons for the first hearing shall be accompanied by the submissions that were not served earlier. In the writ of summons, the parties are instructed to bring to the hearing all the documents pertinent to the case that are in their possession and were not previously submitted. In the writ of summons, the court informs the plaintiff and the person concerned that they may make a written statement on the content of the document of defence before the hearing, and warns the parties that in the hearing they may only make an oral statement. The court sets a deadline preceding the date of hearing, no shorter than 15 days, for making the statement. The court may disregard any statements submitted after this deadline.

A request for taking of evidence may be submitted, and means of proof may be made available in the first hearing at the latest.

Hearings may only be postponed in justified cases, in which event the court notifies the parties summoned to appear in court – if possible – in advance and simultaneously takes action to set the new day in court. At the parties’ justified joint request, the court may postpone the hearing on one occasion for a maximum of 60 days if it deems that it might facilitate resolving the legal dispute within a reasonable time.

The parties may make comments orally at the hearing on the results of taking of evidence. If the hearing has to be postponed because further taking of evidence is necessary, the court may set a deadline no shorter than fifteen days for submitting written statements.

If the case is decided without a formal hearing, the court has to set a deadline, no shorter than 15 days, for the parties to submit their submissions. The court may set a deadline no shorter than 15 days for submitting answers to be given to such submissions and other submissions.

1.7.2. Interim and precautionary measures, enforcement of judgments

1) When does the appeal challenging an administrative decision have suspensive effect?
As a main rule, if the authority did not declare a decision immediately enforceable, the appeal has a suspensive effect on enforcement of the decision. This provision does not apply in environmental administrative proceedings which are single-instance procedures, and the decisions of the environmental authority cannot be appealed, only challenged before the court. A specific rule on environmental fines provided by Article 96/C of the Kvt. stipulates that the lodging of a statement of claim against a resolution of the authority on imposing a fine will have a suspensive effect on enforcement. In other environmental cases, the lodging of a statement of claim against the decision of the environmental authority does not have a suspensive effect.

2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?
If the decision can be appealed, the appeal has a suspensive effect on enforcement of the decision. No other possibility is provided for an injunctive relief during the administrative appeal by the authority or the superior authority.

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?
In administrative proceedings, there is no possibility to introduce a request for such a measure during the procedure.

4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?

The authority declares its decision immediately enforceable in four cases:
- if it is necessary to prevent or eliminate any life-threatening or potentially devastating situation or a severe violation of rights relating to personality, or to mitigate the detrimental consequences thereof;
- if it is considered necessary for reasons of national security, defence or public security, or for the protection of public interests;
- if the decision provides for the support or maintenance of any person; or
- where prompt entry into the relevant official records and registers is prescribed by law.

5) Is the administrative decision suspended once challenged before court at the judicial phase?

As a general rule, the administrative lawsuit does not have a suspensive effect on the implementation of the decision challenged. However, the procedural provisions allow that any person whose rights or lawful interests are injured by the act of the administrative authority may request immediate legal protection from the court in order to eliminate the directly threatening disadvantage, temporarily resolve the legal relation made disputed or invariably maintain the condition providing grounds for the legal dispute. It is possible to request the ordering of suspensive effect, relieving suspensive effect or temporary measures, or the ordering of the provision of preliminary evidence.

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?

Injunctive relief is provided by national tribunals without it being conditional upon a financial deposit, however the court may make performance of the petition subject to the provision of security. The decision on injunctive relief (and on security, if so required by the court) can be challenged at the Curia within 8 days.

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.

Procedural costs in administrative proceedings cover all costs arising over the course of the procedure, and these costs must be borne by the person who incurred them. If more than one client of the same interest is involved, they are jointly and severally liable for the bearing of procedural costs.

In proceedings opened upon request, procedural costs must be advanced by the requesting client, however the client may not be ordered to advance any procedural costs already covered by the fee. The costs of the procedure for taking evidence must be advanced by the party requesting the evidence.

In proceedings opened or conducted on the authority’s own initiative, procedural costs are advanced by the authority, except for the costs incurred in connection with the client’s appearance, the costs of the client’s representative, translation costs not to be borne by the authorities, and the costs of postage and document transmission incurred by the client and other parties to the proceedings.

The authority specifies the amounts of procedural costs and decides as to the bearing of these costs, including the refund of advanced costs where applicable. The amount of procedural costs is determined based on the supporting evidence available. The authority must reduce the amount of procedural costs if they are considered unreasonably high.

The authority may grant exemption from costs to any natural person client who – due to their income and financial situation – is unable to pay all or part of the procedural costs, with a view to easing the burden on such a person in enforcing his rights, or for other material reasons provided for by an act.

Exemption from costs can be total or partial exemption from advancing and bearing procedural costs.

The costs of court proceedings include all expenses the party has necessarily incurred during or prior to the proceedings in a causal relationship with the enforcement of a right in the action, including the loss of income stemming necessarily from having to appear before the court.

Costs of court proceeding include e.g. procedural fees, remuneration of experts and the legal fee. As a main rule, in administrative lawsuits the court duty is 30,000 HUF. Where the subject matter of the proceedings is connected with tax, duties or similar obligations, social security benefits or customs obligations, competition, press products and media services – apart from complaints – electronic communications or public procurement, the duty is calculated in a different way.

Civil organisations (foundations and associations) are exempt from the obligation to pay duties, however this exemption does not pertain to other costs of the procedure.

2) Cost of Injunctive relief/interim measure, is a deposit necessary?

Any person whose rights or lawful interests are injured by the administrative activity may request immediate legal protection from the court. The petition has to be lodged with the court if it is not filed together with the statement of claim submitted to the authority. The petition must specify in detail the reasons for the necessity of immediate legal protection and the documents for verifying them must be attached. The facts providing grounds for the petition must be substantiated. The court may make performance of the petition subject to the provision of security.

3) Is there legal aid available for natural persons?

Act LXXX of 2003 on Legal Aid[19] ensures legal aid in forms of extrajudicial aid and aid in civil actions and administrative proceedings.

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?

Based on Act LXXX of 2003 on Legal Aid, legal aid may be made available to public-benefit organisations and trade unions, regardless of their financial situation, in lawsuits instituted by them in the public interest pursuant to authorisation by specific other legislation, for example consumer protection or environmental protection. In the framework of legal aid, representation is provided to the plaintiff, defendant, interested party, petitioner and respondent through an advocate in legal proceedings, and the costs thereof are advanced or borne by the State.

The application for legal aid must be submitted to the legal assistance service by filling in the form prescribed for this purpose in a single copy. The documents and/or official certificates proving eligibility for aid should be attached to the form (Template of the request for legal aid).

In addition to pro bono assistance provided by legal assistance services operating within Government Offices in accordance with this Act, NGOs performing legal assistance for individuals and other NGOs in environmental cases must also be mentioned.

The application for legal aid specified in the Act on Legal Aid must be submitted to the legal assistance service by filling in the form prescribed for this purpose in a single copy. The documents and/or official certificates proving eligibility for aid should be attached to the form (Template of the request for legal aid).

The legal assistance service should make decisions immediately, or at the latest within five days, regarding applications submitted in person (if it can be determined, on the basis of the application, that the conditions for granting aid have been met). Decisions regarding applications submitted in writing should be made within fifteen days.

The legal assistance service also provides, free of duty and charge, information on aid; the conditions for authorising, reviewing, withdrawing and repaying it; and legal aid providers and their contact data. The legal assistance service should also provide the necessary aid application forms and help the applicant to fill out the forms.
1) Where are the national rules on environmental access to justice available? Internet link to be provided. Are there other forms of structured dissemination?

2) During different environmental procedures how is this information provided? From whom should the applicant request information?

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?

4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment?

5) Is translation, interpretation provided to foreign participants? What are the rules applicable?

Administrative as well as court proceedings are conducted in the Hungarian language. However, the Ákr. requires an interpreter to be engaged if the case officer does not speak the foreign language of the client or any other party to the proceedings.
Furthermore, the Pp. provides that in court proceedings, including those conducted under the Kp., all parties are entitled in oral communications to use their native language, the language of their respective nationality, or the language of their region or nationality to the extent provided for by international agreement. In civil as well as in administrative court proceedings, the court must appoint an interpreter, sign language interpreter or translator.

1.8. Special procedural rules


Country-specific EIA rules related to access to justice

1) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

According to the provisions of the Åkr., a client is a natural or legal person, or an organisation, whose rights or legitimate interests are affected by the case (Art. 10(1) of this Act). In addition, in certain specific cases the rights of clients may be vested in other persons or organisations. In screening procedures, public concerned means any natural or legal person affected or likely affected by the decision made in a procedure, or otherwise interested in the decision made in a procedure, including an environmental organisation specified in Art. 98(1) of the Kvt.

The term “client” is construed comprehensively by the Kvt. insofar as it clearly spells out that associations established to represent environmental interests and other civil organisations not deemed to be political parties or interest representatives and operating in the impact area may have the status of a client in environmental administrative procedures. This privileged legal standing is also confirmed by Khvr., which lays down the framework of EIA and IED procedures and declares that NGOs operating in the area affected by the activity subject to EIA must always be deemed “concerned”.

In administrative judicial proceedings, persons who were considered as “clients” in the administrative stage can file a court action against the administrative decision. The lawful interests necessary for intervention in administrative lawsuits are determined by involvement in the specific impact area and the interest in operation. Compared to Art. 98(1) of the Kvt., a further condition for filing a claim against the decision is stipulated by the Code of Administrative Litigation, namely that the NGO in question must be active in the impact area for at least one year.

Members of the public concerned and environmental NGOs can submit application for legal standing during the administrative proceedings and are entitled to bring administrative action against the definitive decision of the authority. The EIA screening decision can be challenged before the court separately.

2) Rules on standing relating to scoping (conditions, timeframe, public concerned)

Similar to the rules applicable to screening, standing in scoping is ensured for “clients” under Art. 10(1) of the Åkr., and members of the public concerned, covering any natural or legal person affected or likely affected by the decision made in a procedure, or otherwise interested in the decision made in a procedure, including an environmental organisation specified in Art. 98(1) of the Kvt.

Members of the public concerned and environmental NGOs can submit application for legal standing during the administrative proceeding. The result of scoping can be challenged together with the final decision taken in the EIA procedure.

3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?

As already mentioned, environmental administrative proceedings are single-instance procedures, and the decision of the environmental authority is definitive at the time of its delivery. The decision of the authority can take the form of a ruling on procedural issues or a resolution on the merits of the case which closes the EIA proceedings and incorporates the environmental permit. Clients (members of the public concerned, environmental NGOs having legal standing) may bring administrative action against definitive decisions within 30 days.

4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO?

Final authorisation can be challenged by any person whose rights or lawful interests are directly affected by the administrative activity, the public prosecutor’s office or the body exercising regulatory supervision or legal control if the deadline set in the notice elapsed without any result, any administrative body that did not take part in the prior proceedings as an authority or regulatory authority if its competence is affected by the administrative activity, or, in the cases specified in law, any NGO that has been pursuing its registered activity in order to protect any fundamental right or enforce any public interest in a geographical territory affected by the administrative activity for at least one year if the administrative activity affects its registered activity.

In this regard, rights of members of the public concerned (natural and legal persons and environmental NGOs) are deemed to be affected in EIA procedures. Therefore, individual members of the public concerned (natural and legal persons) and environmental NGOs can submit application for legal standing during the administrative proceedings and are entitled to bring administrative action against the definitive decision of the authority.

The provisions of the Kvt. and the Khvor. do not ensure the right of foreign NGOs to challenge the final authorisation granted in EIA proceedings. However, based on the general concept of “client”, any natural or legal person (including a foreign NGO having legal personality) can participate in the proceedings if its rights or lawful interests are directly affected by the case. This means that a foreign environmental NGO does not have the right provided by Art. 98(1) of the Kvt. – its interests are not deemed to be affected automatically – but can have the right to have legal standing under Art. 10(1) of the Åkr.

5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?

National law does not set out specific rules for administrative court procedures in environmental matters. The general provisions of the Kp. apply in the judicial review of the environmental authority’s decision.

The court has to judge the dispute within the frameworks of the petition of claim, applications and legal statements submitted by the parties. The court may order an examination or taking of evidence ex officio only in cases specified by law.

Several requirements of the Kp. provide for own motion of the court, e.g. the court may, upon request or ex officio, bring any person into the action as a person concerned whose rights or lawful interests are affected by the judgment to be passed in the action if the court deems that their involvement in the action is necessary in order to resolve the dispute.

The court may, ex officio or upon petition, ask the Court of Justice of the European Union to provide a preliminary opinion, or ask the Constitutional Court to commence its proceedings for declaring that a legal regulation, statutory provision, means of regulation of public-law organisations or uniformity decision is contrary to the Fundamental Law and to international treaties.

Furthermore, the court may order the taking of evidence ex officio with respect to evidence to support any fact or circumstance that must be taken into consideration ex officio, or in the case of reference made to legal injury jeopardising the interests of a minor or a person entitled to disability benefit, or if the law so provides.

The judicial review covers both the substantive as well as the procedural legality of the challenged act of the authority. The court examines the lawfulness of the administrative activity within the limits of the petition of claim; however, the court must ex officio take into consideration the grounds for nullity or other legally stipulated grounds for invalidity of the disputed administrative act and any material deficiency in formal requirements owing to which the administrative act is to be considered as non-existing, the fact that the administrative act is based on a legal regulation that is not applicable in the case, and other facts and circumstances stipulated in law.

Where the legal injury is declared, the court must ex officio require the administrative body to eliminate the consequences of the activity that injure rights.
6) At what stage are decisions, acts or omissions challengeable?

National law does not set out specific rules for administrative court procedures in environmental matters. The general provisions of the Ákr. and the Kp. apply in the judicial review of the environmental authority’s decisions or omissions. The petition of claim can be submitted to the administrative body which adopted the disputed decision within 30 days from its disclosure. The authority must forward the case documents to the court within 15 days.

Administrative authorities (including environmental authorities) are required to act within their area of jurisdiction in cases for which they are competent. However, if an authority fails to meet its obligation to act within the administrative time limit, its supervisory body will instruct it to carry out the procedure. If there is no supervisory body, or if the supervisory body fails to take action, the court of competent jurisdiction in administrative actions will order the authority to carry out the procedure.

In the event of omissions (i.e. if the administrative authority does not meet its obligations stipulated by law), the client or the person whose rights are directly affected by the omission, or the public prosecutor’s office, or the body exercising regulatory supervision, has the right to bring an action. The statement of claim must be submitted to the court within 90 days from becoming aware of the unsuccessful outcome of the administrative proceedings serving to remedy the omission or, in the case of omission of a legal remedy organisation, from expiry of the deadline available for taking measures, but no later than one year after expiry of the deadline for implementing the administrative act.

7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

As already mentioned, environmental administrative proceedings are single-instance procedures, and the decision of the environmental authority is definitive at the time of its delivery. In relation to EIA proceedings, the national legislation does not require an administrative review procedure to be exhausted prior to recourse to the judicial review procedure. Clients (members of the public concerned, environmental NGOs having legal standing) may bring to the court an administrative action against definitive decisions of the authority within 30 days.

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 meeting the requirement determined under point 12?

In EIA proceedings, it is not required by national legislation that participation in the public consultation phase is necessary to have legal standing before the court.

9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

Fair and equitable proceedings in relation to access to justice in environmental administrative procedures is ensured by the general provisions of the Ákr., which stipulate that administrative authorities must adhere to the principles of legality. Authorities must exercise their powers under the principle of due course of the law. This means that cases must be handled professionally and in good faith, having regard to the objectives of simplicity and cooperation with clients, in due observation of the right to equality before the law and the principle of equal treatment, without undue discrimination, bias or prejudice.

Administrative authorities are responsible for ascertaining that the client and other parties to the proceeding are properly informed of their rights and obligations.

According to the basic principles of court proceedings, all clients have equal rights and the court must adjudge the dispute in fair, concentrated and cost-effective proceedings. The court must, in such a manner and by means of the tools stipulated by law, contribute to enabling the parties and other persons in the lawsuit to exercise their procedural rights and fulfill their obligations.

10) How is the notion of “timely” implemented by the national legislation?

With regard to access to justice in EIA proceedings, the general procedural rules must be taken into account. The Ákr., the Pp. and the Kp. entered into force in 2018, and these new legislations reformed the provisions on time limits in order to accelerate the administrative proceedings and make the judicial review of administrative decisions (administrative actions) more concentrated.

As regards the proceedings of administrative courts, the Kp. stipulates strict time limits for certain procedural steps (forwarding case documentation to the court for examination of the statement of claim, adjudication of petitions for immediate legal protection, setting the date of the court hearing etc.). A court hearing can be postponed only under the conditions stipulated by this Code. The timelines mentioned are aimed at most judgments being delivered within a reasonable time.

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?

In relation to EIA, the general provisions on injunctive relief as provided by the Kp. apply. Any person whose rights or lawful interests are injured by the administrative activity may request immediate legal protection from the court. The petition must be lodged with the court if it is not filed together with the statement of claim submitted to the authority. The petition must specify in detail the reasons for the necessity of immediate legal protection and the documents for verifying them must be attached. The facts providing grounds for the petition must be substantiated.

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

Most provisions of IED have been transposed into national law by the Khvr. With regard to access to justice in IPPC/IED proceedings, the general procedural rules pertaining to administrative and court procedures (i.e. the Ákr., the Pp. and the Kp.) must be taken into account. As mentioned above, the EIA as well as the IED rules are stipulated by the Khvr., and where the activity to be authorised is subject to both regimes, the applicant (the developer) is entitled to ask the authority to conduct an integrated procedure for a consolidated environmental permit.

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?

Standing rules are similar to those stipulated by national law for EIA proceedings. Decisions of the authority can be challenged by any person whose rights or lawful interests are directly affected, or, in the cases specified in law, by any NGO that has been pursuing its registered activity in order to protect any fundamental right or enforce any public interest in a geographical territory affected by the administrative activity for at least one year if the administrative activity affects its registered activity.

The decision of the authority can take the form of a ruling (deciding on procedural issues) or a resolution (on the merits of the case) which closes the EIA proceedings and incorporates the environmental permit. Both types of decision can be challenged before the court within 30 days.

In this regard, rights of members of public concerned (natural and legal persons and environmental NGOs) are deemed to be affected in IED procedures. Therefore, individual members of the public concerned (natural and legal persons) and environmental NGOs can submit application for legal standing during the administrative proceedings and are entitled to bring administrative action against the decision of the authority.

The provisions of the Kvt. and the Khvr. do not expressly provide the right of foreign NGOs to challenge the final authorisation granted in IED proceedings. However, based on the general concept of “client”, any natural or legal person (including a foreign NGO having legal personality) can participate in the proceedings if its rights or lawful interests are directly affected by the case. This means that a foreign environmental NGO does not have the right provided by Art. 98(1) of the Kvt. – its interests are not deemed to be affected automatically – but can have the right to have legal standing under Art. 10(1) of the Ákr.

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)
Where the activity is subject to the EIA/IED regime, the environmental authority may take the following decisions in the screening procedure:
the activity will likely have a significant impact on the environment, therefore EIA and IED procedures must be conducted (separately or even in integrated
proceedings);
the activity will not have significant impact on the environment and only the IED permitting procedure is necessary.
The decision made in the EIA/IED screening procedure can be separately challenged before the court.
In screening procedures, “public concerned” means any natural or legal person
affected or likely affected by the decision made in a procedure, or
otherwise interested in the decision made in a procedure, including an environmental organisation specified in Art. 98(1) of the Kvt.
The Kvt. provides that associations established to represent environmental interests and other civil organisations not deemed to be political parties or interest
representatives and operating in the impact area may have the status of a client in environmental administrative procedures. This privileged legal standing is
also confirmed by Khrvr., which lays down the framework of EIA and IED procedures and declares that NGOs operating in the area affected by the activity
subject to IED must always be deemed “concerned”.
In administrative judicial proceedings, persons who were considered as “clients” in the administrative stage can file an action at the court against the
administrative decision. The lawful interests necessary for intervention in administrative lawsuits are determined by involvement in the specific impact area
and the interest in operation. Compared to Art. 98(1) of the Kvt., a further condition for filing a claim against the decision is stipulated by the Code of
Administrative Litigation, namely that the NGO in question must be active for at least one year in the impact area.
Members of the public concerned and environmental NGOs can submit application for legal standing during the administrative proceedings and are entitled
to bring administrative action against the definitive decision of the authority.

4) Rules on standing relating to scoping (conditions, timeframe, public concerned)
For cases where an activity is subject to mandatory EIA and IED, or only subject to IED, the national legislation provides for the developer to initiate a
preliminary consultation procedure (scoping). Public participation in scoping is ensured for members of the public concerned, covering any natural or legal
person
affected or likely affected by the decision made in a procedure, or
otherwise interested in the decision made in a procedure, including an environmental organisation specified in Art. 98(1) of the Kvt.
Members of the public concerned and environmental NGOs can submit application for legal standing during the administrative proceedings. It should be
noted that in a preliminary consultation the authority issues an opinion on the content of the application documentation and does not take a decision, which
cannot be challenged before the court separately.

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?
The petition of claim can be submitted to the administrative body which adopted the disputed decision within 30 days from its disclosure. The authority must
forward the case documents to the court within 15 days.

6) Can the public challenge the final authorisation?
Members of the public concerned and environmental NGOs fulfilling the legal requirements stipulated by the Kvt. and the Kp. are entitled to bring
administrative action against the definitive decision of the authority (which incorporates the final authorisation).

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?
As mentioned above, national law does not set out specific rules for administrative court procedures in environmental matters. The general provisions of the
Kp. apply in the judicial review of the environmental authority’s decision.
The court has to judge the dispute within the frameworks of the petition of claim, applications and legal statements submitted by the parties. The court will
take account of the applications and statements in accordance with their content and not in accordance with their specification in terms of form. The court
may order an examination or taking of evidence ex officio only in cases specified by law.
Several requirements of the Kp. provide for own motion of the court, e.g. the court may, upon request or ex officio, bring any person into the action as a
person concerned whose rights or lawful interests are affected by the judgment to be passed in the action if the court deems that their involvement in the
action is necessary in order to resolve the dispute.
The court may, ex officio or upon petition, ask the Court of Justice of the European Union to provide a preliminary opinion, or ask the Constitutional Court to
commence its proceedings for declaring that a legal regulation, statutory provision, means of regulation of public-law organisations or uniformity decision is
contrary to the Fundamental Law and to international treaties.
Furthermore, the court may order the taking of evidence ex officio with respect to evidence to support any fact or circumstance that must be taken into
consideration ex officio, or in the case of reference made to legal injury jeopardising the interests of a minor or a person entitled to disability benefit, or if law
so provides.
The judicial review covers both the substantive as well as the procedural legality of the challenged act of the authority. The court examines the lawfulness of
the administrative activity within the limits of the petition of claim; however, the court must ex officio take into consideration the grounds for nullity or other
legally stipulated grounds for invalidity of the disputed administrative act and any material deficiency in formal requirements owing to which the administrative
act is to be considered as non-existing, the fact that the administrative act is based on a legal regulation that is not applicable in the case, and other facts and
circumstances stipulated in law.
Where the legal injury is declared, the court shall ex officio require the administrative body to eliminate the consequences of the action that injure rights.
Own motion acts of the court are adopted by rulings which – if explicitly provided by the Kp. – may be appealed by the party, the person concerned and
those regarding whom the ruling contains provisions with respect to the relevant part of such provision applying to them.
In civil (and administrative) court proceedings, the party may lodge a complaint with the court if the court was bound to certain time limits for the conduct of
proceedings, for carrying out certain procedural steps or for adopting resolutions and the court failed to observe such time limits. This applies in cases where
the court lays down time limits for carrying out certain procedural steps which lapse without success and the court fails to impose sanctions on the defaulting
person or body, or where the court fails to perform a procedural step within a reasonable timeframe for the completion thereof or fails to ensure that such a
procedural step is carried out.

8) At what stage are these challengeable?
National law does not set out specific rules for administrative court procedures in environmental matters. The general provisions of the Ákr. and the Kp. apply
in the judicial review of the environmental authority’s decisions or omissions.
The petition of claim can be submitted to the administrative body which adopted the disputed decision within 30 days from its disclosure. The authority must
forward the case documents case to the court within 15 days.
Administrative authorities (including environmental authorities) are required to act within their area of jurisdiction in cases for which they have competence. However, if an authority fails to meet its obligation to act within the administrative time limit, its supervisory body will instruct it to carry out the procedure. If there is no supervisory body, or if the supervisory body fails to take action, the court of competent jurisdiction in administrative actions will order the authority to carry out the procedure.

In the event of omissions (i.e. if the administrative authority does not meet its obligations stipulated by law), the client or the person whose rights are directly affected by the omission, or the public prosecutor’s office, or the body exercising regulatory supervision, has the right to bring an action. The statement of claim must be submitted to the court within 90 days from becoming aware of the unsuccessful outcome of the administrative proceedings serving to remedy the omission or, in the case of omission of a legal remedy organisation, from expiry of the deadline available for taking measures, but no later than one year after expiry of the deadline for implementing the administrative act.

9) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

In relation to IED proceedings, national legislation does not require an administrative review procedure to be exhausted prior to recourse to the judicial review procedure.

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 IED proceedings, it is not required by national legislation that participation in the public consultation phase is necessary to have legal standing before the court.

11) Fair, equitable – what meaning is given to equality of arms in the national jurisdiction?

Fair and equitable proceedings in relation to access to justice in environmental administrative procedures (including IED) are ensured by the general provisions of the Ákr., which stipulate that administrative authorities must adhere to the principles of legality. Authorities must exercise their powers under the principle of due course of the law. This means that cases must be handled professionally and in good faith, having regard to the objectives of simplicity and cooperation with clients, in due observation of the right to equality before the law and the principle of equal treatment, without undue discrimination, bias or prejudice. Administrative authorities are responsible for ascertaining that the client and other parties to the proceedings are properly informed of their rights and obligations.

In line with the basic principles of court proceedings, all clients have equal rights and the court must adjudge the dispute in fair, concentrated and cost-effective proceedings. The court must, in such a manner and by means of the tools stipulated by law, contribute to enabling the parties and other persons in the lawsuit to exercise their procedural rights and fulfill their obligations.

12) How is the notion of "timely" implemented by the national legislation?

With regard to access to justice in IED proceedings, the general procedural rules must be taken into account. The Ákr., the Pp. and the Kp. entered into force in 2018, and these new legislations reformed the provisions on time limits in order to accelerate the administrative proceedings and make the judicial review of administrative decisions (administrative actions) more concentrated.

As regards the proceedings of administrative courts, the Kp. stipulates strict time limits for certain procedural steps (forwarding the case documentation to the court for examination of the statement of claim, adjudication of petitions for immediate legal protection, setting the date of the court hearing etc.). A court hearing can be postponed only under the conditions stipulated by this Code. The timelines mentioned are aimed at most judgments being delivered within a reasonable time.

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?

In relation to IED, the general provisions on injunctive relief as provided by the Kp. apply. Any person whose rights or lawful interests are injured by the administrative activity may request immediate legal protection from the court. The petition must be lodged with the court if it is not filed together with the statement of claim submitted to the authority. The petition must specify in detail the reasons for the necessity of immediate legal protection and the documents for verifying them must be attached. The facts providing grounds for the petition must be substantiated.

14) Is information on access to justice provided to the public in a structured and accessible manner?

The most important national legislations on access to justice in IED proceedings are laid down by the Ákr., the Kp., the Kvt. and the Khvr., which can be found on the official website of the Official Journal and in the National Database of Laws. Structured information in this regard can be found on the websites of environmental NGOs, for instance here.

1.8.3. Environmental liability[21]

Country-specific legal rules relating to the application of 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?

Where a decision has been taken by the environmental authority, it can be challenged before the court in accordance with the general rules of the Kp., i.e. by any national or legal person whose rights or lawful interests are directly affected by the decision. Environmental NGOs (associations formed to represent environmental interests which are active in the impact area for at least one year) are also entitled to bring an action to the court, as provided for by the Kp. and the Kvt.

2) In what deadline does one need to introduce appeals?

In this regard, the general rules for lodging a petition of claim apply, therefore it can be submitted to the administrative body which adopted the disputed decision within 30 days from its disclosure.

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?

The Kvt. lays down that where the environment is endangered, damaged or polluted, environmental associations are entitled to intervene, in the interest of protecting the environment, and ask the competent authority to take appropriate measures, or file a lawsuit against the user of the environment.

In such a lawsuit, the court can be asked to require the party posing the hazard to refrain from the unlawful conduct (operation) or to compel the same to take the measures necessary to prevent the damage.

4) Are there specific requirements regarding 'plausibility' for showing that environmental damage occurred, and if yes, which ones?

National legislation does not provide specific provisions in this regard.

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)?
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?

Based on Art. 99 of the Kvt., where the environment is being threatened, damaged or polluted, associations formed to represent environmental interests which are active in the impact area are entitled to intervene, in the interest of protecting the environment, and ask the competent authority to take appropriate measures within its jurisdiction, or file a lawsuit against the user of the environment. In the lawsuit, the party in the case may ask the court to enjoin the party posing the hazard to refrain from the unlawful conduct or compel the same to take the measures necessary to prevent the damage.

Therefore, environmental associations are entitled to submit their request to the competent authority or to the court in the case of imminent threat of damage to the environment.

7) Which are the competent authorities designated by the MS?

The minister with responsibility for environmental and nature protection (the “Minister”), County Government Offices, district environmental authorities, the National Meteorological Service, mayors and notaries are appointed as having competence in environmental administration. County Government Offices proceed as territorial environmental authorities in most environmental administrative cases. In specific cases stipulated by law, the Government Office of Pest County or the Minister proceeds as the environmental authority of nationwide competence.

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?

In relation to proceedings stipulated by Art. 99 of the Kvt. (see point 6.), national legislation does not require an administrative review procedure to be exhausted prior to recourse to court 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?

The national environmental legislation requires that enforcement of environmental interests must be encouraged by Hungary through international agreements, particularly in its relations with neighbouring countries, and that consideration must be given to the environmental interests of other countries, the reduction of cross-border loading of the environment and endangering the environment, and the prevention of environmental pollution and damage to the environment.

In Hungary, the Espoo Convention has been implemented by Governmental Decree 148/1999 (X.18.). This piece of legislation contains the provisions of the Convention. The coordinator of the Espoo procedure is the ministry with responsibility for environmental protection, which is the Ministry of Agriculture, in close cooperation with the competent environmental authority.

The specific rules on cross-border impacts are assessed in accordance with the specific pieces of legislation in the Skvr. (transposing the SEA Directive) and the Khvr. (transposing the EIA Directive).

Trans-boundary EIA procedures are governed by the Khvr. The competent environmental authority sends the relevant information to the ministry responsible for environmental protection as soon as it emerges that the activity under consideration may have significant environmental effects on the territory of another Member State. The affected country must be notified when it emerges, during the preliminary assessment procedure (screening) or during the preliminary consultation (scoping), that a trans-boundary environmental impact can be assumed.

Cases where a Member State likely to be significantly affected requests information on the project are not expressly regulated by Khvr., however in accordance with Art. 3(7) of the Espoo Convention (implemented by Art. 3(7) of Governmental Decree 148/1999), the concerned party must, at the request of the affected party, exchange sufficient information for the purposes of holding discussions on whether there is likely to be a significant adverse trans-boundary impact.

In connection with plans and programmes which are likely to have a significant impact on the environment, the strategic environmental assessment must cover consultations with neighbouring countries in the case of significant cross-border impact and take into account the results of the consultations in drawing up the plan or programme.

Based on Art. 9.1 of the SEA Decree, if, on the basis of the environmental evaluation, significant adverse trans-boundary environmental effects are likely to occur in a Member State of the European Union or in the territory of other countries with which reciprocity with regard to environmental assessment of the trans-boundary effects of the plans and programmes is guaranteed by international treaties, or if so requested by other countries, the developer must forward the relevant documents to the ministry responsible for protection of the environment in that country at the same time as national consultations on the draft plan or programme are held.

As mentioned above, national legislation does not expressly provide legal standing for foreign NGOs, however if their rights or lawful interests are directly affected by the proceedings, they can be clients in administrative proceedings in accordance with the general rules of the Ákr., which also ensures that the rules on translation and interpreters apply to foreign NGOs as clients. The right to legal aid is not provided for foreign NGOs.

Environmental administrative proceedings are single-instance procedures, and the decision of the environmental authority is definitive at the time of its delivery.

The decision of the authority can take the form of a ruling on procedural issues or a resolution on the merits of the case which closes the proceedings. Clients (members of the public concerned, environmental NGOs having legal standing) may bring administrative action against definitive decisions within 30 days from delivery of the given decision.

2) Notion of public concerned?

The notion of public concerned is stipulated by the national EIA, IED and SEA legislations, i.e. by the Khvr. and the Skvr., and these terms apply in the proceedings relating to projects, plans or programmes likely to have trans-boundary impacts. According to the Khvr., “public concerned” covers any natural or legal person and any association lacking the legal status of a legal person which is or might be affected by the decision or which is interested in the decision taken.

The Skvr. defines “public concerned” as natural persons, legal entities or organisations without legal entity which are or may be affected by the decision on the plan or programme requiring environmental assessment, in particular because of its effects on the environment, which have an interest with regard to the decision, in particular environmental or other non-governmental organisations whose range of activity is affected, or which are defined as affected by law or by the developer.

As the SEA Directive regulates, the authorities and the public must be given an early and effective opportunity, within appropriate timeframes, to express their opinion on the draft plan or programme and the accompanying environmental report before adoption of the plan or programme or its submission to the legislative procedure.

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)?
As mentioned above, national legislation does not expressly provide legal standing for foreign NGOs, however if their rights or lawful interests are directly affected by the proceedings, they can be clients in administrative proceedings in accordance with the general rules of Ákr. In this case, the general procedural rules of administrative and court proceedings are applicable. According to the general rules of administrative procedures, under the information on legal remedy, the decision provides information on which general court is entitled to review the decision.

Right to legal aid is not provided for foreign NGOs.

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)?

According to the Ákr., any natural person (including citizens of other countries) may have the status of a client if their rights or lawful interests are affected by the case. In this case, the general procedural rules of administrative and court proceedings are applicable for submissions, time limits, etc. Legal aid is not available to foreign parties in the case of environmental proceedings.

5) At what stage is the information provided to the public concerned (including the above parties)?

In EIA and IED proceedings, at the earliest stage of the procedure the environmental authority publishes on its website a notice about the details of the case. At the same time, the notaries of the affected municipalities must be informed concerning the procedure and the notaries must make available to the public the announcement on the proceedings and the features of the planned project.

In the case of plans and programmes, the developer must publish its decision on the necessity of preparing an SEA. The scoping decision is also made public, together with the way the developer intends to ensure public participation.

6) What are the timeframes for public involvement including access to justice?

In the national legislation on EIA, in preliminary assessment proceedings (screening), after submission of the request and the preliminary assessment documentation, the environmental authority publishes on its website:

- the fact that the environmental impact assessment has been initiated;
- information on the website where the documentation can be accessed;
- whether consultation is in progress with other countries likely to be affected;
- a call for making any comments directly to the environmental authority within 21 days from the date of publication of the environmental authority’s announcement;
- the date of the start of the proceedings and the administrative time limit, name and official contact details of the contact person;
- the decisions which potentially may be made by the environmental authority.

Simultaneously with the publication of the announcement, the environmental authority must deliver the announcement, the printed copies of the application and its annexes to the notary of the affected municipality and to the notaries of the presumed to be affected municipalities. The notary must immediately, and no later than within five days, make sure that the announcement is made public by displaying it in public places and using other local customary methods.

In EIA proceedings, after submission of the request the environmental authority publishes on its website:

- the fact that the environmental impact assessment has been initiated;
- information on the website where the documentation can be accessed;
- whether consultation is in progress with other countries likely to be affected;
- the ways of providing information and the possibilities of submitting comments and asking questions;
- the date of the start of the proceedings and the administrative time limit, name and official contact details of the contact person;
- the decisions which potentially may be made by the environmental authority.

Together with the publication of the announcement, the environmental authority must deliver the announcement, the printed copies of the application and its annexes to the notary of the affected municipality and to the notaries of the presumed to be affected municipalities. The notary must immediately, and no later than within five days, make sure that the announcement is made public by displaying it in public places and using other local customary methods. The period of publication must be at least 30 days.

In EIA proceedings, comments may be submitted to the environmental authority, or to the notary of the municipality competent according to the location of the public hearing, up to the time of the public hearing. The environmental authority must make available to the public concerned the opinion of the specialist authorities and the expert opinions, and also the documents prepared in order for corrections to be made within eight days of their submission or availability (or the consultation, if any).

In IED proceedings, at the earliest stage of the procedure (within 15 days after receipt of the application documentation and all necessary information), the environmental authority publishes on its website a notice about the details of the case, including the relevant information on the project, the impact area, the expected emissions and impacts on the environment and human health, the measures to prevent or to mitigate the likely impacts, the monitoring tools, and the measures to prevent accidents and inform the public.

At the same time, the notaries of the affected municipalities must be informed concerning the procedure. Within five days, the notaries must make available to the public the announcement on the proceedings and the features of the planned project for at least 21 days.

National legislation does not provide specific timeframes for access to justice in the case of trans-boundary decisions. An action against the authority’s decision can be brought within 30 days.

In the case of plans and programmes, the developer must publish its decision on the necessity of preparing an environmental assessment (SEA). The scoping decision is also made public, together with the way the developer intends to ensure public participation. The public has 30 days to comment on the draft environmental report.

7) How is information on access to justice provided to the parties?

In the case of EIA and IED proceedings, the notification on the proceedings contains information on the details of public participation (timelines, date of public hearing, deadline for submitting comments etc.), and the decision of the authority (which has to be delivered to the clients) must contain information on legal remedy and the relevant time limit.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?

In this respect, the general rules of administrative proceedings and court proceedings apply. Administrative as well as court proceedings are conducted in the Hungarian language. However, the Ákr. requires that an interpreter must be engaged if the case officer does not speak the foreign language of the client or any other party to the proceeding.

Furthermore, it is provided by the Pp. that in court proceedings, including those conducted under the Kp., all parties are entitled, in oral communications, to use their native language, the language of their respective nationality, or the language of their region or nationality to the extent provided for by international agreement. In civil as well as in administrative court proceedings, the court must appoint an interpreter, sign language interpreter or translator.

9) Any other relevant rules?
In administrative proceedings, and depending on the subject of the procedure, the main decision-making authority may be obliged to involve expert authorities within their fields of competence. An expert authority provides its opinion, including an approval or refusal of the application. Where the law requires the involvement of expert authorities in a permit procedure, the permit shall not be granted without the expert authority’s approval.

In environmental administrative proceedings, the above-mentioned provision of the Ákr. ensures the legal standing of individuals whose legal interests are directly affected, and Article 98 of the Kvt. provides that environmental associations can also participate as clients. Other legal entities, members of ad hoc groups or foreign NGOs may be treated as clients in connection with certain specific types of case.

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legal statements submitted by the parties. The court will take account of the applications and statements in accordance with their content and not in accordance with their specification in terms of form. The court may order an examination or taking of evidence ex officio only in cases specified by law. The judicial review may cover both procedural and substantive legality depending on the content of the petition of claim.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? If the decision can be appealed, an administrative action may be brought if either of the entitled parties filed an appeal and the appeal has already been determined. Since 1 March 2020, in administrative environmental cases the decision of a second-instance environmental authority cannot be requested. Clients may bring to the court an administrative action against the decision.

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 general, it is not required by national legislation that participation in the public consultation phase is necessary to have legal standing before the court. In this respect, the provisions of the Kp. must be taken into account. Any person whose rights or lawful interests are directly affected by the administrative activity (i.e. the decision), or any non-governmental organisation, in the cases specified in law or government decree, that has been pursuing its registered activity in order to protect any fundamental right or enforce any public interest in a geographical territory affected by the administrative activity for at least one year, if the administrative activity affects its registered activity, has the right to institute an action.

5) Are there some grounds/arguments precluded from the judicial review phase? There are no explicit provisions precluding arguments from the judicial review phase. The subject of the administrative dispute is the lawfulness of the act of the authority regulated by administrative law or the omission of such act.

6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction? Fair and equitable proceedings in relation to access to justice in environmental administrative procedures are ensured by the general provisions of the Kp., which stipulate that administrative authorities must adhere to the principles of legality. Authorities must exercise their powers under the principle of due course of the law. This means that cases must be handled professionally and in good faith, having regard to the objectives of simplicity and cooperation with clients, in due observation of the right to equality before the law and the principle of equal treatment, without undue discrimination, bias or prejudice. Administrative authorities are responsible for ascertaining that the client and other parties to the proceedings are properly informed of their rights and obligations. In accordance with the basic principles of court proceedings, all clients have equal rights, and the court must adjudge the dispute in fair, concentrated and cost-effective proceedings. The court must, in such a manner and by means of the tools stipulated by law, contribute to enabling the parties and other persons in the lawsuit to exercise their procedural rights and fulfill their obligations.

7) How is the notion of “timely” implemented by the national legislation? The Kp., the Pp. and the Kp. entered into force in 2018 and these new legislations reformed the provisions on time limits in order to accelerate the administrative proceedings and make the judicial review of administrative decisions (administrative actions) more concentrated. As regards the proceedings of administrative courts, the Kp. stipulates strict time limits for certain procedural steps (forwarding the case documentation to the court for examination of the statement of claim, adjudication of the petitions for immediate legal protection, setting the date of the court hearing etc.). A court hearing can be postponed only under the conditions stipulated by this Code. The timelines mentioned are aimed at most judgments being delivered within a reasonable time.

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 provisions on injunctive relief are provided by the Kp. Any person whose rights or lawful interests are injured by the administrative activity may request immediate legal protection from the court. The petition must be lodged with the court if it is not filed together with the statement of claim submitted to the authority. The petition must specify in detail the reasons for the necessity of immediate legal protection and the documents for verifying them must be attached. The facts providing grounds for the petition must be substantiated. There are no special rules applicable in this regard.

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 costs which must be considered when filing a lawsuit with the administrative court in access to justice matters are the duty and the legal fees. As a main rule, the duty on administrative actions is 30,000 HUF (ca. 85 EUR), which must be paid by the party submitting the petition of claim. Legal fees can also be requested to be paid by the unsuccessful party as a court cost. The amount of this may be reduced by the court. The main rule is that the court costs of the successful party (including the duty) must be covered by the unsuccessful party. Where a party only succeeds in part, it must cover the costs of the opposing party in proportion to the loss. The co-litigants cover the costs of court proceedings jointly and severally. In the case of the settlement of the parties, the agreement reached in this respect, the court costs of the successful party to the settlement must be covered by the unsuccessful party to the settlement. If the ratio of winning and losing cannot be determined, neither of the parties will be required to cover the court costs. If the proceedings are terminated, the court costs of the defendant must be covered by the plaintiff. However, where the proceedings are terminated due to withdrawal and the withdrawal took place because the defendant satisfied the claim after the opening of proceedings, the court costs of the plaintiff are to be covered by the defendant. Furthermore, if the proceedings are terminated due to death or dissolution, neither party is required to cover the court costs of the opposing party. Where a party fails in carrying out certain acts during the proceedings, is delayed in certain acts without justification, fails to meet a deadline or time limit, or causes unnecessary expenses to the opposing party in any other way, either during the proceedings or beforehand, said party must cover those costs irrespective of the outcome of the action. The party might be entitled to different types of cost allowances: subject-specific and individual cost exemption; subject-specific and individual right for the suspension of payment of costs; subject-specific and individual duty exemption; right for the suspension of payment of specific duty; reduced duty; exemption from the prepayment of the advocacy fee, or the payment thereof. In general, the party is entitled to individual cost exemption and individual right for the suspension of payment of costs upon request based on their income and financial situation, whereas individual duty exemption will be granted ex officio. Specific allowances can be based on the subject matter of the proceedings, and the allowance of duty reduction will be granted ex officio upon the occurrence of specific procedural events.
Under cost exemption, the party is exempt from the advance payment of duties, the prepayment of costs incurred during the proceedings, save as otherwise provided for by law, the payment of any unpaid duty and the recovery of expenses advanced by the State, and the requirement to provide security for court costs.

The right for the suspension of payment of costs covers exemption from the advance payment of duties and from the prepayment of costs incurred during the proceedings. In the case of partial individual right for the suspension of payment of costs, the allowance applies to a specific percentage of duties and expenses, or to duties, and/or to itemised specific expenses.

It should be noted that cost exemption does not exempt the party from covering the unpaid duties and the costs of any unnecessary procedural act.

The decision on the authorisation of individual cost allowance and the individual right for the suspension of payment of costs and for the withdrawal of authorised cost allowances lies with the Court. The resolution rejecting the application for authorisation and the decision for the withdrawal of an authorised cost allowance may be appealed separately.

The specific rule in administrative court proceedings is that in a model action[2] the Court may provide that the court costs incurred in the scope of taking of evidence, or a part of such costs, are to be advanced or borne by the State.

The amount of the duty (30,000 HUF – 85 EUR) cannot be considered as being prohibitive. Furthermore, in Hungary associations and funds are exempt from the obligation to pay duties. Therefore, in administrative court proceedings NGOs should count with legal fees and – if applicable – expert fees.

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[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?

According to national law, plans or programmes (including land-use plans) may be adopted by different legal measures, i.e. by law or by a public administrative measure without legal force. Challenging the legality of laws and/or public administrative measures by a natural person or by an organisation is possible by means of a constitutional complaint lodged with the Constitutional Court. Where the legal measure adopting the plan or programme is contrary to the Fundamental Law and this infringes a fundamental right of a natural or legal person, for example the right to a healthy environment laid down by the Fundamental Law, the Constitutional Court is entitled to annul the contested provision.

A person or organisation affected by a concrete case may submit a constitutional complaint to the Constitutional Court if, due to the application of a legal regulation contrary to the Fundamental Law in their judicial proceedings their rights enshrined in the Fundamental Law were violated, and the possibilities for legal remedy (not including the review procedure of the Supreme Court as extraordinary legal remedy) have already been exhausted or legal remedy is not possible.

By exception, Constitutional Court proceedings may also be initiated if, due to the application of a legal provision contrary to the Fundamental Law, or when such legal provision becomes effective, rights were violated directly, without a judicial decision, and there is no procedure for legal remedy designed to repair the violation of rights, or the petitioner has already exhausted the possibilities for remedy. In these proceedings, the Constitutional Court may also examine the constitutionality of a judicial decision.

The Constitutional Court will admit constitutional complaints if a conflict with the Fundamental Law significantly affects the judicial decision, or if the case raises constitutional law issues of fundamental importance.

Constitutional complaints may be submitted within 60 days of receipt of the contested decision, or within 180 days of entry into force of the legal regulation contrary to the Fundamental Law. If the decision is not communicated, the time limit for submitting constitutional complaints will be 60 days from the date of becoming aware of the decision or from the date of the violation of rights guaranteed by the Fundamental Law. The Constitutional Court may also rule on constitutional complaints that were submitted after the time limit due to the submitter’s inability to submit the complaint due to a circumstance beyond their control, providing that the petitioner submits an application for extension along with the complaint within 15 days of the termination of the obstacle. However, no Constitutional Court proceedings may be initiated 180 days after the communication of the decision, the violation of the right guaranteed by the Fundamental Law and entry into force of the legal regulation that is contrary to the Fundamental Law.

The Constitutional Court must decide on constitutional complaints within a reasonable time. In practice, it is not uncommon for proceedings of the Constitutional Court to take years.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantiative legality?

The Constitutional Court examines whether the rights enshrined in the Fundamental Law were violated, which may include infringement of both procedural and substantive norms.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

A constitutional complaint may be submitted to the Constitutional Court if the possibilities for legal remedy (not including the review procedure of the Supreme Court as extraordinary legal remedy) have already been exhausted or legal remedy is not possible.

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.?

A person or organisation affected by a concrete case may submit a constitutional complaint to the Constitutional Court if their rights enshrined in the Fundamental Law were violated.

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?

No injunctive relief is available.

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 proceedings of the Constitutional Court are free of charge. The applicant must bear their costs incurred in the course of the proceedings.

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[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?

Legal standing in administrative and/or judicial review of plans and programmes depends on the legal form by which the plan or programme was adopted. If the act adopting a plan or programme is considered as a legal measure or a public administrative measure without legal force and the relevant conditions are met, a constitutional complaint can be lodged with the Constitutional Court as explained under Chapter 2.2. point 1. However, plans and programmes subject to Article 7 of the Aarhus Convention which are not considered as such acts cannot be challenged.

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? How is the notion of “timely” implemented by the national legislation?

The Constitutional Court examines whether the rights enshrined in the Fundamental Law were violated, which may include infringement of both procedural and substantive norms.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? How 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?

A constitutional complaint may be submitted to the Constitutional Court if the possibilities for legal remedy (not including the review procedure of the Supreme Court as extraordinary legal remedy) have already been exhausted or legal remedy is not possible. No injunctive relief is available.

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.? 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 Constitutional Court must decide on constitutional complaints within a reasonable time. In practice, it is not uncommon for proceedings of the Constitutional Court to take years.

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?

A constitutional complaint may be submitted to the Constitutional Court if the possibilities for legal remedy (not including the review procedure of the Constitutional Court as extraordinary legal remedy) have already been exhausted or legal remedy is not possible.

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 Constitutional Court examines whether the rights enshrined in the Fundamental Law were violated, which may include infringement of both procedural and substantive norms.

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

In accordance with the basic principles of court proceedings, all clients have equal rights and the court must adjudge the dispute in fair, concentrated and cost-effective proceedings.

8) How is the notion of “timely” implemented by the national legislation?

The Constitutional Court must decide on constitutional complaints within a reasonable time. In practice, it is not uncommon for proceedings of the Constitutional Court to take years.

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?

A constitutional complaint may be submitted to the Constitutional Court if the possibilities for legal remedy (not including the review procedure of the Constitutional Court as extraordinary legal remedy) have already been exhausted or legal remedy is not possible.

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 Constitutional Court examines whether the rights enshrined in the Fundamental Law were violated, which may include infringement of both procedural and substantive norms.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[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 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?

Legal standing in administrative and/or judicial review of plans and programmes depends on the legal form by which the plan or programme was adopted. If the act adopting a plan or programme is considered as a legal measure or a public administrative measure without legal force and the relevant conditions are met, a constitutional complaint can be lodged with the Constitutional Court as explained under Chapter 2.2. point 1. However, plans and programmes subject to Article 7 of the Aarhus Convention which are not considered as such acts cannot be challenged.

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)?

A constitutional complaint may be submitted to the Constitutional Court if the possibilities for legal remedy (not including the review procedure of the Supreme Court as extraordinary legal remedy) have already been exhausted or legal remedy is not possible.

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 Constitutional Court examines whether the rights enshrined in the Fundamental Law were violated, which may include infringement of both procedural and substantive norms.

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

A constitutional complaint may be submitted to the Constitutional Court if the possibilities for legal remedy (not including the review procedure of the Supreme Court as extraordinary legal remedy) have already been exhausted or legal remedy is not possible.

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.?

A constitutional complaint may be submitted to the Constitutional Court if the possibilities for legal remedy (not including the review procedure of the Constitutional Court as extraordinary legal remedy) have already been exhausted or legal remedy is not possible.

6) Are there some grounds/arguments precluded from the judicial review phase?

Explicitly not, however the constitutional complaint must be based on the fact that the fundamental rights of the complainant were violated.

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

In accordance with the basic principles of court proceedings, all clients have equal rights and the court must adjudge the dispute in fair, concentrated and cost-effective proceedings.

8) How is the notion of “timely” implemented by the national legislation?

The Constitutional Court must decide on constitutional complaints within a reasonable time. In practice, it is not uncommon for proceedings of the Constitutional Court to take years.

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?

No injunctive relief is available.

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 Constitutional Court examines whether the rights enshrined in the Fundamental Law were violated, which may include infringement of both procedural and substantive norms.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to Implement EU environmental legislation and related EU regulatory acts[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 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?
Similar to the cases covered by Chapters 2.2 to 2.4, executive regulations and/or generally applicable legally binding normative instruments – as legal measures or public administrative measures without legal force – can be challenged by a constitutional complaint lodged with the Constitutional Court if the conditions stipulated by the Act on the Constitutional Court are met. A person or organisation affected by a concrete case may submit a constitutional complaint to the Constitutional Court if, due to the application of a legal regulation contrary to the Fundamental Law in their judicial proceedings their rights enshrined in the Fundamental Law were violated, and the possibilities for legal remedy (not including the review procedure of the Supreme Court as extraordinary legal remedy) have already been exhausted or legal remedy is not possible.

By exception, Constitutional Court proceedings may also be initiated if, due to the application of a legal provision contrary to the Fundamental Law, or when such legal provision becomes effective, rights were violated directly, without a judicial decision, and there is no procedure for legal remedy designed to repair the violation of rights, or the petitioner has already exhausted the possibilities for remedy. In these proceedings, the Constitutional Court may also examine the constitutionality of a judicial decision.

The Constitutional Court will admit constitutional complaints if a conflict with the Fundamental Law significantly affects the judicial decision, or if the case raises constitutional law issues of fundamental importance.

Constitutional complaints may be submitted within 60 days of receipt of the contested decision, or within 180 days of entry into force of the legal regulation contrary to the Fundamental Law. If the decision is not communicated, the time limit for submitting constitutional complaints will be 60 days from the date of becoming aware of the decision or from the date of the violation of rights guaranteed by the Fundamental Law. The Constitutional Court may also rule on constitutional complaints that were submitted after the time limit due to the submitter’s inability to submit the complaint due to a circumstance beyond their control, providing that the petitioner submits an application for extension along with the complaint within 15 days of the termination of the obstacle. However, no Constitutional Court proceedings may be initiated 180 days after the communication of the decision, the violation of the right guaranteed by the Fundamental Law and entry into force of the legal regulation that is contrary to the Fundamental Law.

The Constitutional Court must decide on constitutional complaints within a reasonable time. In practice, it is not uncommon for proceedings of the Constitutional Court to take years.

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 Constitutional Court examines whether the rights enshrined in the Fundamental Law were violated, which may include infringement of both procedural and substantive norms.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

A constitutional complaint may be submitted to the Constitutional Court if the possibilities for legal remedy (not including the review procedure of the Supreme Court as extraordinary legal remedy) have already been exhausted or legal remedy is not possible.

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.?

A person or organisation affected by a concrete case may submit a constitutional complaint to the Constitutional Court if their rights enshrined in the Fundamental Law were violated.

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?

No injunctive relief is available.

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?

Proceedings of the Constitutional Court are free of charge. The applicant must bear their costs incurred in the course of the proceedings.

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?[7]

National legislation does not provide for legal challenge against EU regulatory acts before national courts.

[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] If at least ten proceedings with an identical legal and factual base commence before the court, the court may – while providing the parties with a right to make a statement – decide to adjudge one of the cases in a model action and stay the rest of the proceedings until it adopts its decision concluding the proceedings. (Kp. Art. 33(1))

[3] The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.

[4] 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.

[5] 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.

[6] 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

[7] 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

The obligation for administrative authorities to act is stipulated by the Akr. The authority has an obligation to act within its area of jurisdiction in the cases for which it has competence, or on the basis of delegation. If the authority fails to meet its obligation to act within the administrative time limit, the supervisory
body provided will instruct it to carry out the procedure. If there is no supervisory body, or the supervisory body fails to take action, the court of competent jurisdiction in administrative actions will order the authority to carry out the procedure. Such petition of claim can be submitted by any natural or legal person whose rights or lawful interests are directly affected by the omission of the environmental authority.

There are cases in which the authority may exercise the right to remain silent. This means that the client is considered to have been authorised to exercise the right asserted if the authority decided not to adopt a resolution within the prescribed administrative time limit. The right to remain silent may be exercised in automated decision-making processes if not precluded by law, or in other cases if it is expressly ordered by law.

The decisions of the courts and other judicial forums are executed by judicial enforcement proceedings in accordance with the Act on Judicial Enforcement[1]. In the course of judicial enforcement, executive force may be employed to order a party compelled to pay money or undertake some other conduct to fulfill such obligation. The enforcement order may be issued if the writ of execution contains an obligation (ruling against the judgment debtor), if it is final, definitive or subject to preliminary enforcement, and the resolution of the public prosecutor’s office and/or the investigating authority is not subject to further remedy, and the deadline of performance has expired.

The court will impose a fine on the debtor or the person or organisation obliged to participate in the enforcement procedure for contempt, for failure to meet the obligations in connection with enforcement or for engaging in any conduct aimed at obstructing the authority carrying out the enforcement procedure. The fine for contempt may not exceed the enforceable amount. No fine for contempt may be imposed for the sole reason of the judgment debtor’s failure to comply with their obligation prescribed in the enforcement order.


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Access to justice in environmental matters - Malta

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
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. 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

Maltese law is what is known as a mixed legal system (mainly based on continental Civil Law, but with influences from the Common Law tradition). Maltese law has its roots in Roman law, whilst public law has been greatly influenced by British law. The sources of Maltese law are the Constitution, the Codes, the Acts of Parliament, subsidiary legislation that may be published under such Acts, directly applicable EU legislation as well as ratified international conventions. The courts in Malta are categorised as Superior or Inferior Courts, and there is a distinction between civil and criminal courts. The Superior Courts are made up of the Constitutional Court, the Court of Appeal, the Court of Criminal Appeal, the Criminal Court and the Civil Court. The Inferior Courts are the Courts of Magistrates (Malta) and the Court of Magistrates (Gozo). The latter court has both a superior and an inferior jurisdiction. The Constitutional Court, which may be regarded as the highest court in Malta, hears and determines specific disputes including the human rights cases. All cases relating to violations of human rights are heard before the Civil Court, First Hall and the Constitutional Court (the ‘Civil Court (Constitutional Jurisdiction)’) may then act as a court of last instance. The Judiciary is composed of two offices:

- Judges who preside over the Superior Courts, and the magistrates who preside over the inferior courts and conduct criminal inquiries.
- The criminal or civil action is brought before the relevant Courts of First Instance. In general, parties to the dispute may appeal against the decision of the Courts of First Instance.

The main entity that regulates environmental matters is the Environment and Resources Authority (ERA). Decisions by other authorities, such as the Planning Authority, may also have direct or indirect effect on the environment. Historically these authorities had formed one authority, the Malta Environment and Planning Authority (MEPA), however the demerger ensures that the functions and roles of each entity are separate, and each is regulated by its own piece of legislation.

The Environment and Resources Authority (ERA) is the competent authority responsible for environmental protection under the Environmental Protection Act (Chapter 549). Its mission is to safeguard the Maltese environment for a sustainable quality of life. The goals of the ERA are: to mainstream environmental targets and objectives across Government and society; to take a leading role in advising Government on environmental policy-making at the national level, as well as in the context of international environmental negotiations; to develop evidence-based policy backed by a robust data gathering structure; and to draw up plans, provide a licensing regime and monitor activities having an environmental impact and to integrate environmental considerations into the development control process. The Environmental Protection Act (Chapter 549 of the Laws of Malta) is the main legal provision which regulates the operations of the ERA.

The Planning Authority (PA) carries out and monitors the permit granting process for development applications and also has a policy-making function in the land-use sphere. The PA is regulated by the Development Planning Act (Chapter 552 of the Laws of Malta).

Access to justice in environmental matters is provided mainly through the Environment and Planning Review Tribunal (EPRT), which was first established in 2010. The Tribunal is regulated through the Environment and Planning Review Tribunal Act (Chapter 551 of the Laws of Malta). Chapter 551 distinguishes between decisions made by the Environment and Resources Authority (ERA), and the Planning Authority (PA). The decisions taken by the PA which can be appealed before the EPRT are listed in Article 11 of Chapter 551.
With regard to decisions taken by the ERA, Article 47 of Chapter 551 and Article 63 of the 7th Environmental Protection Act (Chapter 549), provide the right for an aggrieved person to challenge such decisions before the EPRT. Notably, for appeals lodged by a person other than the applicant, such a person need not prove that he has an interest in that appeal in terms of the doctrine of juridical interest, but he is required to submit reasoned grounds based on environmental considerations to justify his appeal.

In all cases, the definition of a ‘person’ includes an association or organisation, whether registered as a legal person or not, including NGOs.

The Court of Appeal is the judicial body which decides on appeals against decisions of the EPRT.

The Courts of Civil Jurisdiction (the First Hall of the Civil Court) can rule on another form of review, namely judicial review of administrative actions filed under Article 469A of the 7th Code of Organisation and Civil Procedure (Chapter 12). The latter allows the courts of civil jurisdiction to enquire into the validity of any administrative act or declare such an act null, invalid or without effect, only in cases where the act is in violation of the Constitution of Malta, or when it is ultra vires on the grounds specifically contained in subsection (1)(b) of Article 469A.

The Constitutional Court has both an original and an appellate jurisdiction. As an appellate court it hears appeals against decisions of other courts on questions relating to the interpretation of the Constitution and on the validity of laws, as well as appeals against decisions on alleged violations of fundamental human rights. As a court of original jurisdiction, the Constitutional Court decides questions concerning the validity of the election of members of the House of Representatives, the requirement in certain cases for a member to vacate his seat in the said House, and the validity of the election of the Speaker from among persons who are not members of the House. As a court of original jurisdiction, the Constitutional Court also decides questions concerning the validity of general elections, including allegations of illegal or corrupt practices or foreign interference in such elections. No appeal lies from a decision of the Constitutional Court given in its original jurisdiction.

Certain subsidiary legislation also provides for access to justice with regard to specific matters, such as the 7th Freedom of Access to Information on the Environment Regulations (S.L. 549.39) which provide for two forms of appeal for an applicant who requested environmental information and was dissatisfied with the response. The applicant may appeal to the Information and Data Protection Commissioner as per regulation 12, or to the EPRT as per regulation 11A. In the latter case, the Tribunal is obliged to hold its first hearing within six working days from receipt of the appeal.

2) Constitution – main (content of + including references) provisions on environment and access to justice in the national constitution (if applicable) including procedural rights

The Constitution contains a declaration of principles which includes reference to the State’s obligations to protect and conserve the environment and its resources for the benefit of present and future generations, to prevent environmental degradation and to promote, nurture and support the right of action in favour of the environment[1]. However, in accordance with Article 21 of the Constitution, this is not justiciable. Article 33 of the Constitution protects the right to life of every citizen as a fundamental human right. The wording of the provision is wide and can be interpreted to include the right to a healthy environment as an aspect of the right to life. As yet there has been no legal challenge to this provision to confirm its interpretation in the sense that the right to life includes the right to a healthy environment. Article 41 also provides for the right to freedom of expression, including also freedom to receive ideas and information without interference. Article 46 provides for the right to file a constitutional case against the government when a violation of human rights is alleged. The Constitution contains provisions ensuring procedural rights such as the requirement of impartiality of tribunals deciding upon civil rights (including environmental rights).

The Constitution also includes the right to be given a fair hearing within a reasonable time. This incorporates safeguarding of the principles of natural justice. Furthermore, there is a Constitutional provision[2] which allows for the filing of a class action known as the “actio popularis” where a law may be challenged as being invalid for reasons of public interest. An example of such a case would be one where an allegation is made that a law was not regularly approved by Parliament or the relevant minister according to its procedural norms.

3) Acts, Codes, Decrees, etc. - main provisions on environment and access to justice, national codes, acts

Under the Maltese national order, there are five main routes whereby individuals, associations or NGOs can have access to justice in the environmental field. These are the following:

Access to information;
Public participation in decisions relating to the environment;
Right of appeal for decisions relating to the environment;
Right of action for Judicial Review of acts or omissions of authorities;
Right of action for the declaration of the invalidity of a law.

The relevant pieces of legislation which provide for access in this manner are listed below and are broadly grouped in relation to the above-cited categories (though the scope of some will overlap):

General
The Environmental Protection Act (Chapter 549) and the Development Planning Act (Chapter 552)
Access to Information
The Freedom of Access to Information on the Environment Regulations (S.L. 549.39)
The Freedom of Information Act (Chapter 496)
Public Participation
The Environmental Impact Assessment Regulations (S.L. 549.46)
The Strategic Environmental Assessment Regulations (S.L. 549.81)
The Industrial Emissions (Integrated Pollution Prevention and Control) Regulations (S.L. 549.77)
The Plans and Programmes (Public Participation) Regulations (S.L. 549.41)
The Water Policy Framework Regulations (S.L. 549.100)
The European Pollutant Release and Transfer Register Reporting Obligations Regulations (S.L. 549.47)
The Control of Major Accident Hazard Regulations (S.L. 424.19)
The Development Planning (Procedure for Applications and their Determination) Regulations (S.L. 552.13)
Access to Justice – Appeal and Judicial review
The Environment and Planning Review Tribunal Act (Chapter. 551)
The Administrative Justice Act (Chapter. 490)
The Code of Organisation and Civil Procedure (Chapter. 12)
The Data Protection Act (Chapter. 586)
Access to Justice - Right of Action for the Declaration of the Invalidity of a Law
The Constitution of Malta
4) Examples of national case-law, role of the Supreme Court in environmental cases

The jurisprudence of the Court of Appeal (as is the case with all judgments) can be found here. The doctrine of judicial precedent does not apply in Malta so jurisprudence has a persuasive but not a binding effect.

The rulings regarding environmental and development cases are those made by the Court of Appeal (Inferior jurisdiction). These are judgments in appeals filed from decisions of the Environment and Planning Review Tribunal (EPRT) and most have the Planning Authority (PA) as a defendant.

The Court of Appeal acts does not re-examine the facts of a case, but only interprets the relevant legal and procedural questions relating to it. \[3\]

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 to administrative procedures may only rely on international agreements when these have been transposed into national law – there is no right of direct recourse.

As per Article 267 of the TFEU, which is applicable in Malta under Chapter 460, a preliminary reference may be requested at any stage of the proceedings, but if it is made at the appeal stage then the national court cannot reject it. The procedure is also regulated by Article 21 of the Court Practice and Procedure and Good Order Rules (S.L 12.09).

1.2. Jurisdiction of the courts

1) Number of levels in the court system

The Maltese judicial system is a two-tier system consisting of court(s) of first instance, presided over by a judge or magistrate, and the court(s) of second instance, the court of appeal.

There are also various specialised tribunals that deal with specific areas of the law. There is a right of appeal to the Court of Appeal against decisions of tribunals and awards of arbitrators.

The Environment and Planning Review Tribunal (EPRT) is the tribunal which decides upon appeals against decisions of the Planning Authority and the Environment and Resources Authority. Decisions of the Environment and Planning Review Tribunal are subject to appeal before the Court of Appeal on points of law or any matter relating to an alleged breach of the right of fair hearing before the tribunal (as per Article 50 of Chapter 551).

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)?

The Environment and Planning Review Tribunal (EPRT) Act, Chapter 551, provides that the role of the EPRT is to review ‘the decisions of the Planning Authority and the decisions of the Environment and Resources Authority’, further providing that the EPRT is to exercise any other jurisdiction and function conferred by the Act and any other law. The role of the EPRT is to ‘review’ planning and environmental decisions in terms of law and fact within the parameters set out in the EPRT Act. The decisions of the EPRT are subject to appeal before the Court of Appeal.

The Administrative Review Tribunal is set up by virtue of the Administrative Justice Act (Chapter 490 of the Laws of Malta), for the purpose of reviewing administrative acts. It consists of a Chairperson, who shall be a person who holds or has held the office of a judge or of a magistrate in Malta (Article 8(4) of Chapter 490), appointed for a period of four years by the President of Malta acting on the advice of the Prime Minister. The Tribunal is assisted by two assistants, whom the administrative review tribunal may consult in any case for its decision (Art. 10(1) of Chapter 490) however, the Tribunal is not bound to abide by the opinion given by the assistants (as per Art. 10(2) of Chapter 490). The Tribunal holds sessions in Malta and Gozo.

Administrative acts include the issuing by the public administration i.e. the government of Malta including its Ministries and departments, local authorities and any body corporate established by law of any order, licence, permit, warrant, authorisation, concession, decision or refusal of any demand from a member of the public. Any party to the proceedings before the Tribunal who feels aggrieved by a decision of the said Tribunal may appeal to the Court of Appeal. The Administrative Review Tribunal does not have a general jurisdiction to review administrative acts which are reviewable under Article 469A of the Code of Organisation and Civil Procedure. It only has jurisdiction to review those administrative acts committed by the entities listed in Chapter 490 of the Laws of Malta or any other pertinent law.

The First Hall of the Civil Court has general jurisdiction to decide on actions for judicial review filed under Article 469A of the Code of Organisation and Civil Procedure (Chapter 12). The latter allows the courts of justice of civil jurisdiction to enquire into the validity of any administrative act or declare such act null, invalid or without effect, only in cases where the act is in violation of the Constitution of Malta, or when it is ultra vires on the grounds specifically contained in subsection (1)(b).

3) Specialities as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges

The Environment and Planning Review Tribunal is the specialised environmental tribunal within the Maltese judicial system. It consists of a panel of three (3) members, all of whom are appointed by the President acting on the advice of the Prime Minister. One member within the panel shall be an advocate and the other two members shall be well-versed in development planning and environmental matters respectively. In practice, this usually translates into a panel consisting of an advocate, a planner and an architect. The EPRT may engage experts to assist it in its deliberations.

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.

The Court of Appeal may bring up certain issues of its own motion. These are limited to issues of public order such as those regarding prescription or jurisdiction.

The Environment and Planning Review Tribunal has wider discretionary and own motion powers than the Court of Appeal, as the latter only decides upon points of law raised by the party in its appeal. Besides accepting and/or dismissing appeals, the EPRT has the power to order a change of plans and/or variations to planning and environmental decisions or order the Planning Authority to reconsider and decide the case again.

1.3. Organisation of justice at administrative and judicial level

1) System of the administrative procedure (ministries and/or specific state authorities)

The Environment and Resources Authority is the main regulator on the environment in Malta. The Planning Authority decides on matters which may have an environmental impact (similar to other public authorities such as Transport Malta, Regulator for energy and water services, etc).

The ERA is responsible for various permitting aspects such as waste management, industry and nature protection. Through its permitting system the Authority implements the provisions of the Environmental Protection Act and regulations set out in subsidiary legislation through the industrial, nature and waste management permitting streams using various tools. These tools consist of notifications, clearances, general binding rules, consignment permits for disposal at sea and transfer of hazardous waste, environmental & nature permits, Integrated Pollution Prevention and Control (IPPC) permits, registration of producers and permitting of schemes under Extended Producer Responsibility and Convention on International Trade in Endangered Species (CITES) permits amongst others.

Below is a list of permits by permitting stream:

- Industry-related: IPPC and Environmental Permits for major activities;
- Waste Management: IPPC, environmental permits, consignment permits, transfrontier shipment permits, waste registrations (carriers, brokers, etc), extended producer responsibility scheme permits and producer registrations;
Nature-related: tree and activity permits, CITES permits and clearances, GMOs, invasive alien species;
Discharges to sea: hotels, port facilities, sewage treatment plants;
Other activities: environmental permits and registrations for activities including minor industries, medium combustion plants, fuel stations, and road tankers.
All applications for an Environmental Permit are duly processed in accordance with internal procedures. The Authority’s decisions are communicated only to applicants in writing and are appealable before the Environment and Planning Review Tribunal.
It should be noted that notice of the filing of an application for certain environmental permit is not widely disseminated and that only the relevant decision is published on the ERA website. The public is not given an opportunity to participate in this permitting process, and the right to challenge the issue of the permit is severely hindered by the fact that there is no notification or publication of the permit within a certain time. As a result, constant attention to the ERA website is needed to see when the relevant decision is issued, in order to appeal within the relative time limit.
The Planning Authority (PA) established under the Development Planning Act, 2016 (Chapter 552 of the Laws of Malta) is the national agency responsible for land use planning in Malta. Its functions include the consideration and determination of applications for development and the facilitation and co-ordination of the permit-granting process for projects of common interest. The Planning Authority also has a policy-making function.

2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?
An appeal against decisions of the EPRT may be made to the Court of Appeal on points of law within 20 days from the date of decision by the EPRT. The appellant before the Tribunal and all other persons who participated in the appeal may appeal against decisions of the Tribunal. There is no set time limit for the Court of Appeal to give its judgment.
A request for revocation of a permit issued under the Development Planning Act may be filed with the PA within 5 years of the date of issue of the permit. A ruling for revocation may be filed on grounds of fraud, the submission of incorrect information, error on the face of the record or where public safety is concerned. The decision of the PA regarding revocation may be appealed to the EPRT and thereafter to the Court of Appeal. If the PA refuses to consider the request for revocation, that refusal may be challenged by means of an action for judicial review within six months.
An action for the judicial review of the legality of administrative action (including environmental decisions) may be filed before the First Hall of the Civil Court, which is the court of first instance. Such an action is based on Article 469A of Chapter 12 of the Laws of Malta. It must be filed within a period of six (6) months from the date when the interested person becomes aware or could have become aware of such an administrative act, whichever is the earlier.
There is no set time limit for judgment to be handed down when such an action is filed. The judgment of the First Hall of the Civil Court may be appealed by either party to the Court of Appeal.

3) Existence of special environmental courts, main role, competence
There are no specialised environmental courts in Malta.

4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)
Whilst an action for judicial review challenging the legality of administrative action (including environmental decisions) delivered by competent authorities may be filed before the First Hall of the Civil Court as described above, there is also the possibility of appeal against decisions of the Environment and Planning Authority before the Environment Planning Review Tribunal. Appeals against the decisions of this tribunal may then be made to the Court of Appeal on points of law within 20 days from the date of decision EPRT. The appellant before the Tribunal and all other persons who participated in the appeal may appeal against decisions of the Tribunal.
There is no set time limit for the Court of Appeal to give its judgment.

There is no provision for extraordinary ways of appeal or rules in the environmental sector.
A request for a preliminary reference may be made before courts of all instances, however only a court of last instance is obliged to make the request if it deems it necessary. The preliminary reference procedure may not be used before tribunals – such as the Environment and Planning Review Tribunal.

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?
Under Maltese law, provision for ‘out of court settlements’ procedures is found in:
S.L. 549.127
Article 83 from Chapter 549.

7) How can other actors help (ombudsperson (if applicable), public prosecutor), accessible link to the sites?
The Ombudsman is an independent officer of Parliament whose mandate is to investigate any action taken by or on behalf of any government department or other authority of the Government, any Minister or Parliamentary Secretary and any other public officer and any statutory body and/or partnership or other body in which the Government has a controlling interest or any other body or entity subjected by law to his jurisdiction.
The Ombudsman investigates claims of maladministration, procedural irregularity, injustice or unfairness by such entities. When the Ombudsman’s investigation shows that the complaint is justified, he may recommend that complainant be given adequate redress. However, the Ombudsman’s opinion is persuasive and not enforceable and there are instances when his recommendation is ignored.
The Ombudsman institution in Malta is regulated by the Ombudsman Act which also provides for the appointment of Commissioners for Administrative Investigations in specialised areas of the public administration. One of these Commissioners is tasked with investigating environmental and planning issues.
Filing a complaint with the Ombudsman and/or the Commissioner for the Environment and Planning is free of charge and the anonymity of the complainant is maintained. Own motion investigations by the Office of the Ombudsman can also take place.

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)?
Physical and legal persons, including NGOs, may challenge environmental administrative decisions.
2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?
The rules regarding the possibility of challenging environmental administrative decisions are broadly the same in sectoral legislation.
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.)
In order to appeal against a decision of the Planning Authority to the Environment and Planning Review Tribunal, interested third parties (including NGOs) must have submitted written representations regarding the application for development/environmental permission during the term established by law for the public consultation process.
However, all persons having sufficient interest have access to a review procedure before the Environment and Planning Review Tribunal to challenge the substantive or procedural legality of any decision, act or omission relating to a development or an installation which is subject to an environmental impact assessment (EIA) or an integrated pollution prevention and control (IPPC) permit. This applies even if they have not submitted representations within the term stipulated by law. The concept of “sufficient interest” has been interpreted widely by the Tribunal and the courts, and essentially NGOs or parties who aim to safeguard the environment are assumed to have sufficient interest.
With regard to the possibility of filing actions for judicial review of administrative decisions before the courts, although notionally the requirement of possessing juridical interest still exists, this is no longer interpreted restrictively by the courts insofar as eNGOs are concerned. Recent jurisprudence has seen eNGOs being assumed to have the necessary juridical interest and locus standi. Individuals must show legal interest, which, as defined in jurisprudence, is made up of the following three concurrent characteristics: legitimate or juridical, personal or direct and actual.

The requirement that interest must be legitimate or juridical means that it must be in conformity with the law. The second requisite requires that there must be a determinate and actionable link between the parties to the action and the third requisite implies that the interest must exist at the time of the filing of the action and it cannot be hypothetical.

4) What are the rules for translation and interpretation if foreign parties are involved?

The official language of the courts is Maltese and proceedings are conducted in the Maltese language (Chapter 12 of the Laws of Malta, Code of Organisation and Civil Procedure).

Chapter 189 of the Laws of Malta, the “Judicial Proceedings (Use of English Language) Act, 1965”, deals with cases where one or more parties are English-speaking. In this case, the court may order proceedings to be conducted in English.

Where any party does not understand the language in which the oral proceedings are conducted, such proceedings shall be interpreted to him either by the court or by a sworn interpreter.

Any evidence submitted by affidavit is to be drawn up in the language normally used by the person taking such an affidavit. The affidavit, when not in Maltese, is to be filed together with a translation into Maltese, which must also be confirmed on oath by the translator.

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?

The rules of evidence contained in Chapter 12 require, inter alia, that all evidence must be relevant to the matter at issue between the parties, and that in all cases the court shall require the best evidence that the party may be able to produce.

The parties may also bring forward witnesses, and Chapter 12 holds that all persons of sound mind, unless there are objections against their competency, shall be admissible as witnesses. As a general rule however, hearsay evidence is not permissible[4].

The court may not request evidence on its own motion. However, the court may, at any stage of the examination or cross-examination, put to a witness such questions as it may deem necessary.

2) Can one introduce new evidence?

Evidence can be produced until such time as the party declares that all evidence has been produced. No new evidence or new witnesses may be introduced at the appellate stage, unless the court grants authorisation. The circumstances in which this may be allowed are listed in Article 208 of Chapter 12. This would include circumstances where it is proved on oath or otherwise, that the party submitting the evidence of such a witness had no knowledge thereof, or was unable, by the means provided by law, to produce such a witness in the court of first instance or the evidence of the witness was submitted and disallowed before the court below and the appellate court considers it admissible and relevant; or the appellate court is satisfied of the necessity or expediency of taking the evidence of such a witness.

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts.

Parties to judicial proceedings may request expert opinion from “ex parte witnesses”. However, in terms of Article 563A of Chapter 12, the evidence of ex parte expert witnesses is admissible only if, in the opinion of the court, the witness is suitably qualified in the relevant matter. The party summoning the expert witness has to pay the relevant fees. The court may also request “ex officio” expert witnesses on its own motion.

According to Article 89 of Chapter 12, the Minister responsible for justice may nominate a panel, consisting of however many advocates, legal procurators and other experts he sees fit to call on, to perform the duties of experts in the courts of Malta and Gozo. This list is to be published in the Government Gazette. However, this list of experts includes architects, accountants and traffic experts rather than environmental experts.

The court may refer to these experts or others not on the list. In this case the court will decide which of the parties is to bear the costs and fees for the appointed experts. More specifically, in terms of Article 223(5) of Chapter 12, where an ex parte expert witness is produced by any of the parties in a case, the court in the definitive judgment shall establish a fair amount which can be claimed as costs for the said witness. The court also establishes how the costs are to be apportioned between the parties to the case.

3.1) Is the expert opinion binding on judges, is there a level of discretion?

Judges are not bound by expert opinion.

3.2) Rules for experts being called upon by the court

Where a person is called as a witness, his opinion on any relevant matter on which he is qualified to give expert evidence shall be admissible in evidence only if, in the opinion of the court, he is suitably qualified in the relevant matter.

The parties to the lawsuit may challenge the appointment of the expert on grounds of impartiality.

3.3) Rules for experts called upon by the parties

In the case of an expert witness produced by the parties to a lawsuit, his opinion on any relevant matter on which he is qualified to give expert evidence shall be admissible in evidence only if, in the opinion of the court, he is suitably qualified in the relevant matter.

3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?

Where an “ex parte” expert witness is produced by any of the parties to a case, the court shall in the definitive judgment establish a fair amount which can be claimed as costs for the said witness. In determining the said amount, the court shall take into account the seriousness of the claims and, in the case of an expert witness not resident in Malta, whether local expertise was available, and all the other circumstances of the case. The court shall also establish how the said costs are to be apportioned between the parties to the case. This is also the procedure which is adopted when the court appoints an expert witness of its own motion.

Fees for expert witnesses may be considerable.

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

The Chamber of Advocates is the professional body representing lawyers practising in Malta. Its website includes a “Find a lawyer” function, for lawyers registered with the Chamber. However, the search for lawyers working in the environmental field only produces a list of 6 lawyers, which is relatively out of date, as at least one of these practitioners is now working in another sector.
The Government of Malta’s website, lawyersregister.gov.mt, provides an official list of lawyers with the names and details of warranted lawyers who have consented to have their professional details featured on the Register. This Register can be accessed publicly. However, this list does not provide the specialisation area of each lawyer.

Lawyers who work in the environmental field are usually contacted via one of the several Environmental NGOs active in this sector.

It is not mandatory to be represented by legal counsel.

1.1 Existence or not of pro bono assistance
There are lawyers who assist parties or environmental NGOs pro bono. They are usually referred to by Environmental NGOs.

There is a recently-established Law Clinic whereby law students are supervised by legal practitioners to provide legal advice. This is aimed mostly at third country nationals appealing against asylum law decisions.

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.)
Since the provision of pro bono assistance is relatively informal, applicants should ideally contact one of the NGOs indicated below, providing contact details and the subject of their query.

The Law Clinic may be contacted at the Cottonera Resource Centre by sending an email to crc@um.edu.mt

1.3 Who should be addressed by the applicant for pro bono assistance?
Applicants for pro bono assistance should address the Chairperson or Administrator of the relevant NGO.

2) Expert registries or publicly available websites of bars or registries that include the contact details of experts
There are no expert registries or publicly available websites with contact details of experts in the environmental field. Malta is a very small island and references to experts/practitioners are obtained by word of mouth.

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible
The following are the NGOs which are very active in this field:

Din l-Art Helwa
Friends of the Earth (Malta)
Moviment Graffitti
Futur Ambjent Wieħed: avvchristinebellizzi@gmail.com
Nature Trust Malta
Ramblers Association of Malta
Flimkien Għal Ambjent Aħjar
Birdlife Malta
Bicycle Advocacy Group (BAG Malta)

4) List of International NGOs, who are active in the Member State
The following international NGOs are active in Malta:

Birdlife Malta
Friends of the Earth (Malta)

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 public can challenge decisions of the Environment Resources Authority as well as those of the Planning Authority when it grants planning/development permission.

The deadline for filing an appeal to the Environment and Planning Review Tribunal is 30 days from the date of publication of the decision.

Appeals against decisions which do not need to be published shall be lodged before the Tribunal within thirty days from the date of notification of the decision (Chapter 551 Article 13 of the Laws of Malta)

2) Time limit to deliver decision by an administrative organ
The Environment and Planning Law Review Tribunal is the body which decides appeals against decisions of the Planning Authority and the Environment and Resources Authority.

The time limit within which it has to deliver its decision depends on whether a request for suspension of execution of the decision is filed and upon the type of decision appealed against. The different time limits are listed below:

Time limit when a request for the suspension of the execution of the permit is not requested
In cases where an appeal is lodged but is not accompanied by a request for suspension, the Tribunal shall appoint the day and hour and hold the first hearing for the parties to appear before it, within two months from the lodging of the appeal application.

The Tribunal shall deliver its final decision on the merits of the appeal within one year from the first hearing of the appeal, which period may be extended only once by a further period of six months in exceptional cases, in the interests of justice. This is also the applicable time limit when a request for suspension has been made but not acceded to.

However, this time limit is not really enforceable. The only thing that happens when a final decision is not delivered within the time-frames indicated is that the appeal is assigned by the Secretary to another panel. It is not clear what happens if the second Tribunal panel does not deliver a decision within the time limit.

Time limits when a suspension of the execution of the permit is requested
Where the appeal is accompanied by a request for suspension of execution of a permission, the Tribunal shall notify the parties, hold its first hearing and decide on the request within thirty days from receipt of the appeal application.

The Tribunal may not grant a suspension of execution of a permit in relation to an application for a development which, in the opinion of the Minister responsible for the Planning Authority, is of strategic significance or of national interest, relates to any obligation ensuing from a European Union act, affects national security or affects the interests of the Government and/or other governments. This proviso is not applicable to applications relating to developments or installations which are subject to an environmental impact assessment (EIA) and/or integrated pollution prevention and control (IPPC) matters.

The Tribunal can suspend execution of the permit for one month from the date of the first hearing of the appeal before the Tribunal, in the case of an application subject to an environmental impact assessment (EIA) and/or an integrated pollution prevention and control (IPPC) permit, which in the opinion of the Minister responsible for the Planning Authority is of strategic significance or of national interest, relates to any obligation ensuing from a European Union act, affects national security or affects the interests of the Government and/or other governments.
The Tribunal shall suspend the execution of such a permit for three months from the date of the first hearing of the appeal before the Tribunal in the case of an application other than those described above.

**Time limit for decision on the merits when the execution of a permit has been suspended**
The Tribunal shall, whenever the execution of a permit has been suspended, deliver its final decision on the merits of the appeal:
within three months from the date of the first hearing of the appeal;
within one month from the date of the first hearing of the appeal in the case of an application subject to an environmental impact assessment (EIA) and/or to an integrated pollution prevention and control (IPPC) permit which, in the opinion of the Minister, is of strategic significance or of national interest, relates to any obligation ensuing from a European Union act, affects national security or affects the interests of the Government and/or other governments.

3) **Is it possible to challenge the first level administrative decision directly before court?**
It is possible to challenge a first level administrative decision directly before the courts, when the law does not provide for the possibility of an appeal to the Environment and Planning Review Tribunal under Chapter 551 of the Laws of Malta – as would be the case with certain types of development permits such as development notification orders.

In these cases, an interested third party may lodge an action for judicial review before the Civil Court to ‘enquire into the validity’ or declare such acts null in terms of Article 469A of Chapter 12 of the Laws of Malta due to the fact there is no alternative mode of contestation or of obtaining redress provided elsewhere.

4) **Is there a deadline set for the national court to deliver its judgment?**
There is no deadline for the national court to deliver its judgment.

5) **Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)**
There are time limits within which the relevant appeals or action for judicial review must be filed. However, time limits during the course of the procedure are laid down by the court and are not fixed.

### 1.7.2. Interim and precautionary measures, enforcement of judgments

1) **When does the appeal challenging an administrative decision have suspensive effect?**
An appeal to the Environment and Planning Review Tribunal does not have a suspensive effect. Nor does an action filed in court for judicial review challenging an administrative environmental decision or action. The suspension of the administrative decision must be specifically requested – by means of an application requesting such suspension before the EPRT, and by means of an application for a warrant of prohibitory injunction in the case of court action for judicial review.

2) **Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?**
When filing an appeal against a decision of the Planning Authority to grant planning/development permission one may also file an application for suspension of the execution of the permit. If acceded to by the EPRT, this would suspend execution of the permit only until such time as the EPRT decides upon the appeal – which is at most 3 months.

Similarly, when filing an appeal against a decision of the Environment and Resources Authority, one may also file an application for suspension of the appealed decision. Notably, in the case of an appeal against the approval or partial approval of a potentially irreversible action or an action that may potentially cause significant damage to the environment, the approval may be suspended by the EPRT pending its final decision, if the said Tribunal deems that this would be in the interests of avoiding any likely significant or irreversible effects or implications on the environment or for similarly justified reasons.[5]

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?**
The request for a suspension may only be filed concurrently with the application for appeal filed before the Environment and Planning Review Tribunal. This means it must be filed within 30 days of the date of publication of the decision appealed against.

No other requests for suspension may be filed before the EPRT. As the suspension lapses automatically when the EPRT gives its decision, a situation my arise where the EPRT decides upon the substantive merits of the appeal and decides against the appellants. As the effects of the suspension would have lapsed, the effects of the decision appealed against go into effect unless they are suspended by the filing of an application for a warrant of prohibitory injunction which is acceded to by the court. This results in an anomalous situation where an administrative environmental decision may become executable whilst appeal proceedings before the courts are still ongoing. This may render the court appeal process an exercise in futility, as the decision (which may include a permit for development which is environmentally deleterious and irreversible) would have become executable long before the court can reach its judgment.

According to Chapter 12 of the Laws of Malta (Code of Civil Procedure). The object of a warrant of prohibitory injunction is to restrain a person from doing anything which might be prejudicial to the person suing out the warrant. The court shall not issue any such warrant unless it is satisfied that such a warrant is necessary in order to preserve a right of the person requesting it, and that prima facie such person appears to possess such right.

It should be noted that the application for a warrant of prohibitory injunction may be objected to by the other parties involved in the procedure. The latter may also file requests for revocation of the said warrant or for the appellants to provide security in the event that the warrant can be proven to have been issued on frivolous or vexatious grounds. This can be very daunting for persons or NGOs without sufficient resources.

4) **Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?**
As explained above, there is immediate execution of an administrative decision irrespective of appeal proceedings unless the court accedes to the application for the issue of a warrant of prohibitory injunction filed by appellants.

5) **Is the administrative decision suspended once challenged before court at the judicial phase?**
The administrative decision is not suspended even when challenged before the court, unless the court accedes to the application for the issue of a warrant of prohibitory injunction filed by appellants.

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?**
The only forms of injunctive relief available are those described above – namely an application for suspension of execution of a decision to be filed before the EPRT and/or an application for the issue of a warrant of prohibitory injunction to be filed before the courts.

### 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.**
Subsidiary Legislation 551.01, Environment and Planning (Fees) Regulations, stipulate the fees due to the Registry of the Environment and Planning Review Tribunal in respect of appeals. These are as follows:

<table>
<thead>
<tr>
<th>Type of decision</th>
<th>Appeal fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Against a decision of the PA for a development permission</td>
<td></td>
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</tbody>
</table>
Against a decision of the PA under a development notification order or under a regularisation process or under a planning control application € 150

Against a decision following a request for screening of a proposed development permission € 150

Against any other decision of the PA € 150

Against any decision of the Environment and Resources Authority € 150

If one had to add the professional fees payable to lawyers, architects and other technical experts required to conduct an appeal before the EPRT, one could easily run to some 2500 to 3000 euros in the more straightforward appeals. More complex appeals which would require analysis of environmental assessments and studies and expert opinion would be far more expensive – running to costs of 10,000 euros or more.

The costs of filing an appeal to the court would be 120 euros in Court Registry fees, and a further 7.20 euros for each notification, to which professional fees for legal counsel must be added. These fees could vary widely depending on the complexity of the case and the level of background research required. It would be safe to say that there would be a starting figure in the 1200 euro range for the most simple kind of appeal.

The cost of filing an action for judicial review of administrative acts would be 120 euros in court fees and a further 7.20 euros for each notification, to which professional fees for legal counsel and expert witnesses must be added, for a starting figure which would approach the 3000 euro figure. When the case is terminated, the court registry fees amount to 650 euros.

2) Cost of Injunctive relief/interim measure, is a deposit necessary?

Injunctive relief may be available at 2 stages:

1) When filing an appeal against a decision to grant planning/development permission one may also file an application for suspension of execution of the permit. If acceded to by the EPRT, this would suspend the execution of the permit until such time as the EPRT decides upon the appeal. There is no separate registry fee for filing this application, however fees are payable to the professional practitioner (lawyer/architect) drawing up and filing the application and attending the relative Tribunal hearing to discuss this application. These costs vary depending on the practitioner in question.

No form of deposit is necessary.

2) If the Tribunal rules against the plea to request suspension of the execution of the permit, or rules against the revocation of the permit, then an appellant may file an application for a warrant of prohibitory injunction in the civil courts. This costs 250 to 300 euros in Court Registry fees (depending on the number of parties which have to be notified). The fees due to the legal practitioners (lawyer and legal procurator) drafting and filing the relative application have to be added to this amount. The application for a warrant of prohibitory injunction must be followed by the filing of a lawsuit within 20 days.

No form of deposit is necessary, but if the request for a warrant of prohibitory injunction is not acceded to, the costs and expenses must be paid for by the losing party.

3) Is there legal aid available for natural persons?

Legal aid is available for natural persons under the Maltese legal system. The applicant should apply to the Legal Aid Malta Agency for legal aid.

This is subject to a means test. A person requesting legal aid must also pass the “merit” test and show that he has reasonable grounds for initiating or defending, continuing or being a party to proceedings.

For an applicant to qualify under the means criteria, the person must not possess property of any sort, including disposable money, with a net value above €6,988.12 for the preceding twelve months. Moreover, the applicant’s income should not, for the period of twelve months prior to the demand for the benefit of legal aid, exceed the national minimum wage for persons above the age of 18.

If granted, the legal aid covers expenses related to all court registry and lawyers’ fees until the case procedures have been exhausted. Legal Aid Malta does not cover expenses related to court expert reports.

Although legal aid is available to natural persons who satisfy the means and merit test criteria described above, it is usually withheld in domestic litigation matters and there is no record of it having been availed of in the environmental litigation sector.

Legal Aid Malta is the agency which provides legal aid and pro bono assistance in Malta. In order to qualify for legal aid, an applicant has to pass a means test and a merit test. This is assessed by the agency. Application forms can be filled in at Legal Aid Malta’s office premises or by downloading them from the website indicated below. The contents of the application have to be sworn by the applicant. The request for legal aid may also be made by filing an application before the civil court. The contact details are as follows:

Address
188-189 Old Bakery Street,
Valletta, Malta

Telephone
+356 2247 1500

Email: info.legalaidmalta@gov.mt

Website: http://www.legalaidmalta.gov.mt

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?

Article 926 of Chapter 12 of the Laws of Malta states that companies registered under the Companies Act shall not be entitled to the benefit of legal aid.

There is no specific mention of whether NGOs are eligible to receive legal aid or not. A recent request by an eNGO for legal aid has been turned down.

5) Are there other financial mechanisms available to provide financial assistance?

There are no legally binding financial mechanisms available to provide financial assistance for natural persons, associations, legal persons and/or NGOs to file appeals to the Environment and Planning Review Tribunal or the Court of Appeal or to access justice. This is a severe obstacle to access to justice as appellants must bear Tribunal Registry costs, professional costs, the costs of experts and studies as well as the costs of the other party if they lose the case.

6) Does the ‘loser party pays’ principle apply? How is it applied by courts, are there exceptions?

The court has the discretion to award or apportion costs in any way it deems fit. However, the general principle is that the losing party usually pays costs.

When an appeal is decided upon by the EPRT, and the appeal is upheld, the Tribunal may order that the fees paid for filing the appeal, or part of them, shall be refunded to the appellant. When any interested person, or an environmental NGO, or an external consultant has lodged an appeal before the Tribunal, and the Tribunal finds in favour of any such appellant, the appeal fee paid by the said appellant shall be reimbursed to the appellant in equal proportions by the parties and, for the purposes of this regulation, the Tribunal decision shall be an executive title.

Website: http://www.legalaidmalta.gov.mt

Email: info.legalaidmalta@gov.mt

Telephone +356 2247 1500

Address 188-189 Old Bakery Street,
Valletta, Malta

Telephone +356 2247 1500

Email: info.legalaidmalta@gov.mt

Website: http://www.legalaidmalta.gov.mt
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?
The court apportions costs according to the “loser pays” principle. In certain exceptional cases, such as those where the subject matter of the case is
innovative or complex, the court may decide not to apportion costs in this manner. However, this is entirely at the court’s discretion.

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?
The Environmental Resources Authority (ERA) is the main entity which publishes information regarding environmental access to justice. Some
environmental information relating to planning applications is available on the PA’s website. However, it should be noted that this is only
rudimentary information about the individual planning applications. More detailed information may only be obtained by registration on the PA’s E-App system.

2) During different environmental procedures how is this information provided? From whom should the applicant request information?
Information regarding access to justice is provided in different ways under different environmental procedures which are described below.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?
Planning Authority (PA)
The PA is regulated by the Development Planning Act (Chapter 552 of the Laws of Malta) which incorporates the obligations found in the Aarhus Convention
by providing for public access and dissemination of information on the environment, facilitating the participation of the public in decisions which affect
the environment, and containing specific provisions on access to justice. The Development Planning Act provides for public participation in decision-making for any development, whether it requires an environmental impact assessment (EIA) or not. In particular the Development Planning (Procedure for Applications and their Determination) Regulations 2016 provide more
detailed provisions regarding public participation where development applications, planning regularisation procedures and summary planning procedures are
concerned.

For the regularisation procedure (which does not require an EIA), an application needs to be submitted, which is published in the Government Gazette, and
is subject to public consultation. With respect to the summary procedure, applications are published in the Government Gazette and on the Department of Information website, and on a site
notice affixed to the site, and the public is allowed to submit any comments/objections generally within 15 days. As regards planning applications, the Development Planning (Procedure for Applications and their Determination) Regulations 2016 oblige the Executive
Chairperson (established under the Development Planning Act) to ensure that information about the applications are available online and at the actual site at
an early stage in order to allow for members of the public to make representations.

Article 72(2) of the Development Planning Act states that in its decision on an application for development permission, the Planning Board shall have regard
to representations made in response to the publication of the development proposal. According to Article 71(8) of the Development Planning Act and regulations 5(4) and 12(6) of the Development Planning (Procedure for Applications and their Determination) Regulations, 2016), when material changes in the application are proposed, or fresh/revised drawings or documents are submitted, those
who had previously made representations on the original proposal are informed and are allowed to make comments.

EIA
The Environmental Impact Assessment Regulations (EIA Regulations) (S.L. 549.46) enacted under the Environment Protection Act call for public
participation in the EIA process as explained below.

Under the said regulations there are various opportunities for public participation, e.g. at the scoping stage and at the review stages of the process. Members
of the public are allowed 30 days to submit any issues they wish to see included in the EIA Terms of Reference. Another 30 days are given to the public
to comment on the EIA Report, once this is submitted to the Authority for review. A public meeting is held for Category I projects. The public is to be informed at least 15 days before the date of the public hearing about their right to attend
and make comments on the proposals during the meeting itself as well as written submissions up to 7 days after the meeting. The public will be informed of
the date, time and place of the hearing through a publication in a local newspaper, in Maltese and English, as well as on Authority’s website. All
submissions and comments by the public are to be collated in a report by the ERA and referred to the EIA coordinator for a response. The coordinator’s
responses are referred to the ERA and are included as an Addendum to the EIA Report. At this stage, the EIA Report may be further revised should there be
any material considerations.

For the comments to be included in this report, these have to reach the ERA by the stipulated deadline. The final assessment by the ERA is made publicly available on the website of the Authority. This report is also referred to the permitting authority.

Regulation 30 of the EIA Regulations obliges the competent authority to inform the public of a decision taken regarding the application – including the content
of the decision, any conditions, and main reasons and considerations on which the decision is based, including information about the public participation
process. The EIA Regulations also provide scope for updating an EIA or undertaking a fresh assessment (regulation 24(3)), if there are any requested changes or
extensions to a development which would result in significant adverse effects on the environment. In this regard, the normal procedures in the EIA
Regulations would apply, including a public consultation. In accordance with regulation 34 of the EIA Regulations, aggrieved persons may file appeals before the EPRT to challenge a decision, act or omission related to any matter regulated under the EIA regulations.
IPPC
The Industrial Emissions (Integrated Pollution Prevention and Control) Regulations (S.L. 549.77) (Industrial Emissions (IPPC) Regulations) provides for public participation with regard to the permitting of installations.

Regulation 18 of these regulations states that the Environment Resources Authority (ERA) must ensure that the public concerned are given early and effective opportunities to participate. Details of the public participation procedure are then provided in Schedule 4.

According to Schedule 4 of the Industrial Emissions (IPPC) Regulations (S.L. 549.77), the public consultation process shall be initiated through a notice in at least one local newspaper and on ERA’s website.

The periods for public consultation applicable to installations covered by the Regulations shall be thirty days for the procedures described in Regulation 18(1) (a) to (d) and which relate to the granting, upgrading and reconsideration of permits. The public consultation period shall be 15 days in all other cases where the competent authority deems consultation to be necessary, with the proviso that where the application for reconsideration of a permit in accordance with Regulation 18(1)(e) includes a request for a substantial change, the timeframe for public consultation shall be 30 days.

Moreover, the ERA may also require the operator to organise one or more public meetings as part of the public consultation process.

Under the Industrial Emissions (IPPC) Regulations, regulation 18 states that the reasons on which the decision is based must be published, and these would include an explanation of how the results of public consultation were taken into account, as well as more technical points as listed in regulation 18(2).

The above-mentioned rules relating to the Industrial Emissions (IPPC) Regulations apply to a decision on granting, reconsidering or updating a permit.

A change in the operating conditions of IPPC installations requires a variation of the permit, which in turn requires public consultation procedures as regulated by the Industrial Emissions (IPPC) Regulations.

In accordance with regulation 20 of the IPPC Regulations, members of the public concerned having a sufficient interest shall have access to a review procedure before the EPRT to challenge the substantive or procedural legality of decisions, acts or omissions subject to regulation 18 of the IPPC Regulations. Notably, the interest of any NGO promoting environmental protection and meeting any requirements under national law shall be deemed sufficient. Under this regulation the competent authority (ERA) is also obliged to ensure that practical information is made available to the public on access to administrative and judicial review procedures.

Plans and Programmes
The public is given the opportunity to participate in the preparation of plans, programmes and policies relating to the environment by virtue of the following pieces of legislation: the Environment Protection Act (Chapter 549 of the Laws of Malta), the Development Planning Act (Chapter 552 of the Laws of Malta), the Strategic Environmental Assessment Regulations (SEA Regulations) (S.L. 549.61), and the Plans and Programmes (Public Participation) Regulations (S.L. 549.41).

The relevant definitions in Directive 2003/4/EC have been transposed through these Acts and Regulations, and they are all non-discriminatory as they provide all members of the public with equal rights of participation.

Under the Environmental Protection Act, the ERA is required to draw up the National Strategy for the Environment as per Article 45, which is a strategic governance document setting the policy framework for the preparation of plans, policies and programmes issued under this Act or under any other Act for the protection and sustainable management of the environment. During the preparation or review of the Strategy, the Minister responsible for the environment shall make known to the public the matters intended for consideration and shall provide adequate opportunities for individuals and organisations to make representations (within a time frame of at least six weeks). The Strategy, together with a statement of the representations received and the responses made to those representations, is then published.

The ERA may also publish subsidiary plans, defined as: a plan that deals with a specific environmental policy or matter setting out detailed specifications for its implementation, as per Article 48; as well as more detailed plans and policies as per Article 50.

In preparing or reviewing such plans, the ERA must inform the public of the matters it intends to consider and provide for public consultation on such preliminary issues. Public consultation is also provided for after the draft plan has been prepared and published (for a period of at least six weeks). The plan is formally adopted by the ERA after taking into consideration all the representations submitted to it.

The Development Planning Act contains similar provisions as regards the preparation of the Spatial Strategy for Environment and Development (SPED) and other subsidiary plans.

The former is a strategic document regulating the sustainable management of land and sea resources covering the whole territory and territorial waters of the Maltese islands; whilst the latter include subject plans, local plans, action plans or management plans and development briefs. Articles 44 and 53 of the Development Planning Act state that public consultation must be provided for during the preparation of the plan, as well as after the draft has been published in a similar manner as that described above.

Provisions for public participation are also included in the SEA Regulations (S.L. 549.61) for plans and programmes undertaken by public authorities which are likely to have significant environmental effects. The above Regulations define “the public” as one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups. In addition, the said Regulations define “make available to the public” to mean publishing in the Government Gazette or in at least one daily newspaper, in English and in Maltese, a notice indicating where the document may be viewed or obtained; the price of the said document shall not exceed the cost of its printing and distribution. This with a view to ensuring access to documentation to all interested stakeholders without any barriers.

According to these Regulations, there are opportunities for the public to be constantly informed and to comment during the Strategic Environmental Assessment (SEA) process. Responsible authorities are obliged to ensure that their conclusions on the need or otherwise for a SEA are made available to the public. Moreover, legislation also requires that the draft plan or programme and the environmental report prepared are made available to the public. In so doing, the public is given an early and effective opportunity within an adequate time-frame, which shall not exceed sixteen weeks from the publication of the plan or programme and its environmental report, to express its opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or programme or its submission to the legislative procedure.

In order to reach out to the public affected or likely to be affected by, or having an interest in, the decision-making (e.g. those promoting environmental protection and other organisations concerned), the notice of availability of the plan or programme and the environmental report shall be published in at least the Government Gazette together with specific details of where the documentation is available and how comments can be submitted and by which date.

As a matter of good practice, responsible authorities are also advised to make the Scoping Report available to the public and interested stakeholders. In concluding the SEA process and communicating the decisions taken, the responsible authority is obliged to ensure that, when a plan or programme is adopted, the public is informed and the following items are made available:

- the plan or programme as adopted;
- a statement summarising how environmental considerations have been integrated into the plan or programme and how the environmental report prepared, the opinions expressed and the results of consultations have been taken into account and the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with;
the measures that have been decided concerning monitoring. In addition to the above, the Plans and Programmes (Public Participation) Regulations (S.L. 549.41) provide for public participation in the drawing up of specific plans and programmes that relate to waste, water and air as specified in the Schedule therein. The competent authority (ERA) must ensure that the public is given early and effective opportunities to participate in the preparation, modification or review of the specified plans or programmes. The ERA must take into account the results of the public participation when making its decision and must inform the public of the final decisions along with the reasons and considerations upon which those decisions are based, including information about the public participation process.

4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment?

When the Planning Authority makes a decision regarding development applications, regulation 13 (7) of the Development Planning (Procedure for Applications and their Determination) Regulations, 2016 (S.L. 552.13) stipulates that the decision notice is to be communicated to the applicant, the architect, external consultees, any other consultees and any registered interested party, within fifteen days from the date of the decision. Article 33 of Chapter 552 obliges the PA to provide the parties with detailed information about the right to submit an appeal and the applicable legislation regulating the filing of appeals and applicable time limits.

With regard to decisions of the Environment and Planning Review Tribunal, a notice of the date of reading of the decision is usually sent to the interested parties in the appeal. This is not sent by registered post so there may be (and have been) cases where notification is not confirmed. The decision of the EPRT is read in public and a hard copy of the decision is given to the parties in the case. The decision does not contain any reference to modes of appeal.

5) Is translation, interpretation provided to foreign participants? What are the rules applicable?

The working language of the Environment and Planning Review Tribunal is Maltese, and the decisions are likewise published in Maltese. However, in line with Article 21 of Chapter 12 and Article 12 of Chapter 551, where any party does not understand the language in which the proceedings are conducted, such proceedings shall be interpreted to him/her.

1.8. Special procedural rules


Country-specific EIA rules related to access to justice

1) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

The Environment and Resources Authority (ERA) is the competent authority for the Environmental Impact Assessment (EIA) process, which is regulated by the Environmental Impact Assessment Regulations (S.L. 549.46).

Schedule I of the EIA Regulations contains a list of development projects which may qualify for an EIA. A detailed list of criteria can be accessed on the ERA website. Once a project is deemed to fall under Schedule I, a Project Description Statement (PDS) is requested in line with the criteria laid down in Schedule II of the EIA Regulations (S.L. 549.46).

If a development proposal falls under Category I of Schedule I of the EIA Regulations (S.L. 549.46), the EIA process will commence immediately, following the submission of the PDS. Should the proposal fall under Category II, a detailed EIA screening is carried out in accordance with Schedule III of the same Regulations to identify whether the proposal is likely to have any significant impacts arising from the same proposal. If the detailed screening does not envisage any significant environmental effects, the proposal would not require the submission of an EIA Report. Should significant impacts be identified in the EIA screening document, the proposal would qualify for further EIA studies through the request on an EIA Report. There is no public participation in the EIA screening process.

2) Rules on standing related to scoping (conditions, timeframe, public concerned)

In the case of EIAs, the ERA Regulations (S.L.549.46) in Malta provide an opportunity for public participation at the scoping stage. According to regulation 16 (2), Government entities, local councils responsible for the localities where the project is proposed to be sited, other local councils that may be affected, as well as the public (including NGOs), are invited by the competent authority (ERA) to make recommendations and ancillary reasoned justifications, within 30 days, on any relevant matters that they wish to see included in the EIA Terms of Reference (TOR). The TOR, which are tailor-made to the project, will determine the content of the EIA Report.

The developer is responsible for appointing an EIA coordinator and independent consultants to undertake the necessary studies and assess the likely impacts of the environmental parameters identified in the EIA TORs. The EIA findings are then incorporated through the preparation of an EIA Report. This is a coordinated report prepared by an independent EIA coordinator and a team of individual independent consultants. This report consists of a coordinated assessment, technical appendices containing the specialised studies and a non-technical summary. Once the EIA Report is complete, the developer is responsible for publishing a notification in local newspapers to inform the public that an EIA Report has been submitted to the ERA and is available for public consultation. A digital copy of the EIA is made available on the Authority’s website for a 30-day consultation period. In the meantime, consultation is also undertaken with entities of Government, the local council(s) and NGOs. Comments made by the ERA and the consultees, including the public, are referred to the EIA coordinator for a reply.

For Category I projects, a public hearing is organised by the developer within or after the 30-day consultation period stipulated above. All comments made during the public hearing and its subsequent consultation period are referred to the EIA coordinator for a reply.

At the stage, any necessary revisions are made in the EIA Report, as relevant either through the re-submission of a new EIA report or an Addendum. At the end of the process, the ERA prepares a report based on the EIA findings together with a recommendation. This report feeds into the overall decision-making process whereby a decision is taken with regard to a proposed development permit application. Should the development be approved, this would be subject to specific conditions and post-permit monitoring.

3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?

In accordance with regulation 34 of the EIA Regulations, aggrieved persons may file appeals before the EPRT to challenge a decision, act or omission related to any matter regulated under the EIA regulations. In Chapter 551 of the Laws of Malta, Article 47 also provides for an appeal to the EPRT. According to this, ‘any person may appeal any decision of the Environment and Resources Authority only in relation to environment assessments, access to environmental information and the prevention and remedying of environmental damage’.

An appeal to the EPRT may be filed on any ground including:

- that a material error as to the facts has been made;
- that there was a material procedural error;
- that an error of law has been made;
- that there was some material illegality, unreasonableness, ineffective or insufficient consideration of adverse effects, or lack of proportionality.
According to law, an appeal should be lodged before the EPRT within thirty days from the date of publication of the decision on the Department of Information website. In cases concerning appeals against decisions which do not need to be published, appeals shall be lodged before the EPRT within thirty days from the date of notification of the decision.

4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO?
The EIA is not a permit or an authorisation. However, in accordance with regulation 34 of the EIA Regulations, aggrieved persons may file appeals before the EPRT to challenge a decision, act or omission related to any matter regulated under the EIA regulations, and furthermore, Article 47 of Chapter 551 may be invoked to challenge any decision relating to the EIA by appealing to the EPRT. According to this, any person may appeal any decision of the Environment and Resources Authority only in relation to environment assessments, access to environmental information and the prevention and remediation of environmental damage. This right of appeal to the EPRT shall be available to any party aggrieved by the decision without the need to prove its interest in the matter.

The final result of the EIA process is the publication of an EIA report which is to be taken into consideration in the decision-making process relating to the development consent or permit applied for. The development consent or permit is ultimately decided upon by the relevant permitting authority in Malta (which is the public authority responsible for issuing, refusing or otherwise regulating the development consent in question) e.g. the PA. Therefore if individuals and/or NGOs, including foreign NGOs, wish to challenge the EIA process as described above, they may resort to regulation 34 of the EIA Regulations. If the applicant, members of the public, NGOs or interested third parties wish to challenge the development consent or permit issued by the permitting authority, one must have regard to the legislation regulating the development process or regulating the permitting authority in question. For instance, in those cases where the permitting authority is the PA, Article 11(e) of Chapter 551 is applicable, which provides the opportunity for an appeal of the decision to the EPRT.

5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?
An action for judicial review of the legality of administrative action, decisions or omissions in the EIA process may be filed before the First Hall of the Civil Court (which is the court of first instance). Such an action would be based on Article 469A of Chapter 12 of the Laws of Malta, and must be filed within a period of six (6) months from the date when the interested person becomes aware or could have become aware of such an administrative act, whichever is the earlier.

The court may not initiate such proceedings on its own motion.

6) At what stage are decisions, acts or omissions challengeable?
As stated above, an appeal to the EPRT from administrative decisions, acts or omissions must be filed within 30 days of publication or notification. An action for judicial review within the Civil Court must be filed within a period of six (6) months from the date when the interested person becomes aware or could have become aware of such an administrative act, whichever is the earlier.

7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
Redress by means of judicial review is only available when ‘the mode of contestation or of obtaining redress, with respect to any particular administrative act before a court or tribunal is not provided for in any other law.’ This means that the remedies of before the EPRT and an appeal against the EPRT’s decision to the Court of Appeal, if relevant, must have been availed of beforehand.

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 7?
In order to have standing before the EPRT to appeal decisions of the ERA, no prior participation is formally required, however the Tribunal may consider the lack of participation in its decision. However in order to have standing before the EPRT to challenge certain decisions of the PA, prior participation in the form of registration as an interested third party is at times required. In terms of standing before the Civil Courts, no prior participation is required, but legal interest must be proved.

9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
Chapter 551 of the Laws of Malta states that the EPRT is to adhere to and apply the principles of good administrative behaviour and respect the parties’ right to a fair hearing, including the principles of natural justice, namely: (i) nemo judex in causa sua, and (ii) audi et alteram partem. The EPRT is to ensure procedural equality between the parties to the proceedings. Each party is to be given an opportunity to present its case, whether in writing or orally, or both, without being placed at a disadvantage. These principles are enshrined in the Maltese Constitution and observed by the courts.

10) How is the notion of “timely” implemented by the national legislation?
Chapter 551 of the Laws of Malta stipulates that the EPRT is to reach its decisions in a timely manner. However, in the case of appeals against decisions of the ERA to the EPRT, there are no time limits stipulated within which the EPRT must make its decision. There is no time limit stipulated at law within which the courts must make its judgment.

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?
With regard to appeals against decisions taken in the course of the EIA process, the effect of a decision shall not be suspended simply because an appeal has been lodged, unless the EPRT or the Court of Appeal, as the case may be, so orders. In the case of an appeal against the approval or partial approval of a potentially irreversible action or an action that may potentially be of significant damage to the environment, the approval may be suspended by the EPRT pending a final decision by the EPRT if the said EPRT deems that this would be in the interests of avoiding any likely significant or irreversible effects or implications on the environment or for similarly justified reasons. Injunctive relief must be requested by means of an application requesting suspension of the execution of the administrative environmental decision filed with the EPRT concurrently with the application for appeal or by means of an application for the issue of a warrant of prohibitory injunction filed before the courts, as the case may be.

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
S. L. 549.77 Industrial Emissions (Integrated Pollution Prevention and Control) Regulations state that the competent authority shall ensure that practical information is made available to the public on administrative and judicial review procedures.

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?
According to regulation 20 of S. L. 549.77 Industrial Emissions (Integrated Pollution Prevention and Control) Regulations, members of the public concerned having sufficient interest shall have access to a review procedure before the Environment and Planning Review Tribunal to challenge the substantive or procedural legality of decisions, acts or omissions subject to regulation.

An appeal may be lodged before the Tribunal within thirty days after a decision has been made on granting, reconsidering or updating of a permit.

For the purposes of these regulations, the interest of any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed sufficient.
Moreover, Chapter 551 entitles all persons having sufficient interest to have access to a review procedure before the EPRT to challenge the substantive or procedural legality of any decision, act or omission relating to a development or an installation which is subject to an environmental impact assessment (EIA) or an integrated pollution prevention and control (IPPC) permit. A party may also file an action for judicial review challenging an administrative act within 6 months of the date of commission of the said act or omission, or within six months of when the party became aware of it – whichever is the earlier. In order to have standing, the party filing such an action must have sufficient interest. This has been interpreted widely by the Maltese Tribunal and the courts, in relation to NGOs with aims of safeguarding the environment. They are assumed to have sufficient interest. Individuals have to prove personal and direct interest.

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

There is no opportunity for public participation in the screening phase. However, members of the public concerned having sufficient interest shall have access to a review procedure described above to challenge the substantive or procedural legality of decisions, acts or omissions made at this stage.

4) Rules on standing relating to scoping (conditions, timeframe, public concerned)

The opportunity for public consultation is provided for during the permitting stage. This is explained in the answer to 1.7.4.2. Members of the public concerned having sufficient interest shall have access to the review procedure described above to challenge the substantive or procedural legality of decisions, acts or omissions made at this stage.

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?

As stated above, an appeal to the EPRT against administrative decisions, acts or omissions must be filed within 30 days of publication or notification. An action for judicial review must be filed within a period of six (6) months from the date when the interested person becomes aware or could have become aware of such an administrative act, whichever is the earlier.

6) Can the public challenge the final authorisation?

The public can challenge the final authorisation by means of an appeal filed before the EPRT within 30 days of publication of the decision or of its notification.

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?

An action for judicial review of the legality of administrative decisions (including environmental decisions) may be filed before the First Hall of the Civil Court which is the court of first instance. Such an action is based on Article 469A of Chapter 12. Administrative acts may be challenged when they are in violation of the Constitution, or when they emanate from a public authority that is not authorised to perform them, or when a public authority has failed to observe the principles of natural justice or mandatory procedural requirements in performing the administrative act or in its prior deliberations thereon, or when the administrative act constitutes an abuse of the public authority’s power in that it is done for improper purposes or on the basis of irrelevant considerations; or when the administrative act is otherwise contrary to law. An administrative act includes the issuing by a public authority of any order, licence, permit, warrant, decision, or a refusal of any demand from a claimant.

The court looks into the procedural legality of the act or omission which is being challenged. The court may annul the challenged act or omission and order redress or a remedy, however it may not substitute its discretion for that of the authority which committed the act or omission. The court may act on the advice of experts – appointed by the court itself or summoned as “ex parte” witnesses to assess the reasonableness or soundness of the act or omission which is being challenged, or the prior deliberations made thereon. However, this will only be done to see if the correct, legal procedures and level of care has been abided by, or otherwise. The court may not initiate such proceedings on its own motion.

8) At what stage are those challengeable?

An action for judicial review must be filed within a period of six months from the date when the interested person becomes aware or could have become aware of such an administrative act, whichever is the earlier.

9) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Redress by means of judicial review is only available when ‘the mode of contestation or of obtaining redress, with respect to any particular administrative act before a court or tribunal is not provided for in any other law.’

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., or meaning the requirement determined under point 9?

In order to have standing before the EPRT to appeal decisions of the ERA, no prior participation is required. However in order to have standing before the EPRT to challenge certain decisions of the PA, prior participation in the form of registration as an interested third party is at times required. In terms of standing before the Civil Courts, no prior participation is required, but legal interest must be proved.

11) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

Chapter 551 of the Laws of Malta states that the EPRT is to adhere to and apply the principles of good administrative behaviour and respect the parties’ right to a fair hearing, including the principles of natural justice, namely: (i) nemo judex in causa sua, and (ii) audi alteram partem. The EPRT is to ensure procedural equality between the parties to the proceedings. Each party is to be given an opportunity to present its case, whether in writing or orally, or both, without being placed at a disadvantage. These principles are enshrined in the Maltese Constitution and observed by the courts.

12) How is the notion of “timely” implemented by the national legislation?

Chapter 551 stipulates that the EPRT is to reach its decisions in a timely manner. As explained above (Answer to 1.7.1.2) there are time limits within which the EPRT should reach its decision, however these are not enforceable. There is no time limit stipulated by law within which the court must make its judgment. This leads to a situation whereby the appeal or court action becomes an exercise in futility, as if injunctive relief is not ordered by the EPRT or the court, the effects of the challenged decision become executable whilst the relative legal challenge is still ongoing.

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?

With regard to appeals against decisions taken in the course of granting a permit in the IPPC process, the effect of a decision shall not be suspended simply because an appeal has been lodged, unless the EPRT or the Court of Appeal, as the case may be, so orders.

In the case of an appeal against the approval or partial approval of a potentially irreversible action or an action that may potentially be of significant damage to the environment, the approval may be suspended by the Tribunal pending a final decision by the Tribunal if the said Tribunal deems that this would be in the interests of avoiding any likely significant or irreversible effects or implications on the environment or for similarly justified reasons. Injunctive relief must be requested by means of an application requesting suspension of the execution of the administrative environmental decision filed with the EPRT concurrently with the application for appeal before it, or by means of an application for the issue of a warrant of prohibitory injunction filed before the courts, as the case may be.
14) Is information on access to justice provided to the public in a structured and accessible manner?
The Industrial Emissions (Integrated Pollution Prevention and Control) Regulations (S.L. 549.77) (Industrial Emissions (IPPC) Regulations) makes provision
for information on access to justice as per response to question 1.7.4.2.

In the decision notices published by the ERA and uploaded to the ERA’s website, the possibilities of filing an appeal to that decision are included therein.
Furthermore, the decision notice sent to the applicant relating to environmental permits also includes a reference to the appeal procedure.

1.8.3. Environmental liability[6]
County-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?
S.L. 549.97 Prevention and Remedying of Environmental Damage Regulations stipulate the remedies available to parties aggrieved by environmental
damage or the imminent threat of such damage.

Regulation 13 states that natural or legal persons affected or likely to be affected by environmental damage, or having a sufficient interest in environmental
decision-making relating to the damage, shall be entitled to submit to the competent authority (ERA) any observations relating to instances of environmental
damage of which they are aware and shall be entitled to request the competent authority to take action under these regulations.

If the aggrieved party decides to challenge the ERA’s decision or lack thereof, then an appeal against that can be filed to the EPRT within thirty days from
the date of publication of the decision on the Department of Information website by the Environment and Resources Authority or within thirty days from the date
of notification of the decision in the case of decisions which do not need to be published. As this is a case where the decision is notified to the aggrieved
party, the appeal must be lodged within 30 days of notification.

Once the EPRT has reached that decision, then the decision may be appealed against by lodging an appeal to the Court of Appeal within 20 days of the
EPRT’s decision.

According to the Regulations, a person shall be deemed to have a sufficient interest if he has filed representations with regard to the issue of a permit, or if
he qualifies as a consultee or an identified stakeholder under the provisions of the Environmental Impact Assessment Regulations.

Any non-governmental organisation promoting environmental protection shall be deemed to have sufficient interest for this purpose.

2) In what deadline does one need to introduce appeals?
If the aggrieved party decides to challenge the ERA’s decision or lack thereof, then an appeal against that can be filed to the EPRT within thirty days from the
date of publication of the decision on the Department of Information website by the Environment and Resources Authority or within thirty days from the date
of notification of the decision in the case of decisions which do not need to be published. As this is a case where the decision is notified to the aggrieved
party, the appeal must be lodged within 30 days of notification.

Once the EPRT has reached that decision, then the decision may be appealed against by lodging an appeal to the Court of Appeal within 20 days of the
EPRT’s decision.

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?
According to S.L. 549.97 Prevention and Remedying of Environmental Damage Regulations, natural or legal persons affected or likely to be affected by
environmental damage, or having a sufficient interest in environmental decision-making relating to the damage, shall be entitled to submit to the competent
authority any observations relating to instances of environmental damage of which they are aware and shall be entitled to request the competent authority to
take action under these regulations.

Regulation 13(3) states that the request for action shall be accompanied by the relevant information and data supporting the observations submitted in
relation to the environmental damage in question. Apart from the requirement of relevance there are no criteria set for the kind of information to be submitted.

4) Are there specific requirements regarding ‘plausibility’ for showing that environmental damage occurred, and if yes, which ones?
Although the request for action and the accompanying observations must show in a plausible manner that environmental damage exists, the regulations do
not stipulate any criteria regarding “plausibility”, however such damage must fall within the definition of ‘environmental damage’ as contained in S.L. 549.97.

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)?
S.L. 549.97 Prevention and Remedying of Environmental Damage Regulations simply stipulate that the competent authority shall, as soon as possible,
inform the person(s) who submitted observations to the authority of its decision to accede to or refuse the request for action and shall provide the reasons for
it. However, there is no indication as to the time limits within which the competent authority must make the notification.

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?
Under regulation 13 of S.L. 549.97, requests for action can be made for environmental damage caused by any of the occupational activities listed therein,
and for any imminent threat of such damage occurring by reason of any of those activities.

7) Which are the competent authorities designated by the MS?
The competent authority in this case is the ERA.

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?
An action for judicial review of the legality of administrative action (including environmental decisions) may be filed before the First Hall of the Civil Court
which is the court of first instance. Such an action is based on Article 468A of Chapter 12. However, this only available when the mode of contestation or of
obtaining redress, with respect to any particular administrative act before a court or tribunal is not provided for in any other law. Therefore, all other legal
avenues including administrative review procedures, must have been exhausted before restoring to an action for judicial review.

1.8.4. Cross-border rules of procedures in environmental cases
1) Rules on涉及other countries? At which stage of the procedure is there a possibility to challenge environmental decisions?
The Environmental Impact Assessment Regulations (Subsidiary Legislation 549.46) provide for transboundary consultations through Part VII of the said
legislation. Where the Minister responsible for the environment is aware that a project in Malta is likely to have significant effects on the environment in
another State, or where a State likely to be significantly affected so requests, the Minister shall notify the affected State as soon as possible and no later than
when the Maltese public is informed, and shall include the following information within the notification:
information on the project and its location together with the available information on the possible transboundary impacts;
information on the nature of the possible decisions
any other information which the Minister deems reasonable

The Minister shall also give the interested State thirty calendar days within which to indicate whether it wishes to participate in the environmental decision-
making procedures, including the development consent procedure, the environmental impact assessment and/or scoping, as the case may be.
If another State considers that the environment under its jurisdiction is likely to be adversely affected by a project which is proposed to be carried out in Malta and which is within the scope of the EIA regulations, but no notification has taken place in accordance with the above, the Minister shall, at the request of that State, exchange sufficient information for the purpose of holding discussions on whether there is likely to be a significant adverse transboundary impact. If the interested State indicates to the Minister that it intends to participate in such consultation procedures, the Minister shall send to that State the required information as laid down in these regulations and, once it is submitted to the Environment and Resources Authority, the EIA report.

The interested State may enter into consultations with the Minister concerning, inter alia:

- the potential transboundary effects of the project;
- possible alternatives to the project, including the no-action alternative where relevant;
- measures to prevent, reduce, eliminate or offset any significant transboundary impacts;
- monitoring of the effects of such measures, and of the project;
- possible mutual assistance in preventing, reducing, eliminating or offsetting any significant adverse impact of the project; and
- any other appropriate matters as relevant to the project.

To this effect, the interested State shall agree with the Minister on a reasonable time-frame for the consultation period, taking into account the nature, scale and characteristics of the proposed project and its location. The interested State shall also promptly provide the Minister with information relating to the environment under its jurisdiction which may potentially be adversely affected, where such information is necessary or relevant for the assessment.

The interested State may arrange for the information to be made available, within a reasonable time, to the relevant authorities and the public in its territory such that they can forward their opinion within a reasonable time and participate effectively in the relevant environmental decision-making procedures before any consent for the project is granted. The interested State shall forward its opinion to the Minister within the timeframe established by the Regulations, who shall in turn forward the opinion to the ERA.

The Minister shall provide to the interested State information about the final decision on the proposed project and the reasons and considerations on which the decision was based, together with the terms and conditions attached to the decision and information about the public participation process. The interested State may make such information available in an appropriate manner to the public concerned in its own territory.

If additional information on the significant transboundary impact of a project proposed in Malta, which was not available at the time a decision was made and which could have materially affected the decision, becomes available to the Minister or to an interested State before work on the project commences, the Minister shall immediately inform the interested State and vice-versa, as relevant. In such cases any one or both parties may request that consultations be held on whether the decision needs to be revised.

Where the monitoring of a project or any other post-project analysis reveals significant adverse transboundary impacts or any factors that may result in such impacts, the Minister shall immediately inform the interested State or vice-versa, as relevant. Both parties shall then enter into consultations on the measures that should be undertaken to prevent, reduce, eliminate or offset such impact, including any mutual assistance to this effect.

The transmission of information to the interested State, and the receipt of information by such State, shall be subject to the limitations contained in any law in force in Malta.

Regulation 26 of the EIA Regulations then regulates the consultation procedure when a project occurring in another State may have potential transboundary impacts on Malta.

Regulation 27 of the EIA Regulations caters for the situation where a project or combination of projects not listed in Schedule I of the EIA Regulations (or in the respective legislative of that State) is likely to cause a significant adverse transboundary impact. In such cases, the Minister responsible for the environment in Malta may, acting on the advice of ERA, enter into discussions with such State, and the above provisions may thereby be applicable. The Strategic Environmental Assessment Regulations (S.L 549.61) also provide for transboundary consultations through regulation 8, which states that:

Where the responsible authority considers that the implementation of a plan or programme being prepared in relation to its territory is likely to have significant effects on the environment in another Member State, or where a Member State likely to be significantly affected so requests, the Member State in whose territory the plan or programme is being prepared shall, before its adoption or submission to the legislative procedure, forward a copy of the draft plan or programme and the relevant environmental report to the other Member State at the earliest stage possible.

The Prevention and Remedy of Environmental Damages Regulations (Subsidiary Legislation 549.97) also contain provisions concerning transboundary environmental damage where the environmental damage affects or is likely to affect other EU Member States. If environmental damage has occurred, Malta would need to provide sufficient information to the potentially affected EU Member States.

2) Notion of public concerned?

The notion of public concerned in a transboundary context is the same as for nationals, any person whether legal or natural, and environmental NGOs. There is no specific list of cases where individuals or NGOs could choose between courts of different countries. The choice would depend on the outcome of the courts taking cognisance of the case.

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)?

The principle of non-discrimination is applicable, and NGOs of affected countries which are registered in the EU have standing in the same way in which local NGOs have standing. No form of procedural assistance is available to either local or foreign NGOs.

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)?

Unless it is specifically stated in the applicable law, as in the case of access to environmental information, EIA and IPPC legislation, there is no right of access to justice for individuals who do not have a direct interest. This is equally applicable to individuals of affected countries.

5) At what stage is the information provided to the public concerned (including the above parties)?

The affected State is to be provided with the information as soon as possible and no later than when the Maltese public is informed.

6) What are the timeframes for public involvement including access to justice?

There is a 30-day consultation period covering the Terms of Reference of the EIA and another 30-day period for consultation on the EIA Report.

7) How is information on access to justice provided to the parties?

Information regarding the public consultation exercise, consultation periods, the draft terms of reference for the EIA, assessments and the final EIA report are published on the ERA website. NGOs, local councils and other stakeholders are usually notified by electronic mail. There is no specific reference to modes of challenging the EIA process in any notification sent.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?

The information is published in English and there is no provision for its translation or interpretation to foreign participants.

9) Any other relevant rules?

There are no other relevant rules.
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 review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

Decisions, acts, and omissions falling within the scope of EU environmental legislation but outside the scope of the EIA and IED Directives may be challenged by means of two different legal avenues depending on which entity made the said decisions, acts or omissions.

Appeal against decisions made by ERA

The ERA is the competent authority which would be expected to make a good number of this sort of decisions or to issue regulations, orders or authorisations falling within the scope of EU environmental legislation. With regard to these types of decision taken by the ERA, an appeal procedure is provided for by Article 47 of Chapter 551.

This states that any aggrieved party may appeal against decisions of the ERA to the EPRT in accordance with the provisions of the Environment Protection Act and any regulations pursuant to it, and any person may appeal any decision of the Environment and Resources Authority only in relation to environmental assessments, access to environmental information and the prevention and remediation of environmental damage.

The above would indicate that any of the ERA’s decisions made in accordance with the Environment Protection Act or any regulations pursuant to it could be appealed against by an aggrieved party such as the applicant who has been denied a nature permit or a third party who would have objected to the issue of the said nature permit by ERA. The second limb of this provision of law allows an appeal by any person in relation to the three spheres listed therein.

An appeal to the EPRT may be filed on any ground including:

- that a material error as to the facts has been made;
- that an error of law has been made;
- that there was a material procedural error;
- that there was some material illegality, unreasonableness, ineffective or insufficient consideration of adverse effects, or lack of proportionality.

The lack of adherence to EU environmental legislation may be considered as a material procedural error or an error of law and can therefore be a ground for appeal under this provision.

It should be noted that the definition of a person under this law includes an association or body of persons, whether registered as a legal person or not. This concurs with the definition of a person under Chapter 549 of the Laws of Malta (the Environment Protection Act) which defines a “person” as a body or other association of persons, whether granted legal personality or not, and includes environmental voluntary organisations. Consequently, both individuals and associations who feel they have been affected by the decision may appeal. Appellants need not prove an interest in that appeal in terms of the doctrine of juridical interest, but are required to submit reasoned grounds based on environmental considerations to justify their appeal.

With regard to the time limits involved in order to file this appeal, an appeal should be lodged before the EPRT within 30 days from the date of publication of the decision on the Department of Information website by the ERA. Appeals against decisions which do not need to be published are to be lodged before the EPRT within 30 days from the date of notification of the decision. At present, ERA decisions are not published on the website of the Department of Information. There is no official regular system of notification of decisions, orders or authorisations made by the ERA to interested third parties, so it is not clear when the period within which to appeal lapses. Presumably the 30-day period starts from the date on which the interested third party became aware of the decision.

An appeal against the decision of the EPRT may be made to the Court of Appeal only on a point of law. This appeal must be lodged within 20 days of the EPRT reading its decision in public.

Decisions taken by other entities

If the decision to be challenged emanates from an entity other than ERA, such as a ministry or a department of government, recourse may be had by filing an action for judicial review as described below. Such an action must be instituted within 6 months from the date of the decision which is to be challenged, or from when the person filing the action could have been aware of such a decision, whichever is the earlier.

The effectiveness of access to the national courts is questionable mainly because of the limited chances of obtaining interim relief (as explained elsewhere in this fact sheet) and because of the extremely long period of time within which the national courts reach their decisions. It is not uncommon for a case for judicial review to be decided upon after 6 to 7 years, after which period, the whole point of the lawsuit would have become a purely academic exercise. A case in point is the action for judicial review in relation to the extension of the building development zones in Malta. A lawsuit requesting judicial review was filed by a local eNGO in 2007 and no judgment has been reached after 13 years. Bearing in mind that judgment is still pending before the court of first instance. Such an action is based on Article 469A of Chapter 12 of the Laws of Malta.

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?

An appeal for administrative review before the EPRT may be filed on a wide number of grounds as explained above. These cover both procedural and substantive legality of the decision which is to be challenged.

An action for judicial review of the legality of administrative action (including environmental decisions) may be filed before the First Hall of the Civil Court which is the court of first instance.
Administrative acts may be challenged where they are in violation of the Constitution, or when they emanate from a public authority that is not authorised to perform them, or when a public authority has failed to observe the principles of natural justice (i.e. ‘nemo iudex in causa propria’ and ‘audi alteram partem’) or mandatory procedural requirements in performing the administrative act or in its prior deliberations thereon, or when the administrative act constitutes an abuse of the public authority’s power in that it is done for improper purposes or on the basis of irrelevant considerations; or when the administrative act is otherwise contrary to law. An administrative act includes the issuing by a public authority of any order, licence, permit, warrant, decision, or a refusal of any demand from a claimant.

The court looks into the legality of the act or omission which is being challenged. The court may annul the challenged act or omission and order redress or a remedy, however it may not substitute its discretion for that of the authority which committed the act or omission.

During the course of the hearing of the action for judicial review before the First Hall of the Civil Court, a request for a preliminary reference may be made as per Article 267 of the Treaty on the Functioning of the EU (TFEU) requesting the European Court of Justice to rule on the conformity of the national provision with EU law. However, only a court of last instance is obliged to make the request if it deems it necessary. Consequently, the court of first instance may turn down the request for a reference, in which case the preliminary reference may be requested during appeal procedures before the Court of Appeal. Another possible mode of judicial review would be a lawsuit filed on the grounds of the alleged violation of one’s fundamental human rights such as the right to a fair hearing within a reasonable time. The right to a fair hearing would be invoked to include applicability of the Aarhus Convention and other applicable EU norms on public participation requirements. The right to life could also be invoked to include the right to a safe and healthy environment, invoking the non-conformity of the measures sought to be challenged with Article 37 of the EU Charter of Fundamental Rights which requires a high level of environmental protection and improvement of the quality of the environment.

A person filing such an action must show a direct and personal juridical interest, in that the alleged or potential breach of human rights must be done “in relation to him”.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Redress by means of judicial review is only available when ‘the mode of contestation or of obtaining redress, with respect to any particular administrative act before a court or tribunal is not provided for in any other law.’ This means that if there is an alternative mode of redress, this must have been resorted to before filing an action for judicial review.

When filing a constitutional case, one should have exhausted alternative remedies. However, the Constitutional Court has discretion on this matter and may choose to retain jurisdiction if the alternative remedies are not accessible, adequate and effective.

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.?

Parties may only avail themselves of the action for judicial review if they have exhausted all other remedies. The other remedy which parties must have exhausted is that of appeal. The filing of an appeal is open to all persons aggrieved by a decision – not necessarily those who participated in the administrative procedure. Consequently, it may be stated that prior participation is not a necessary requisite.

Moreover, as there are instances when there is no public consultation phase during the course of an administrative procedure, then prior participation would not have been possible. This would not be a bar to filing an action for judicial review.

There may also be cases where no appeal procedure is available (as would be the case when the administrative decision being challenged is being taken by a public authority other than ERA and/or a minister) and consequently the action for judicial review would be the only remedy available. In this case, the issue of prior participation would not arise.

In order to have standing before the EPRT to challenge certain decisions of the PA, prior participation in the form of registration as an interested third party is at times required.

5) Are there some grounds/arguments precluded from the judicial review phase?

The grounds for judicial review are listed in the response to 2.2 above. They are wide-ranging – especially in view of the fact that an administrative act which is contrary to law may be challenged. This broad provision may be interpreted to mean that an administrative act which is contrary to European legislation may be challenged.

6) Fair, equitable – what meaning is given to equality of arms in the national jurisdiction?

Chapter 551 of the Laws of Malta states that the EPRT is to adhere to and apply the principles of good administrative behaviour and respect the parties’ right to a fair hearing, including the principles of natural justice, namely: (i) nemo iudex in causa sua, and (ii) audi alteram partem. The EPRT is to ensure procedural equality between the parties to the proceedings. Each party is to be given an opportunity to present its case, whether in writing or orally, or both, without being placed at a disadvantage. These principles are enshrined in the Maltese Constitution and observed by the courts. There is a body of case-law relating to the equality of arms principle which has been developed across different branches of law.

7) How is the notion of “timely” implemented by the national legislation?

When an appeal against a decision of the ERA is filed before the EPRT, there are no deadlines stipulated for the date within which the EPRT must reach its decision. Nor is there any indication as to when the EPRT must decide upon the application for suspension of the execution of the permit, authorisation or decision which is being challenged.

There is no time limit or deadline within which the courts of law must reach their decision – which is one of the greatest obstacles to effective access to justice.

Appellants whose appeals have languished before the EPRT or the national courts for an inordinate amount of time may opt to file a lawsuit claiming that their constitutional right to have their case decided within a reasonable amount of time has been breached. However, this involves further costs in terms of financial outlay and professional resources – costs which may not easily be borne by NGOs which are not provided with legal aid.

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 may be obtained by filing of an application for a warrant of prohibitory injunction requesting the court to restrain a person from doing anything which might be prejudicial to the person requesting the warrant. The court shall not issue any such warrant unless it is satisfied that such a warrant is necessary in order to preserve a right of the person requesting the warrant, and that prima facie this person appears to possess such a right. The Maltese courts also place great importance on the irremediable nature of the action which is sought to be prevented – or that it cannot be compensated for in a pecuniary manner. This is a very high standard of proof to overcome – as theoretically every form of action and/or decision can be reversed.

The court must also be satisfied, after hearing the explanations given, that unless the warrant is issued the prejudice that would be caused to the person requesting the warrant would be disproportionate when compared with the actual doing of the thing to be restrained.

If the court accedes to the request for the issuance of a warrant of prohibitory injunction, the claimant must file a lawsuit within twenty day in furtherance of the claims made. In this case, the lawsuit would be the action requesting judicial review. There are no special sector rules which are applicable.
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 filing of an application for a warrant of prohibitory injunction in the Civil Courts costs 250 to 300 euros in Court Registry fees (depending on the number of parties which have to be notified).

The fees payable to the legal practitioners (lawyer and legal procurator) for drafting and filing the relevant application have to be added to this amount. Although there is an official tariff for these professional fees specified by law, this does not make reference to extra-judicial fees. These may be significant.

The application for a warrant of prohibitory injunction must be followed by the filing of a lawsuit for judicial review. The Court Registry fee for this ranges from 200 to 500 euros. There are further costs involved in the summoning of witnesses and for any expert witness summoned.

The court apportions the payment of costs, with the losing party usually being ordered to pay the costs. If there are several parties to the lawsuit, the payment of costs can be significant and run into several thousands of euros.

There is no statutory reference requiring costs not to be prohibitive. This is an obstacle which NGOs and individuals in Malta face when seeking access to environmental justice. Moreover, parties filing for the issue of a warrant of prohibitory injunction may be required to provide a guarantee or security to cover the costs in the event of them losing the case. Again, this poses an obstacle to NGOs and individuals who are parties in this sort of public interest litigation.

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[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 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 Strategic Environmental Assessment Regulations, 2010 (Legal Notice 497 of 2010, S.L. 549.61), streamline the SEA process in Malta.

According to the regulations, plan proponents in the public sector are responsible for carrying out a SEA of their plans and programmes and are legally referred to as “responsible authorities.” In their capacity as plan proponents, they determine whether an SEA is required for their own plans and programmes in accordance with the provisions of S.L. 549.61.

The regulations stipulate that the SEA Focal Point is the competent authority for the purposes of the regulations. The SEA Focal Point is composed of a chairperson and two other members. The competent authority may request the responsible authority to submit a detailed plan or programme description identifying the effects on the environment. The competent authority may then take a decision as to whether a SEA is required. This decision is final.

The regulations stipulate that they should not be construed as implying that the competent authority shall be responsible for the carrying out of any SEA and that any SEA which is required shall fall under the responsible authority.

There is no provision for administrative redress if any person wants to challenge an act or omission in the SEA process. A legal challenge requesting judicial review in accordance with Article 469A of the Civil Code may be filed before the First Hall of the Civil Court.

An action for judicial review may be filed to challenge administrative acts which are in violation of the Constitution, or which emanate from a public authority which is not authorised to perform them, or when a public authority has failed to observe the principles of natural justice or mandatory procedural requirements in performing the administrative act or in its prior deliberations thereon, or when the administrative act constitutes an abuse of the public authority’s power in that it is done for improper purposes or on the basis of irrelevant considerations; or when the administrative act is otherwise contrary to law.

An administrative act includes the issuing by a public authority of any order, licence, permit, warrant, decision, or a refusal of any demand from a claimant. In the SEA scenario, an action for judicial review could be filed against the responsible authority (the proponent entity), the competent authority (the SEA Focal Point) and any other authorities which have been involved in the process.

An action for judicial review must be filed within six months of the decision or action being challenged or within six months from when the person could have become aware of it, whichever is the earlier.

In the scenario where the responsible authority does not provide information as to whether a SEA is going to be carried out or not, persons can challenge the omission to do so. There is no time limit prescribed by law within which the responsible authority must decide whether to carry out a SEA or not. Article 469A of the Civil Code states that the absence of a decision of a public authority following a claimant’s written demand served upon it shall, after two months from such service, constitute a refusal. In these circumstances, a person may first file a judicial protest calling upon the responsible authority to take a decision regarding the carrying out of a SEA. If there is no response within two months, that will be deemed to be a refusal and may be challenged within six months from the presumed refusal.

NGOs with an interest in upholding environmental objectives are considered to have sufficient interest to file actions for judicial review. Individuals are required to have a direct juridical interest.

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?

When an action for judicial review is filed, the court looks into the procedural legality of the act or omission which is being challenged. The court may annul the challenged act or omission and order redress or a remedy, however it may not substitute its discretion for that of the authority which committed the act or omission.

During the course of the hearing of the action for judicial review before the First Hall of the Civil Court, a request for a preliminary reference may be made as per Article 267 of the Treaty on the Functioning of the EU (TFEU) requesting the European Court of Justice to rule on the conformity of the national provision with EU law. However only a court of last instance is obliged to make the request if it deems it necessary. Consequently the court of first instance may turn down the request for a reference, in which case the preliminary reference may be requested during appeal procedures before the Court of Appeal.

Another possible mode of judicial review would be a lawsuit filed on the grounds of the alleged breach of the Constitutional rights such as the right to a fair hearing within a reasonable time. The right to a fair hearing would be invoked to include applicability of the Aarhus Convention and other applicable EU norms on public participation requirements. The right to life would be invoked to include the right to a safe and healthy environment, invoking the non-conformity of the measures to be challenged with Article 37 of the EU Charter of Fundamental Rights, which requires a high level of environmental protection and improvement of the quality of the environment[7]. A person filing such an action must show a direct and personal juridical interest, in that the alleged or potential breach of human rights must be done “in relation to him”[8].

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Redress by means of judicial review is only available when ‘the mode of contestation or of obtaining redress, with respect to any particular administrative act before a court or tribunal is not provided for in any other law.’

When filing a constitutional case one should have exhausted alternative remedies. However the Constitutional Court has discretion on this matter and may choose to retain jurisdiction if the alternative remedies are not accessible, adequate and effective[9].
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.?

Persons and NGOs upholding environmental objectives are considered to have standing to file an action for judicial review and there is no set requirement for prior consultation during the administrative phase. Moreover, in cases where the responsible authority omits or refuses to carry out an SEA, there would have been no provision for previous participation.

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 may be obtained by filing a warrant of prohibitory injunction requesting the court to restrain a person from doing anything which might be prejudicial to the person requesting the warrant.

The court shall not issue any such warrant unless it is satisfied that such warrant is necessary in order to preserve a right of the person requesting the warrant, and that prima facie this person appears to possess such a right.

The court must also be satisfied, after hearing the explanations given, that unless the warrant is issued the prejudice that would be caused to the person suing out the warrant would be disproportionate when compared with the actual doing of the thing to be restrained.

If the court accedes to the request for the issuance of a warrant of prohibitory injunction, the claimant must file a lawsuit within twenty days in furtherance of the claims made. In this case, the lawsuit would be the action requesting judicial review.

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 filing of an application for a warrant of prohibitory injunction in the Civil Courts costs 250 to 300 euros in Court Registry fees (depending on the number of parties which have to be notified).

The fees payable to the legal practitioners (lawyer and legal procurator) for drafting and filing the relevant application have to be added to this amount. Although there is an official tariff for these professional fees specified by law, this does not make reference to extra-judicial fees. These may be significant.

The application for a warrant of prohibitory injunction must be followed by the filing of a lawsuit for judicial review. The Court Registry fee for this ranges from 200 to 500 euros. There are further costs involved in the summoning of witnesses and for any expert witness summoned.

The court apportions the payment of costs, with the losing party usually being ordered to pay the costs. If there are several parties to the lawsuit, the payment of costs can be significant and run into several thousands of euros.

There is no statutory reference requiring costs not to be prohibitive. This is an obstacle which NGOs and individuals in Malta face when seeking access to environmental justice.

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[10]

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 plans and programmes not necessarily subject to the procedures in the SEA but which are still subject to public consultation procedures include the following:

The National Strategy for the Environment - a strategic governance document which sets the policy framework for the preparation of plans, policies and programmes issued under the Environmental Protection Act (Chapter 549 of the Laws of Malta) or under any other Act for the protection and sustainable management of the environment, including land and sea resources. In preparing or reviewing the National Strategy for the Environment, the Minister for the Environment shall have regard to:

- the environmental policies and the State of the Environment Report;
- the current economic and financial policies;
- the current social policies;
- the policies of the Government;
- the environmental issues and concerns of material relevance to the strategy;
- the resources likely to be available in all relevant government entities for the implementation of the strategy; and
- the European Union environmental acquis and other international environmental convention obligations to which Malta is a party.

The ERA prepares the National Strategy for the Environment after consulting with relevant entities, whether public or otherwise. During the preparation or review of the National Strategy for the Environment, the Minister shall make known to the public the matters intended for consideration and shall provide adequate opportunities for individuals and organisations to make representations. When the National Strategy for the Environment or a review thereof has been completed, the Minister shall publish the strategy together with a statement of the representations received and the responses made to those representations. Representations on the strategy are to be submitted within a specified period of not less than six weeks. At the conclusion of these consultation procedures, the National Strategy for the Environment shall be considered by the Cabinet of Ministers together with the position statement from the Environment Minister and the representations made with respect to the strategy or its review. The National Strategy for the Environment, or its revision, together with the Minister's position statement, is then to be laid before Parliament for its approval.

Public consultation is also carried out on any draft regulations issued by the Minister for the Environment under Chapter 549, as laid down in Article 55. There is a similar public consultation procedure for the enactment of subsidiary plans and policies relating to the environment, provided for by Article 51 of the Environmental Protection Act. There is a six-week consultation period during the preparation of such plans and policies or when they are altered significantly.

The Plans and Programmes (Public Participation) Regulations (Subsidiary Legislation 549.41) provide for public participation in respect of the drawing up of certain plans and programmes relating to the environment. The Regulations state that the ERA is the competent authority to ensure that the public is given early and effective opportunities to participate in the preparation and modification or review of the plans or programmes required to be drawn up under certain provisions of:

The Waste Management (Waste Batteries and Accumulators) Regulations S.L. 549.54.

The Protection of Waters against Pollution caused by Nitrates from Agricultural Sources Regulations. S.L. 549.25

The Ambient Air Quality Regulations. S.L 549.59
The ERA is to ensure that a public information and participation mechanism is in place as outlined by the Regulations to inform the public of the decisions taken and the reasons and considerations upon which those decisions are based, including information about the public participation process. As regards the possibility for administrative review of the abovementioned procedures, Article 63 of Chapter 549 states that any aggrieved party may appeal against any decision of the Authority to the EPRT in accordance with the provisions of the EPRT Act and any regulations pursuant to it. Article 47 of Chapter 551 allows for appeals by any aggrieved party, and any person may appeal a decision of ERA insofar as environmental impact assessments, access to information and prevention and remedying of environmental damage are concerned. Such an appeal would not require proof of juridical interest. An action for judicial review may be filed under Article 469A of Chapter 12.

With regard to the issue of standing, although notionally the requirement of a juridical interest still exists, this is no longer interpreted restrictively by the courts. Recent jurisprudence has seen NGOs being assumed to have the necessary juridical interest and "locus standi". Following the decision of the Court of Appeal in the case instituted by the Ramblers of Malta enGO[11], it is widely accepted that NGOs have legal standing. It is still not clear whether an individual would always be considered to possess the necessary juridical interest to pose such a challenge.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

In judicial review procedures, administrative acts may be challenged where they are in violation of the Constitution, or when they emanate from a public authority that is not authorised to perform them, or when a public authority has failed to observe the principles of natural justice or mandatory procedural requirements in performing the administrative act or in its prior deliberations thereon, or when the administrative act constitutes an abuse of the public authority’s power in that it is done for improper purposes or on the basis of irrelevant considerations; or when the administrative act is otherwise contrary to law (including EU law).

During the course of the hearing of the action for judicial review before the First Hall of the Civil Court, a request for a preliminary reference may be made as per Article 267 of the Treaty on the Functioning of the EU (TFEU) requesting the European Court of Justice to rule on the conformity of the national provision with EU law. However, only a court of last instance is obliged to make the request if it deems it necessary. Consequently, the court of first instance may turn down the request for a reference, in which case the preliminary reference may be requested during appeal procedures before the Court of Appeal. Another possible mode of judicial review would be a lawsuit filed on the grounds of the alleged breach of the Constitutional rights such as the right to a fair hearing within a reasonable time. The right to a fair hearing would be invoked to include applicability of the Aarhus Convention and other applicable EU norms on public participation requirements. The right to life would be invoked to include the right to a safe and healthy environment, invoking the non-conformity of the measures to be challenged with Article 37 of the EU Charter of Fundamental Rights, which requires a high level of environmental protection and improvement of the quality of the environment[12]. A person filing such an action must show direct and personal juridical interest, in that the alleged or potential breach of human rights must be done "in relation to him"[13].

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Redress by means of judicial review is only available when the mode of contestation or of obtaining redress, with respect to any particular administrative act before a court or tribunal is not provided for in any other law. When filing a constitutional case one should have exhausted alternative remedies. However the Constitutional Court has discretion on this matter and may choose to retain jurisdiction if the alternative remedies are not accessible, adequate and effective[14].

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.?

Although there is no form of administrative review procedure statutorily available to challenge acts or omissions of authorities during the processes laid down in the Environmental Protection Act or the Plans and Programmes (Public Participation) Regulations, there is provision for public consultation and participation as described above. As parties may only avail themselves of the action for judicial review if they have exhausted all other remedies, it may be argued that the lack of participation during the public consultation phase would exclude the possibility of judicial review.

However, judicial review may also be sought in cases where the responsible authority refuses to carry out a public consultation exercise or because of procedural irregularities pertaining to the public consultation exercise. In these cases, it is presumed that that judicial review would still be possible.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There are no express statutory provisions or mechanisms for obtaining injunctive relief during the process laid down in the Environmental Protection Act or the Plans and Programmes (Public Participation) Regulations. There is only the general national provision for filing for the issue of a warrant of prohibitory injunction and, according to Chapter 551, one may request suspension of the appealed decision before the EPRT pending the outcome of the case as discussed in other parts of this sheet.

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 filing of an application for a warrant of prohibitory injunction in the Civil Courts costs 250 to 300 euros in Court Registry fees (depending on the number of parties which have to be notified).

The fees payable to the legal practitioners (lawyer and legal procurator) for drafting and filing the relevant application have to be added to this amount. Although there is an official tariff for these professional fees specified by law, this does not make reference to extra-judicial fees. These may be significant. The application for a warrant of prohibitory injunction must be followed by the filing of a lawsuit. The Court Registry fee for this ranges from 200 to 500 euros. Legal and technical counsel also has to be paid. There are further costs involved in the summoning of witnesses and for any expert witness summoned. If witnesses or parties cannot be notified in the usual fashion, this would require the publication of the notification requests in local newspapers and the Government Gazette, which are further costs to be borne by the plaintiffs. The court apportions the payment of costs, with the losing party usually being ordered to pay the costs. If there are several parties to the lawsuit, the payment of costs can be significant and run into several thousands of euros.

There is no statutory reference requiring costs not to be prohibitive. This is an obstacle which NGOs and individuals in Malta face when seeking access to environmental justice. Moreover parties filing for the issue of a warrant of prohibitory injunction may be required to provide a guarantee or security to cover the costs in the event of them losing the case. Again, this poses an obstacle to NGOs and individuals who are parties to this sort of public interest litigation.

14. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[16]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the content of the plan (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The following are all examples of national legislation required by EU Directives and which require the drawing up of plans and programmes:
The Assessment and Management of Environmental Noise Regulations (S.L. 549.37) – require the drawing up of an action plan. The flora, Fauna and Natural Habitats Protection Regulations (S.L. 549.77) – provide for the drawing up of management plans and appropriate action for the conservation of protected habitats and species.

The Ambient Air Quality Regulations (S.L. 549.59) – provide for the drawing up of an Air Quality Action Plan.

The Waste Regulations (S.L. 549.63) – provide for the drawing up of Waste Management Plans.

The Water Policy Framework Regulations (S.L. 549.100) – provide for the drawing up of Water Catchment Management Plans.

All the above regulations include provisions allowing for information dissemination and public participation procedures during the drawing up of the relevant plans.

The only form of administrative review which can be envisaged in this case is an appeal against a decision of the competent authority (ERA) made in the course of the public consultation exercise or the preparatory exercise leading to the publication of the plan and not of the contents of the plan itself.

Article 63 of Chapter 549 states that any aggrieved party may appeal against any decision of the Authority to the EPRT in accordance with the provisions of the EPRT Act and any regulations pursuant to it. Article 47 of Chapter 551 allows for appeals by any aggrieved party, and also specifies that any person may appeal any decision of the Environment and Resources Authority only in relation to environment assessments, access to environmental information and the prevention and remediation of environmental damage.

An appeal to the EPRT may be filed on any ground including:
that a material error as to the facts has been made;
that there was a material procedural error;
that an error of law has been made;
that there was some material illegality, unreasonableness, ineffective or insufficient consideration of adverse effects, or lack of proportionality.

According to law, an appeal should be lodged before the EPRT within thirty days from the date of publication of the decision on the Department of Information website. In cases regarding appeals against decisions which do not need to be published, the appeal shall be lodged before the EPRT within thirty days from the date of notification of the decision. It is not clear when this time period starts when there is no provision for publication or notification of the decision. Any persons, including NGOs, have standing without the need to prove juridical interest. There is an appeal against the decision of the EPRT to the Court of Appeal which must be filed within 20 days of the date of the decision from the EPRT.

There is no form of judicial review procedure possible for the contents of the published plan which has the same status as a legislative act.

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)?
As the plan or programme constitutes an instrument having the force of law there is no judicial avenue to challenge its contents.

3) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?
The scope of possible administrative review of the preparatory exercise leading to the enactment of plans and programmes is described above. There is no possibility of judicial review of the published plan or programme.

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
Judicial review is not applicable.

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.?
Judicial review is not applicable.

6) Are there some grounds/arguments precluded from the judicial review phase?
Judicial review is not applicable.

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

8) How is the notion of “timely” implemented by the national legislation?

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?

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?

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[16]

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 the executive regulations or legally binding instruments take the form of legislation there is no possibility of administrative review or judicial review according to Article 469A of Chapter 12 of the Laws of Malta, as these remedies are reserved for administrative acts as defined therein.

Each executive regulation/legislation could possibly be challenged by filing an action alleging breach of fundamental human rights, or in terms of Article 46 of the Constitution. In this case, both individuals and NGOs filing the action would have to prove that the alleged breach was being done in relation to them.

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 Constitutional Court deciding on an action regarding an alleged breach of human rights would consider both the procedural and substantive legality of the claim.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
When filing a constitutional case, one should have exhausted alternative remedies. However the Constitutional Court has discretion on this matter and may choose to retain jurisdiction if the alternative remedies are not accessible, adequate and effective.

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.?
When filing a Constitutional case, one would have ideally exhausted all other remedies. However, when claiming a breach of human rights, the issue of prior participation does not arise.

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 may be applied for by filing an application for a warrant of prohibitory injunction in the Civil Courts. This costs 250 to 300 euros in Court Registry fees (depending on the number of parties which have to be notified).
The fees payable to the legal practitioners (lawyer and legal procurator) for drafting and filing the relative application have to be added to this amount. Although there is an official tariff for these professional fees specified by law, this does not make reference to extra-judicial fees. These may be significant. The application for a warrant of prohibitory injunction must be followed by the filing of a lawsuit. The Court Registry fee for this ranges from 200 to 500 euros. Legal and technical counsel also has to be paid. There are further costs involved in the summoning of witnesses and for any expert witness summoned. If witnesses or parties cannot be notified in the usual fashion, this would require the publication of the notification requests in local newspapers and the Government Gazette, which are further costs to be borne by the plaintiffs.

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 costs involved are indicated above. The court apportions the payment of costs, with the losing party usually being ordered to pay the costs. If there are several parties to the lawsuit, the payment of costs can be significant and run into several thousands of euros.

There is no statutory reference requiring costs not to be prohibitive. This is an obstacle which NGOs and individuals in Malta face when seeking access to environmental justice. Moreover, parties filing for the issue of a warrant of prohibitory injunction may be required to provide a guarantee or security to cover the costs in the event of them losing the case. Again, this poses an obstacle to NGOs and individuals who are parties to this sort of public interest litigation.

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?[17]

There is no legal procedure providing for such a challenge. A party may request a preliminary reference to the CJEU at any stage of the proceedings in line with Article 267 of the TFEU, which is applicable in Malta under Chapter 460. The procedure is also regulated by Article 21 of the Court Practice and Procedure and Good Order Regulations (S.L. 12.09).

[1] This category of case reflects recent case-law of the CJEU such as Protect C-684/14, 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.
[3] In Cecil Herbert Jones vs Attorney General (Application no. 95/2018) decided on 15 February 2019, the First Hall of the Civil Court acting in its Constitutional jurisdiction stated that the Charter of Fundamental Rights is based on the principle of direct effect and national courts are obliged to interpret national measures in conformity with the Charter whenever they come within the scope of EU law. The judgment was not appealed.
[5] These principles were enunciated in Ryan Briffa –v– Attorney General decided on 14 March 2014.
[6] The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.
[7] In Cecil Herbert Jones vs Attorney General (Application no. 95/2018) decided on 15 February 2019, the First Hall of the Civil Court acting in its Constitutional jurisdiction stated that the Charter of Fundamental Rights is based on the principle of direct effect and national courts are obliged to interpret national measures in conformity with the Charter whenever they come within the scope of EU law. The judgment was not appealed.
[9] These principles were enunciated in Ryan Briffa –v– Attorney General decided on 14 March 2014.
[10] See findings under ACCCI/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.
[11] 228/2010, Is-Socjeta' The Ramblers' Association of Malta vs. L-Awtorita' ta' Malta dwar l-Ambjent u-Ippjanar [First Hall, Civil Court] 6 March 2012 (Ramblers case, Court of First Instance). The case was appealed in Is-Socjeta' The Ramblers' Association of Malta vs L-Awtorita' ta' Malta dwar l-Ambjent u-Ippjanar et [Court of Appeal Civil, Superior] 27 May 2016. (Ramblers case, Court of Appeal)
[12] In Cecil Herbert Jones vs Attorney General (Application no. 95/2018) decided on 15 February 2019, the First Hall of the Civil Court acting in its Constitutional jurisdiction stated that the Charter of Fundamental Rights is based on the principle of direct effect and national courts are obliged to interpret national measures in conformity with the Charter whenever they come within the scope of EU law. The judgment was not appealed.
[14] These principles were enunciated in Ryan Briffa –v– Attorney General decided on 14 March, 2014.
[15] 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 Booxus 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.
[16] 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.
[17] For an example of such a preliminary reference see Case C-281/16, Vereniging Hoekschewaards Landschap, ECLI:EU:C:2017:774

[1] Article 267 of the TFEU, and if so how?
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Access to justice in environmental matters - Netherlands

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
3. Other relevant rules on appeals, remedies and access to justice in environmental matters.

Access to justice at Member State level

1. Legal order – sources of environmental law

Dutch regulation aimed at protecting the environment has been developing strongly since the early 70s. It developed as a highly fragmented accumulation of rules to protect the environment and human health, divided over a wide number of policy fields and regulations. The Dutch Constitution provides a basis for the regulation that should provide citizens with a habitable environment and allow for the protection and the improvement of the environment. The many legislative acts adopted by Parliament aim to protect the environment and often form the legal basis for executive decrees, which provide more detailed regulations and are adopted by either the Dutch Government or by a specific Minister who is responsible for a certain policy area. Protecting the environment, however, is also the responsibility of governmental bodies at the provincial and the municipal levels. Ensuring compliance and enforcement of environmental regulation is often the responsibility of these lower tiers of government as there is no national environmental protection agency in the Netherlands.

Most (sectoral) environmental laws, executive decrees and regulations have frequently been amended over time, often because of the adoption /implementation of EU environmental regulations and case law of the Court of Justice of the European Union. Over the years, the Dutch legislator has striven to implement coordinative measures on a procedural level and has even introduced integrative legislation. Both the regulation for adopting policy documents and the system of environmental permits have been strongly affected by these procedural and coordinative legislative efforts. However, at the moment there remain many specific (sectoral) acts in order to protect specific parts of the environment, e.g. for water, soil, air, waste, nature conservation and spatial planning. The Netherlands is now (2020) on the brink of implementing a restructured body of regulation that aims to improve environmental regulation with the introduction of the Environment and Planning Act (EPA). The EPA will (most likely) come into force in 2022. This act aims to replace and streamline many of the existing relevant sectoral acts and provide government with the instruments to both protect and improve the quality of the physical living environment in the Netherlands and regulate human activities that could be detrimental to it.

Although specific environmental legislation often provides for additional relevant articles on public participation and access to justice, the Dutch legislator has tried to implement a uniform system of general rules on public participation and access to justice in administrative decision-making, including environmental decisions. In many cases concerning environmental decision-making, the law provides that anyone has the right to state their views on a draft decision before the final decision is taken. Only those with a specific interest related to the decision taken have access to the administrative court that will provide judicial review. This includes natural persons, legal entities and NGOs. Many cases concerned with environmental legislation will be dealt with by the administrative courts. The Dutch system does not provide for environmental tribunals or environmental courts; however, the courts with general competence will provide a relevant role for environmental cases that fall outside the competence of the administrative courts. The rights of citizens in all procedures are affected by both EU regulations and international law. The same is true for the regulation on transparent government. The Netherlands offers an adequate legal framework for the promotion of a transparent government in the Netherlands as it provides anyone with the right to request access to information contained in documents held by an administrative authority that relates to an administrative matter.

2) Constitution – main (content of + including references) provisions on environment and access to justice in the national constitution (if applicable) including procedural rights

Article 21 of the Dutch Constitution (Grondwet[1]) obliges Government to guarantee its citizens a habitable environment and arrange for the protection and the improvement of the environment. Together with Article 11, which secures the right to personal integrity and Article 22, which awards a right to health, these provisions are the main (social) fundamental rights related to the environment laid down in the Dutch Constitution. Access to justice is secured by Article 17, which states that no one can be kept from the competent court against his will. These articles order the legislator to adopt legislative acts and secure these rights; however, citizens cannot rely on the national constitutional rights before the courts when discussing these legislative acts as the Netherlands does not have a Constitutional court. However, in administrative court procedures against single case administrative decisions based on such legislative acts, citizens may rely directly on rights vis-à-vis the government that are granted by the Constitution, like the duty of the government to establish a habitable environment and arrange for the protection and improvement of the environment, as long as the court does not assess the constitutionality of the legislative act itself (Article 120 Dutch Constitution). In the (near) future a new paragraph will be added to this provision in the Constitution. It will grant every citizen of the Netherlands the right to a fair trial within a reasonable time before an independent and impartial court to establish his rights and obligations or to determine the merits of any legal proceedings against him. The proposal thus establishes a new fundamental right for citizens in Chapter 1 of the Constitution. Chapter 6 of the Dutch Constitution is also relevant as it states that the law will make clear which court is competent (Article 112 of the Dutch Constitution). The Netherlands has no constitutional court and therefore relies on its parliamentary system and the Council of State as a legislative
adviser to guarantee the proper functioning of the Dutch constitution. In practice, the European Convention on Human Rights and Fundamental Freedoms, the Charter of Fundamental Rights of the European Union and the Aarhus Convention are more relevant in legal procedures than the Dutch Constitution.

3) Acts, Codes, Decrees, etc. - main provisions on environment and access to justice, national codes, acts

Procedures against administrative decisions in environmental matters are governed by both the general provisions of (administrative) procedural law, which are stipulated in the General Administrative Law Act (GALA, in Dutch: Algemene wet bestuursrecht), mainly chapters 6, 7 and 8 which stipulate the general provisions on access to administrative courts, and by some additional provisions in specific acts of which the most important ones are the Environmental Management Act (EMA, in Dutch: Wet milieuxche), the General Act on Environmental Permitting (GAEP, in Dutch: Wet algemene bepalingen omgevingsrecht), the Spatial Planning Act (SPA, in Dutch: Wet ruimtelijke ordening), the Water Act (in Dutch: Waterwet) and the Nature Conservation Act (in Dutch: Wet natuurbescherming).

After years of preparation, the Dutch legislator has recently adopted a new Environment and Planning Act (in Dutch: Omgevingswet) which will (most likely) be in force in 2022. This act will completely replace or replace relevant parts of the Environmental Management Act, the General Act on Environmental Permitting, the Spatial Planning Act, the Water Act, the Nature Conservation Act and many other environmental acts.

4) Examples of national case-law, role of the Supreme Court in environmental cases

Although it is not a typical case, the best known example of national case-law from the Netherlands Supreme Court is probably its decision in the Urgenda case [ECLI:NL:HR:2019:2007]. In 2015, the Hague District Court (private law sector) became the first court of law that ordered a State to adopt more measures to tackle climate change. It ruled that the State must take more action to reduce greenhouse gas emissions in the Netherlands and ordered it to ensure that Dutch greenhouse gas emissions in the year 2020 would be at least 25 per cent lower than the 1990 levels. The Urgenda Foundation, partly on behalf of 866 Dutch concerned citizens, had requested that the court issue a ruling on the basis of tort law. In late-2018, the Hague Court of Appeal confirmed the District Court's judgment, albeit on different grounds, and just before the end of 2019, the Supreme Court upheld this ruling, adding to the already extended and impressive reasoning. The Supreme Court in the judiciary system of general competence has cassation power only and provides unifying case law with regards to the application of private law.

The highest court in the Netherlands for judicial review of decisions by government bodies that concern the environment is the Administrative Jurisdiction Division of the Council of State (Afdeling bestuursrechtspraak van de Raad van State). This court provides unifying case law concerning the application of administrative and environmental laws and regulations. It is both an appellate court and a court of first instance and has reformatory competence. Recent influential judgments are concerned with the Dutch Programmatic Approach to Nitrogen [ECLI:NL:RVS:2019:1603 and ECLI:NL:RVS:2019:1604]. This approach was codified in general binding rules (executive decree/delegated regulation) on the basis of the Nature Conservation Act, and the court had to decide on its legality in several cases brought by Dutch environmental organisations and concerned with decisions on permitting and enforcement of nature conservation legislation. The regulation provided that agricultural entrepreneurs (farmers) could be allowed to expand either by applying for a permit or by way of exemption, even though their activities would be detrimental to Natura 2000 areas. These areas are protected on the basis of the Dutch Nature Conservation Act which serves as an implementation of the EU Habitats Directive. The Administrative Jurisdiction Division of the Council of State decided that the Dutch Programmatic Approach to Nitrogen could not form the legal basis for allowing economic activities as the regulation was in breach of Article 6 of the EU Habitats Directive in several respects.

Another relevant development in light of access to justice in environmental cases has been the recent judgment of the Administrative Jurisdiction Division of the Council of State in which it redefined which parties qualify as an interested party and will therefore have standing in administrative court proceedings on the basis of Article 8:1, in conjunction with Article 1:2 General Administrative Law Act. For many years, the courts had decided that anyone who could possibly experience the environmental effects of an environmental permit was considered an interested party. The court now reasoned that this was not in line with its own case-law in relation to zoning schemes and licenses for public events and decided that the question on standing, e.g. who is an interested party as defined in Article 1:2 General Administrative Law Act, would have to be answered consistently in all cases concerning decisions that have an effect on the environment. Anyone who is directly and actually affected by an activity permitted by the decision - such as a zoning plan or a permit - is, in principle, an interested party. However, the criterion 'consequences of any significance' serves as a possibility for a correction. Consequences of any significance are missing if the effect on the applicant's interests can be determined objectively, but the consequences for the person involved are so small that a personal interest in relation to the decision is lacking. In this assessment, consideration is given to the factors of distance, visibility, spatial impact and environmental consequences (e.g. odour, noise, light, vibration, emission, risk) of the activity permitted by the decision. The nature, intensity and frequency of the actual consequences may also be important. Legal standards do not determine whether the person concerned has a personal interest in the decision. If the decision and the grounds for appeal cause to do so, the question of whether such a standard is met will be considered in the substantive assessment of the judicial review. Ultimately, it is up to the administrative court to decide who is an interested party. The litigant in question therefore does not have to prove that he is an interested party in a decision.

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?

Once a treaty has come into force in international law, legislative, administrative and judicial authorities must accept the newly created legal situation as binding on all persons (Article 94 of the Dutch Constitution). They can also rely upon EU law if it has direct effect. Article 21 of the Dutch Constitution considers in the substantive assessment of the judicial review. Ultimately, it is up to the administrative court to decide who is an interested party. The litigant in question therefore does not have to prove that he is an interested party in a decision.

1.2. Jurisdiction of the courts

Legal protection in the Netherlands is first of all provided by the courts of general jurisdiction that are competent to decide on private law (between private parties) and criminal law cases (Article 112 of the Dutch Constitution and Article 2 Judiciary (Organization) Act). This system has three tiers. A case is heard first by the District Court (in Dutch: Rechtbank) and if a party does not agree with the judgment, he may lodge an appeal with the Court of Appeal (in Dutch: Gerechtshof). The Court of Appeal re-examines the facts of the case and reaches its own conclusions. Thereafter, it is usually possible to refer a dispute to the highest court, the Supreme Court of the Netherlands (in Dutch: Hoge Raad). The Supreme Court of the Netherlands examines only whether the lower court(s) observed proper application of the law in reaching its judgment. At this stage, the facts of the case as established by the lower court(s) are no longer subject to discussion.
Judicial review of (single case) administrative law decisions that are concerned with the environment are adjudicated by a District Court (administrative law sector) as a court of first instance. An appeal may be lodged with one of the highest administrative law courts in the Netherlands. For environmental decisions this is the Administrative Jurisdiction Division of the Council of State (in Dutch: Afdeling bestuursrechtspraak van de Raad van State). This court will also hear some relevant cases (e.g. zoning schemes) as a court of first and only instance.

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)?

The Netherlands is divided into 11 districts, each with its own District Court. District Courts are divided into 3 sectors: a civil law sector, a criminal law sector and an administrative law sector. The 11 districts are divided into 4 areas of jurisdiction for the Courts of Appeal for civil and criminal disputes and some specific administrative disputes (e.g. tax law). With regard to criminal and civil law, the justices of the Court of Appeal only deal with cases where an appeal has been lodged against the judgment passed by the District Court. There is no special court or tribunal for environmental matters. The law will stipulate which court is competent, so there is no relevant possibility for forum shopping; any decision by a local government (municipality, province or water board) is lodged at the district court of the district where the government is located and a decision by any other governmental authority is lodged at the district court in the district where the appellant lives. With a few exceptions, administrative disputes on governmental decisions about environmental matters (judicial review) must be lodged by an interested party and heard first by one of the eleven District Courts (administrative law sector). Although the District Courts are competent to rule on any case concerning an administrative law decision by a public authority, the competence does not include general binding rules and policy rules. Against (single case) decisions, an interested party has the right to appeal to the court for judicial review (Article 8:1 and 1:2 General Administrative Law Act). An interested party may lodge an appeal against the judgment of the District Court with the Administrative Jurisdiction Division of the Council of State, which is the highest administrative law court for environmental decisions.

3) Specialities as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges

Usually the cases are heard by the District Court by a single-judge division, but the court can decide to appoint three judges to a case which is complex or

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

In procedures against administrative decisions, a competent court will quash (or annul) the decision if the applicant has brought forward arguments that

1.3. Organisation of justice at administrative and judicial level

1) System of the administrative procedure (ministries and/or specific state authorities)

Administrative environmental decisions are taken by administrative authorities of municipalities, provinces or on state level. In many cases the administrative authorities of the municipality are competent to take a decision (adopting a zoning scheme: granting a permit). For specific decisions, the provincial level is competent. Also, at the State level, a specific Minister (see https://www.government.nl) might be competent.

2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?
The administrative procedures in environmental matters are governed by both the general provisions on administrative procedure of the General Administrative Law Act (in Dutch: Algemene wet bestuursrecht) and by some specific provisions in the General Act on Environmental Permitting (in Dutch: Wet algemene bepalingen omgevingsrecht) and the Environmental Management Act (in Dutch: Wet milieubeheer), the Spatial Planning Act (in Dutch: Wet ruimtelijke ordening) and other special acts.

Articles 8:1 and 7:1 General Administrative Law Act (in Dutch: Algemene wet bestuursrecht) stipulate that any interested party (Article 1:2 General Administrative Law Act) may bring a case against a decision (Article 1:3 General Administrative Law Act) made by an administrative authority (Article 1:1 General Administrative Law Act) to the administrative court, but must first file an objection (in Dutch: bezwaarschrift) with the authority that took the decision. The result of this objection procedure will be a (re)new(ed) decision by the same public authority. Only that decision can be the subject of judicial review by the administrative court.

For a number of important environmental permitting decisions, such as whether or not to grant an environmental permit (e.g. the permitting system that is required on the basis of the EU Industrial Emissions Directive, IED) and the adoption of municipal zoning schemes, the law provides for a procedure that involves public participation based on a draft-decision by the public authority. In order to be able to lodge an appeal against the final decision, one has to participate in the preparatory procedure (article 6:13 GALA). This requirement has been ruled partly in violation of the Aarhus Convention by the Court of Justice of the European Union (C-JEU) in its judgment in case C-826/18.[3] When the law provides that this procedure is applicable, a decision will be drafted and will be made publicly known. The draft decision and the documents that it is based on will be available for anyone’s viewing for six weeks. During that time anyone can participate in the decision-making process by submitting their views to the competent authority. The competent authority will have to respond to these views before taking and publishing the final decision. Such a final decision has to be taken within 6 months of the application for the environmental permit. This administrative procedure is laid down in section 3.4 (uniform extensive public preparation procedure) of the General Administrative Law Act (in Dutch: Algemene wet bestuursrecht) and section 3.3 of the General Act on Environmental Permitting (in Dutch: Wet algemene bepalingen omgevingsrecht). This procedure is applicable when it is stipulated by law or when the administrative authority decides to prepare the decision using this procedure. Any decision that was prepared in this extensive procedure is subject to review by a court directly without a prior objection procedure.

Judicial review of an environmental case may take approximately a year.

3) Existence of special environmental courts, main role, competence

Next to the court system consisting of courts with a general competence, the Netherlands judiciary system provides special courts for specific disputes concerned with administrative decisions, such as zoning schemes or permits. There are, however, no special environmental courts or tribunals.

Administrative courts are competent to hear cases on decisions by public authorities. The term decision is defined as the written decision of an administrative authority constituting a public law act (Article 1:3 General Administrative Law Act). However, the administrative courts in the Netherlands are not competent to directly rule in cases concerned with general binding rules, policy rules or factual acts by government authorities (Article 8:2, 8:3 General Administrative Law Act). Those cases can be heard by (the private law sectors of) the District Courts on the basis of tort law. In those proceedings the provisions governing standing in private law will be relevant.

4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)

Most cases against environmental administrative decisions by the competent public authorities are lodged with the District Courts unless another procedure (e.g. appeal in first and only instance with the Administrative Jurisdiction Division of the Council of State) is stipulated. For most cases concerning environmental permits, the District Court and thereafter the Administrative Jurisdiction Division of the Council of State are competent. Cases on zoning plans go directly to the Administrative Jurisdiction Division of the Council of State. For instance: a zoning plan will be adopted according to the uniform extensive public preparation procedure that has to be applied by the competent authority in preparing the decision. Judicial review of a zoning plan is a matter for the Administrative Jurisdiction Division of the Council of State (in Dutch: Afdeling bestuursrechtspraak van de Raad van State) in first and last instance. The approval or refusal of an application for an environmental permit that is required in light of the EU Industrial Emissions Directive (or on other grounds in accordance with Article 2.1(1) sub e of the General Act on Environmental Permitting) will also be prepared by applying the uniform extensive public preparation procedure of section 3.4 General Administrative Law Act but will be subject to judicial review by the District Court first (no administrative review of any kind against the final decision is provided in these cases). An interested party may lodge an appeal against the judgment of the District Court with the Administrative Jurisdiction Division of the Council of State. In such cases on an environmental license, the courts will grant the public authority a small margin of appreciation when establishing what are the Best Available Techniques for the specific installation at hand. In all procedures of judicial review, the applicant may ask for provisional or interim measures in accordance with the general provisions on injunctive relief in administrative procedures (Articles 8:81-8:86 General Administrative Law Act).


The Dutch General Administrative Law Act (GALA) provides all procedural rules for judicial review and the administrative procedure that are to be followed before one can apply for judicial review. It also provides for extraordinary ways of lodging an appeal against decisions that concern the environment (e.g. no obligatory objection procedure when the decision has been prepared by following the uniform extensive public preparation procedure of section 3.4 General Administrative Law Act; no obligatory objection procedure when the decision is designated in an annex to the GALA; judicial review in first and only instance with the Administrative Jurisdiction Division of the Council of State if the decision is designated in an annex to the GALA, etc.). The General Administrative Law Act also provides for extraordinary procedures. During the objection procedure and during all administrative law procedures for judicial review the applicant may ask for provisional or interim measures in accordance with the general provisions on injunctive relief in administrative procedures (Articles 8:81-8:86 General Administrative Law Act).

None of the legislative procedural acts in the Netherlands introduce specific provisions for instigating the preliminary reference procedure with the European Court of Justice. The District Courts and the highest administrative courts make use of the competence to give an interlocutory ruling regulated in Article 8:80a General Administrative Law Act. The competence is, however, not specifically tailored for this use.

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?

Some administrative courts, including the highest administrative court in environmental cases, offer parties the possibility to call in a mediator and try to settle their conflict by finding consensus and without the courts delivering judgment. Although these have proven highly efficient in a small number of cases, the administrative courts have all adopted a new way of hearing cases that allows courts to have a strong focus on procedural justice and investigate possibilities to deal with the case in other ways than by simply annulling the administrative decision in its judgment.

7) How can other actors help (ombudsperson (if applicable), public prosecutor), accessible link (on the sites)?

The existence of a National Ombudsman is guaranteed by Article 78a of the Dutch Constitution (in Dutch: Grondwet). The Netherlands has a special National Ombudsman Act (in Dutch: Wet Nationale ombudsman). In addition, the work of the National Ombudsman’s Office is covered by the Dutch General Administrative Law Act (in Dutch: Algemene wet bestuursrecht). The National Ombudsman investigates complaints brought to him by members of the public. He can also launch investigations on his own initiative. There is no special Ombudsman for environmental matters. At anyone’s complaint the Dutch Ombudsman is competent to investigate the behaviour of government. The Ombudsman mostly helps individual citizens who are experiencing problems
with government and explains to administrative authorities how they can do things better. Where appropriate, the National Ombudsman responds to problems or complaints by launching investigations. By law, all parties concerned have to cooperate with these. The National Ombudsman is a ‘fall-back provision’. If you have a complaint about government, the first step is to complain to the administrative authority itself. The National Ombudsman can only deal with a complaint if it was first lodged with the administrative authority itself and the complaint was not sufficiently dealt with.

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)?

In administrative procedures, the basic rule is that an interested party, a person whose interest is directly affected by a decision (Article 1:2(1) General Administrative Law), must be able to participate in the procedure that will lead to the decision. This is the case both in the administrative procedure that is stipulated for individual decisions and for cases where the uniform extensive public preparation procedure of section 3.4 General Administrative Law Act is applicable (even in cases where anyone is allowed to submit their views, e.g. Article 3.12, lid 5 General Act on Environmental Permitting (in Dutch: Wet algemene bepalingen omgevingsrecht)).

Article 1:2(1) General Administrative Law Act states that an interested party is a person (or any legal entity) whose interest is directly affected by a decision. Article 1:2(3) General Administrative Law Act stipulates that with regard to legal entities, their interests are deemed to include the general (or: public) and collective interests which they particularly represent in accordance with their articles of association (bylaws) and as evidenced by their actual activities. The rule that stipulates that an interested party has the right to appeal a decision (Article 1:3 General Administrative Law Act) taken by a public authority (Article 8:1 and 1:2 General Administrative Law Act) is applicable for all administrative review procedures and administrative court proceedings. In 2005, the actio popularis was removed from the body of Dutch administrative procedural law. The sectoral, environmental legislation does not diverge from this general rule of legal standing; therefore it applies in cases concerned with decision for which an Environmental Impact Assessment (EIA) is required on the basis of EU law and in cases concerned with decisions on the application of a permit that is required in accordance with the Industrial Emissions Directive (IED) for an installation as defined in that directive. Although sectoral legislation on environmental matters often stipulates that not just an interested party but anyone is entitled to submit his or her views on a draft decision, legal standing before an administrative court is awarded only to an interested party (Article 1:2 General Administrative Law Act). Administrative authorities may also qualify as an interested party. Article 1:2(1 and 2) General Administrative Law Act reads that the interests entrusted to a public authority by the legislator are deemed to be their interests. The public tasks attributed to them and the competences they have are decisive in assessing which interests are entrusted to them. In accordance with Article 1:1 General Administrative Law Act, the National Ombudsman is not deemed to be such an administrative authority.

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?

The Dutch legislator aims to provide uniform provisions on access to justice. In many cases, the relevant provisions of the General Administrative Law Act (GALA, in Dutch: Algemene wet bestuursrecht) provide clarity as to procedures to be followed and the possibilities of judicial review against a decision. Although some sectoral legislation provides additional regulation, in most cases the rules on standing, appeal requirements, and court fees are uniform. In some environmental cases the law prescribes that an Environmental Impact Assessment (EIA) report has to be drawn up by the applicant before the public authority is able to decide on an application (Chapter 7 of the Environmental Management Act) for a permit or another decision that one can appeal against with an administrative court. Any decision on EIA screening, EIA scoping or acceptance of an EIA report by the public authority can be challenged in court by filing an appeal against the decision by the public authority that allows or refuses the permit or the decision. There are no special rules on standing, forum, hearing, evidence or the extent of the review by the court. EIA is seen as an important instrument to prepare certain decisions that potentially have significant effects on the environment. It ensures those involved that the competent authority is able to respect the duty of careful preparation of the decision. In most cases, the draft-decision is made public together with the EIA report and anyone is allowed to submit views before a final decision is made. Administrative Courts will review both the procedural legality and the substantive legality of administrative decisions as long as the interested parties have made that specific part of the decision a part of the dispute (see Article 8:69(1) General Administrative Law Act).

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.)

An interested party is anyone whose interest is directly affected by an administrative decision. Case law provides that there should be a personal, objectively determinable interest that belongs to the person filing the case. Regarding administrative authorities, the interests entrusted to them are deemed to be their interests. Regarding legal entities (Article 1:2(3) General Administrative Law Act), their interests are deemed to include the general and collective interests that they particularly represent in accordance with their rules of association (bylaws) and as evidenced by their actual activities. This is also true for foreign NGOs. An example of a general interest could be the protection of the environment in a specific area. One of the most relevant criteria for any legal entity claiming to represent a general interest is the fact that its actions should prove that the specific general interest relevant to the case has been looked after by the legal entity, e.g. by providing proof of activities aimed at protecting the environment. Whether a legal entity (e.g. an NGO) represents general interests of protecting the environment is assessed on a case-by-case basis. Lodging appeals or asking for enforcement action will not count as actual activities. However, this requirement is not applied when a collective interest is represented and the members of the association qualify as interested parties.

4) What are the rules for translation and interpretation if foreign parties are involved?

Discrimination based on country of origin and/or language is forbidden by the Dutch Constitution (Article 1). In general the (procedural) law demands that all lawsuits, appeals and other written documents are submitted to the court in Dutch. The judgment and other written documents of the court will also be in Dutch. One exception exists for the Dutch province of Friesland; there, the Frisian language can be used in court (Wet gebruik Friese taal). However, there are possibilities to have relevant documents that are written in another language translated. If the notice of objection or appeal is in a foreign language and a translation is necessary for the objection or appeal to be properly dealt with, the applicant must arrange for a translation and pay for the costs. Furthermore, when someone participates in a court hearing and is unable to speak the Dutch language sufficiently, he is allowed to use his own language and arrange for an interpreter and pay for the costs. Only if the court arranges for an interpreter, and this will - in environmental matters – in general not be the case, will the costs be paid by the court (see Article 8:35 and 8:36 General Administrative Law Act).

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?

Administrative Courts will review both the procedural legality and the substantive legality of administrative decisions as long as the interested parties have made that specific part of the decision a part of the dispute (see Article 8:69(1) General Administrative Law Act). When a public authority has been granted a margin of appreciation by the legislator in weighing the different interests involved in making a specific decision, the court will allow for this margin by applying a marginal review and upholding any decisions that it finds not unreasonable (Article 3:4(2) General Administrative Law Act). In general, courts will review the administrative decision and will ascertain whether the competent authority could justifiably base the decision on the material, technical findings and calculations that were used. There are no written rules of evidence other than the rules that have to be applied when establishing the facts in the administrative procedure that leads to the decision (e.g. good governance principles). In criminal and civil court procedures, there are specific rules on how to
provide evidence and who must bear the burden of proof. In civil procedures, the parties have to propose all of the evidence for their statements to the court as soon as possible. The state prosecutor prosecutes and must provide all evidence in criminal procedures concerned with environmental matters. In the rules on administrative court procedures, there are some formal rules on providing evidence but none are about which one of the parties will have the burden of proof. Case law of course provides for rules of thumb concerning substantial rules of evidence. For instance: when the challenged decision restricts a citizen in his rights or is of a punitive nature, the burden of proof is on the public authority. Another relevant rule of thumb is: who took the initiative for the administrative decision? If the administrative decision-making started with an application by the citizen involved, the first burden of proof is on the applicant. Policy documents and generally binding rules cannot be directly reviewed by an administrative court.

However, the General Administrative Law Act does provide formal rules concerning the establishment of the facts by administrative courts. For instance, the courts are competent to ask parties for written evidence and can also appoint an independent expert, like the Foundation for advising Administrative Courts in environmental and zoning schemes cases (Stichting Advisering Bestuursrechtspraak or StAB). It should be noticed with regard to gathering evidence, that Article 6:22 of the General Administrative Law Act (in Dutch: Algemene wet bestuursrecht) provides that any flaw that will not harm the interests of any of the interested parties can be overlooked by the court. Also relevant in this respect is Article 8:69a GALA, which stipulates that an administrative decision will not be quashed by the court if the decision is in breach of any rule which was not written to protect the interests of the party that filed the case. In environmental matters, however, the provisions protecting the environment, nature and health are deemed to have been written to protect the clean, healthy and acceptable living conditions of citizens that live or own property nearby. Therefore, individuals could also rely on such provisions.

2) Can one introduce new evidence?
Providing new evidence in court for the first time (either in the procedure of first instance or in appeal) is allowed unless the principle of due process is violated. Although the legislator once explained that administrative courts should seek the objective truth and the courts are competent to request evidence on their own motion (ex officio), the current proceedings before the administrative courts, in many ways, resemble the procedure in civil courts where the parties are expected to provide their evidence. Parties are able to present expert opinions, have an expert heard as a witness and ask the court to appoint an expert to conduct an investigation (see division 8.2.2 General Administrative Law Act on the preliminary inquiry). The court will evaluate all the evidence presented and conclude which evidence is most probably in line with the truth. When an expert opinion is presented, it is, of course, not binding on an administrative judge, although judges are likely to follow the opinion of the expert it appointed. The opinion of an expert is also not binding in cases where the court did not appoint the expert but a party presented a report. The courts are always able to assess the quality and the consistency of the report and will take into account whether the expert has reported in accordance with the principle of due care.

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts
In administrative court procedures, the courts do not have the possibility to investigate parts of an administrative decision that have not been challenged by the applicant. Any court, however, has the authority to investigate the facts of the case by hearing witnesses, by asking for (written) evidence or by appointing an expert, as long as it concerns the conflict that has been brought to court by the parties in the procedure. Administrative courts will use these powers in cases where the applicant has supplied sufficient information to doubt the facts that the administrative authority has based its decision on. Case law proves that parties to the case that is before the court have the duty to provide evidence on their own motion and they are allowed to do so. This is also true in environmental matters before the courts, although the administrative authority, always has the duty to take due care in preparing any administrative decision.

In procedures about administrative decisions on environmental matters, there is the possibility that if the court appoints an independent expert it will be the Foundation for advising Administrative Courts in environmental and zoning cases (Stichting Advisering Bestuursrechtspraak or StAB). This foundation is funded by government and has a specific expertise in environmental matters. The law provides that it will write a report on any environmental case at the request of an administrative court.

There is no publicly available list or registry of experts in environmental cases. Courts may invite individual experts with expertise on specific aspects of a case before them by selecting them based on their publications about that subject matter.

3.1) Is the expert opinion binding on judges, is there a level of discretion?
The court will establish the facts of the case even when an expert has been appointed by the court. However, a carefully prepared expert opinion delivered to the court by an independent expert will most likely be the basis for the judgment of the court, as the opinion of the expert is valuable to the court.

3.2) Rules for experts being called upon by the court
The formal requirements for an expert called upon by the court are stipulated in Article 8:47 of the General Administrative Law Act. Any administrative court may appoint an expert to conduct an investigation. The appointment must state the task to be performed and set a term within which the expert must submit a written report on the investigation to him. The intention to appoint an expert must be notified to the parties and the court may give the parties the opportunity to express their wishes regarding the investigation in writing within a period of time to be determined by the court. Both the Administrative Jurisdiction Division of the Council of State[4] and the (ordinary) judiciary[5] have introduced Codes of Conduct for experts that are appointed by the court to deliver an expert opinion.

3.3) Rules for experts called upon by the parties
The General Administrative Law Act provides general provisions concerning the expert opinions that public authorities may use to come to its decision. In the administrative procedure leading up to the decision, section 3.3 GALA is concerned with the experts that the public authority is obliged to call upon and are called ‘advisers’. The administrative authority to which the opinion is delivered must provide the adviser, at his request or otherwise, with the information needed to enable him to discharge his duties properly and must set a term if the law does not already provide one. The decision of the public authority will state the name of the advisers. The most relevant provision is Article 3:9 GALA, which provides that when an order is based on an investigation carried out by an adviser, the administrative authority must satisfy itself that the investigation was carried out with due care. The public authority must not base its decision on the results of the investigation of the adviser if this is not the case. This basic principle is applicable for all expert opinions that decisions are based on (Article 3.2 GALA).

During the procedure before an administrative court, the parties can call upon an expert to report on a specific aspect of the case and submit the report to the court in order to convince the court. For the parties that aim to have the court annul the decision, the law does not provide any rules for experts called upon.

3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?
When the court appoints the expert, the expert will be awarded a set payment from the judiciary for the task. Parties do not bear these costs. Article 8:38(2) of the General Administrative Law Act provides that the party who has brought or summoned a witness or an expert must reimburse the costs thereof. This also applies to the party to whom an expert's report has been issued. In connection with this, Article 1(1b) of the Decree on Administrative Procedure Costs stipulates that the costs of a witness, expert or interpreter brought in or summoned by a party or interested party may be reimbursed. This also applies to the costs of an expert who has reported to a party. According to the established case law of the highest administrative courts, the costs of engaging an expert are eligible for reimbursement if such engagement was reasonable and if the expert costs themselves are reasonable. The question is
whether, in view of the facts and circumstances as they existed at the time the expert was called upon, the party that called upon the expert could assume that the expert would make a relevant contribution to the court's answering of a question that may be relevant to the outcome of the dispute.

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

Lawyers play an important role in judicial procedures in environmental matters as environmental law is getting more and more complex. If a case is won in administrative court, the public authority could reimburse costs for legal counsel if the court so orders. The amount that can be awarded is maximized and is usually well below the actual costs (Article 8:75 General Administrative Law Act). However, in administrative procedures, legal counsel is not obligatory. The same is true for all procedures before the administrative courts. Legal counsel is therefore not mandatory in administrative judicial procedures. In other words, the General Administrative Law Act (in Dutch: Algemene wet bestuursrecht) does not prescribe legal counsel for lodging an appeal, nor for legal representation in court proceedings. In civil court proceedings legal representation is obligatory in many cases, although there is an important exception for cases in which the financial interest of the case is no larger than EUR 25,000. The same applies for criminal court procedures. All lawyers are members of the Bar (in Dutch: Orde van Advocaten). On their website you can find lawyers through some keywords, like areas of specialization such as environmental law (in Dutch: milieurecht/omgevingsrecht). One can also visit the websites of the government at https://rechtwijzer.nl/ or https://www.juridischloket.nl/.

1.1 Existence or not of pro bono assistance

Law firms could be persuaded to provide pro bono legal assistance and some of them say that they provide such assistance on a regular basis, but most law firms will probably not provide legal assistance for free in relatively normal 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.)?

There are a few websites that provide information on how to get in touch with law firms or lawyers that will provide pro bono existence.

1.3 Who should be addressed by the applicant for pro bono assistance?

The first line of legal aid provided by the Netherlands is online self-help. Information and support are offered on the Rechtwijzer website (Roadmap to Justice). This website provides legal information that is helpful in common legal procedures. To receive pro bono assistance will require getting in touch with a lawyer who or law firm that is willing to provide it.

2) Expert registries or publicly available websites of bars or registries that include the contact details of experts

All lawyers are members of the Bar (in Dutch: Orde van Advocaten). On their website you can find lawyers through some keywords, like areas of specialization such as environmental law (in Dutch: milieurecht/omgevingsrecht). Also, the website for the Legal Services Counters provides a search engine for lawyers and similar information is available at the website that provides a roadmap to justice.

For natural scientists and other non-legal experts there are no registries or general public websites.

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible

There are many NGOs active in the environmental field but there is not a complete verified list available of these Dutch NGOs.

4) List of International NGOs, who are active in the Member State

In some cases environmental NGOs, such as Greenpeace, The World Wide Fund for nature or Friends of the Earth Netherlands (in Dutch: Milieudefensie), will be able to help the public lodge appeals.

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)

An administrative environmental decision for which judicial review is possible by an administrative court must be challenged within 6 weeks after the decision has been officially notified (Article 6:7 GALA); either for lodging an administrative review (objection procedure) or a judicial review procedure by the administrative court. In most cases, one is allowed to submit a pro forma appeal which means that another term is awarded to submit grounds for the appeal.

2) Time limit to deliver decision by an administrative organ

If an objection is lodged against a decision, the time limit for deciding on the raised objections by the administrative authority is stipulated in Article 7:10 General Administrative Law Act and is either six or twelve weeks after the term to file an objection has passed. The twelve-week term is only applicable when an external review advisory board of at least three persons is asked to provide advice on the objection(s) filed.

3) Is it possible to challenge the first level administrative decision directly before court?

If the uniform extensive public preparation procedure codified in section 3.4 General Administrative Law Act (GALA) was followed in preparing the environmental decision, the decision should be challenged by lodging an appeal directly with the District Court or with the court that is made competent by the legislator. If this preparatory procedure was not followed, it is obligatory to follow an objection procedure by filing an objection with the administrative authority that has taken the decision before an appeal may be lodged (Article 8:1 and 7:1 GALA).

4) Is there a deadline set for the national court to deliver its judgment?

The General Administrative Law Act sets a time limit for delivering the judgment after the hearing by an administrative court. This time limit is six weeks and can be extended for another six weeks. However, there are no sanctions against courts delivering late judgments. Usually an administrative court will need 9 to 12 months to deliver its judgment.

5) Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)

There is no time limit for the court to set a date for the hearing. If a court date has been set, the parties have until ten days before the hearing to deliver new information or new grounds for their appeal, but they should be aware that the principle of due process could limit the freedom to send in new information or grounds.

1.7.2. Interim and precautionary measures, enforcement of judgments

1) When does the appeal challenging an administrative decision have suspensive effect?

In general, an appeal against a governmental decision in the Netherlands does not have a suspensive effect (see Article 6:16 General Administrative Law Act). However, sectoral or specific legislation may diverge from this general rule. In most environmental decisions this is not the case.

2) Is there a possibility for an interim relief during the administrative appeal by the authority or the superior authority?

If an objection has been filed with the administrative authority, the president of the District Court which has or may have jurisdiction in the proceedings on the merits may, on request, grant a provisional remedy where speed is of the essence because of the interests involved. So as soon as an objection is filed (pro forma), courts are competent to grant injunctive relief at the request of any interested party that has lodged the objection and has proved the urgent need for an injunctive relief because of the interests involved (see Article 8:31 General Administrative Law Act). The injunctive relief can consist of any court ordered action but will, in practically all cases, consist of awarding a suspensive effect or removing the suspensive effect of a decision that was taken by the administrative authority. There is no appeal against an injunction by the administrative court.
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?
Suspended effect might be asked for under the conditions stated above and can only be requested during a procedure of legal protection such as an objection procedure or a court procedure.

4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?
In general, administrative decisions can be immediately executed, irrespective of an appeal or a court action. Any execution of a decision that is later annulled by court, however, may lead to liability. In practice, decisions are often not yet executed and a court decision might be awaited.

5) Is the administrative decision suspended once challenged before court at the judicial phase?
Although there are exceptions of decisions that are - on the basis of sectoral legislation - de jure suspended when an administrative decision is challenged, this is usually not the case as the General Administrative Law Act provides otherwise (Article 6:16 GALA) and that provision applies to most environmental decisions.

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?
If an appeal against a decision has been lodged with the District Court, the president of the District Court which has jurisdiction in the proceedings on the merits may, on request, grant a provisional remedy where speed is of the essence because of the interests involved. So, as soon as an appeal is lodged (pro forma), courts are competent to grant injunctive relief at the request of any interested party that has lodged the appeal and has proved the urgent need for a injunctive relief because of the interests involved (see Article 8:81 General Administrative Law Act). The injunctive relief can consist of any court ordered action but will, in practically all cases, consist of awarding a suspensive effect or removing the suspensive effect of a decision that was taken by the administrative authority. There is no appeal against an injunction by the administrative court.

When a suspensive effect has been ordered by the administrative court, the decision may not be executed. No one may make use of the permission that has been given by such a decision. If this occurs anyway, an interested party may ask for enforcement action by the public authority. Also, anyone who claims that the actions are to be considered a tort, may apply for an injunctive relief with the District Court (private law sector).

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.
Administrative procedures such as the preparatory procedure and the objection procedure are free of charge. For an administrative court to hear an applicant’s case, it is necessary to pay a fee. The fee for court proceedings in first instance is stipulated in Article 8:41 of the General Administrative Law Act (in Dutch: Algemene wet bestuursrecht). In general, the fee is not considered to be very high. It varies on the basis of the type of person that instigates the procedure and the type of case and substantive law that applies to the case. Article 8:41(3) General Administrative Law Act mentions the different fees explicitly. In 2020 the fee is EUR 48 for any natural person that lodges an appeal or an injunction against a decision by an administrative authority that is concerned with social security and related legislation (see Article 8:41(3) General Administrative Law Act). It is EUR 178 for a natural person in any other case and EUR 354 for any legal person lodging an injunction or an appeal. Fees for proceedings before an Administrative Court of Appeal are somewhat higher and are stipulated in Article 8:109 GALA, they are EUR 131, 265 and 532, respectively. If the appeal is successful, these costs will usually have to be paid by the administrative authority (Article 8:75 and 8:114 General Administrative Law Act). In very rare cases of abuse of the right to appeal, the court might decide that the applicant should bear the (fixed) costs of the administrative authority such as the court fees and costs for lawyers. The courts practically never make use of this competence.

2) Cost of Injunctive relief/interim measure, is a deposit necessary?
The costs of the injunctive relief procedure before the administrative courts are the same as the court fees for the judicial review by the court.

3) Is there legal aid available for natural persons?
The courts cannot provide exemptions from court fees. The Dutch legal aid system provides legal aid to people of limited means. Anyone in need of professional legal aid but unable to (fully) bear the costs is entitled to call upon the provisions as set down in the Legal Aid Act (in Dutch: Wet op de Rechtsbijstand). Residing under the competence of the Ministry of Justice & Security, an independent governing body called the Legal Aid Board (in Dutch: Raad voor Rechtsbijstand) is entrusted with all matters concerning administration, supervision and expenditure as well as with the actual implementation of the legal aid system. This includes matching the availability of legal experts with the demand for legal aid, as well as the supervision and quality control of the actual services provided.

In general, the Dutch legal aid system can be described as a threefold model as it encompasses three lines that provide legal aid consisting of a public preliminary provision, public first-line and private second-line help. See the website of the Legal Aid Board for more information or the specific site for the system of legal aid. One could also visit the website of the judiciary that provides information on the system of legal aid.

Second, there are the Legal Services Counters that act as what is commonly known as the ‘front office’ of legal aid. Legal matters are clarified by providing information and advice either online, by telephone or at one of the 30 Legal Services Counters. Clients may be referred to a private lawyer or mediator, who act as the secondary line of legal aid. Clients may also apply for help from a subsidised lawyer or mediator directly. As a third option, such a lawyer (or mediator) submits an application to the Legal Aid Board on behalf of his client. If legal aid is granted, a certificate is issued which allows the lawyer in question to deal with the case. Lawyers and mediators are paid by the Legal Aid Board to provide their services to clients of limited means. Generally, they are paid a fixed fee according to the type of case, although exceptions can be made for more time-consuming cases. The regular fixed fee is seen as insufficient to cover the actual costs of procedures by those providing this type of legal aid. Furthermore, over time the rules on who can make use of this type of legal aid have been tightened which means fewer persons qualify for this aid.

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 are no legal clinics dealing with environmental cases that are available to the general public. The legal aid system in the Netherlands is meant primarily for natural persons. Legal personalities often have insurance for legal services. In some cases, NGOs like Greenpeace will organize the protests against a decision by a public authority and will help interested parties with lodging appeals or will appeal themselves.

5) Are there other financial mechanisms available to provide financial assistance?
The Netherlands provides a legal aid system to natural persons which has been described above. Also, there is the possibility to take out legal assistance insurance, but this is not provided by government.

6) Does the 'loser party pays' principle apply? How is it applied by courts, are there exceptions?
The ‘loser pays principle’ does not apply in administrative court cases, although the administrative authority will have to pay the court fee for the applicant in most cases when the decision is annulled. Also, in most cases, the authority will have to pay a calculated sum of legal costs (such as the costs related to
1) Where are the national rules on environmental access to justice available? Internet link to be provided. Are there other forms of structured dissemination? All Dutch legislation is available here (in Dutch). Some information on the Dutch court system is also available at https://www.government.nl/. Advice and legal aid is available online at https://rechtwijzer.nl/ and https://www.juridischloket.nl/. The latter refers to the 30 Legal Services Counters that are available throughout the Netherlands where anyone can get legal advice. Environmental information can be requested on the basis of the Government Information (Public Access) Act (WOB, Wet openbaarheid van bestuur) which provides specific provisions concerned with requests for environmental information. Also, chapter 19 of the Environmental Management Act (Wet milieubeheer) implements the specific legal regime for environmental information. More specific information about Dutch environmental law and procedures, including information on access to justice, can be found on the website of the Knowledge Centre InfoMil.

2) During different environmental procedures how is this information provided? From whom should the applicant request information? Rules on access to justice are codified in the General Administrative Law Act (Chapter 6, 7 and 8) and are applicable for any administrative decision. However, sectoral legislation such as the Environmental Management Act, the General Act on Environmental Permitting, the Spatial Planning Act, the Water Act, the Nature Conservation Act etc. may provide additional provisions. Information on the main additional provisions have been discussed in the questions above.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)? There are no sector-specific rules.

4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment? It is obligatory for the administrative authority and the administrative court to provide information about the possibility to lodge either an objection procedure, a judicial review procedure or an appeal and stipulate this information in the decision or the judgment. This is stipulated in Article 3:45 GALA and Article 6:23 GALA.

5) Is translation, interpretation provided to foreign participants? What are the rules applicable? For court cases in which one of the parties does not have an adequate command of Dutch, the government has set up a register of court interpreters and sworn translators. In certain cases (involving criminal or immigration law), the courts can only use interpreters and translators whose names are listed in this register. In civil cases this is not mandatory. Using the register, litigants (such as private individuals and enterprises) and people providing legal services (such as lawyers) can easily find an interpreter or translator who fulfils the requirements of integrity and quality laid down in the Sworn Interpreters and Translators Act. The register of court interpreters and sworn translators (only in Dutch) can in fact be accessed by any member of the public.

1.8. Special procedural rules


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 specific rules relating to standing and access to justice in relation to EIA. The general provisions provided by GALA and specific (environmental) legislation are applicable and explained in more detail in paragraph 1.7.4 sub 1 and 2.

2) Rules on standing relating to scoping (conditions, timeframe, public concerned) An EIA report is prepared in light of an environmental decision that will be taken by an administrative authority. Judicial review is only available against the environmental decision (permit; planning decision) and not against decisions on screening and scoping, on the conditions set by the administrative authority or on the timeframe. The (preparation of the) EIA report is considered a preparatory requirement for the decision that potentially has a detrimental effect on the environment. In all cases, the uniform extensive public preparation procedure is applicable (section 3.4 GALA) and in that procedure anyone can state their views on the basis of a draft decision and the EIA report. In some cases there is a formal requirement for public consultation before the EIA report will be drafted but it does not stipulate which individuals of the public concerned must be allowed to state their views and in what timeframe. After the administrative authority has taken a final decision, judicial review is available only against that decision and only for an interested party (Article 1:2 GALA), as is the case in most of administrative law procedures in the Netherlands.

3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions? In most environmental decisions, anyone that is against the draft decision and is reasonably deemed capable and available for stating their views is supposed to do so when a draft decision is notified by the administrative authority in the uniform extensive public preparation procedure (section 3.4 GALA). There will be a six-week term to state the views. When a final decision is taken, one should apply for judicial review with the administrative court within six weeks after the official notification of the decision. Anyone who has should have stated their views against the draft decision but did not do so will not be able to lodge an admissible appeal with the district court. Also, an appeal against any part of an environmental decision that a court could annul separately from other parts will be inadmissible if the applicant did not state his views on that particular part of the decision in the administrative procedure that led to the final decision.

4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO? The final decision can be challenged before an administrative court by an interested party. As explained above both a natural or a legal person can be an interested party on the basis of section 1 of Article 1:2 GALA. Also, an NGO can be considered an interested party under the requirements set in section 3 of Article 1:2 GALA. Articles 8:1 and 7:1 General Administrative Law Act (in Dutch: Algemene wet bestuursrecht) stipulate that any interested party (Article 1:2 General Administrative Law Act) may bring a case against a decision (Article 1:3 General Administrative Law Act) made by an administrative authority.
(Article 1:1 General Administrative Law Act) to the administrative court, but must first file an objection (in Dutch: bezwaarschrift) with the authority that took the decision.

5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?

This question has been answered in paragraph 1.3 sub 2 – 5 since there is no difference in standing or the scope of the judicial review between different kinds of administrative court procedures. The scope of judicial review is determined by the applicant and can include both substantive and procedural legality of decisions. On its own motion, the administrative court may review the competence of the court, the competence of the administrative authority and the adherence to time limits when lodging the objection procedure and the appeals procedure.

6) At what stage are decisions, acts or omissions challengeable?

The administrative courts in the Netherlands are competent to decide in cases concerning decisions (see Article 8:1 and Article 1:3 GALA) or untimely decision-making when a decision was requested. In any case where an EIA report is required, the decision that can be challenged must be such a decision, e.g. granting the permit that was applied for or adopting the zoning scheme. For factual acts or omissions, interested parties may request an enforcement decision or must refer the case to the civil court.

7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

The Dutch legal system for judicial review requires an interested party to participate in one of two possible administrative procedures before they may file a court action. If a decision is prepared by following the uniform extensive public preparation procedure of section 3.4 GALA, any party is obliged to state their views on the draft decision that will be notified (Article 3:15 General Administrative Law Act).

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?

Unless there are good reasons not to be, the appeal to the court by the interested party is inadmissible if that party did not participate in the administrative procedure (Article 6:13 General Administrative Law Act). If the uniform extensive public preparation procedure was not followed, the law requires that an interested party files an objection (Article 7:1 General Administrative Law Act) and that he states his grounds for his objections against the decision taken by the administrative authority in the objection procedure before he can lodge an appeal against the decision. This entails that every interested party must participate in the prescribed review procedure before an appeal at the court can be lodged. At the moment of writing, it is clear that this requirement is in violation of the implementation of the Aarhus Convention in the European Union. As was explained in more detail above in paragraph 1.3 sub 2.

9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

On the basis of Article 6 of the European Convention for Human Rights and the Fundamental Freedoms, the Dutch courts aim to provide procedures with a fair balance between the parties where each party must be afforded a reasonable opportunity to present their case under conditions that do not place them at a disadvantage vis-a-vis their opponent. The courts make sure that both parties to the proceedings know the evidence in the possession of the court and have the opportunity to comment on it with a view to influencing the outcome of the case. In administrative court procedures, the court is deemed to be active and may, if necessary, counterbalance the inequality between the individual and the administrative authority. This fundamental orientation has an impact on the law of administrative procedure as well. During the decision-making, too, an individual should be able to defend his or her position easily.

10) How is the notion of “timely” implemented by the national legislation?

Although the Dutch administrative courts have implemented several relevant guidelines in order to be able to deliver judgments in a timely way, and also the legislator has adopted several instruments to help administrative courts achieve that goal, there is no general legally binding timeframe to deliver judgment besides the term that is codified in Article 8:66 GALA (six weeks after hearing the case). In some specific environmental cases, however, the legislation specifies that the judgment must be delivered in six months; there is no sanction if the court does not comply with this time requirement. However, case law provides that damages can be awarded if a case remains undecided in the system of administrative adjudication unreasonably long (more than four years if the objection procedure, the procedure of judicial review by the District Court and the Court of Appeal are all used).

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?

There are no special rules applicable apart from the general provisions that were discussed above.

1.8.2. Integrated Pollution Prevention and Control (IPPC)/Industrial Emisions Directive (IED) - provisions related to Directive 2003/35/EC

1) Country-specific IPPC/IED rules related to access to justice

There are no country-specific IPPC rules in relation to access to justice in the Netherlands, although the permit on the basis of this Directive is always prepared by following the uniform extensive public preparation procedure (section 3.4 GALA) and anyone is allowed to state their views on a draft decision. As a consequence, there is no obligatory objection procedure before one can challenge the final decision in court.

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?

Article 8:1 GALA provides that any interested party (Article 1:2 GALA) has standing in administrative court proceedings. Who might be considered an interested party has been described in more detail in paragraph 1.4.

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

Only the final decision (granting or refusal of permit) can be challenged in court.

4) Rules on standing relating to scoping (conditions, timeframe, public concerned)

Only the final decision (granting or refusal of permit) can be challenged in court.

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?

The uniform extensive public preparation procedure is applicable to the granting of a permit for an IED installation. Anyone can state their views on a draft decision. This means that the draft decision will be notified and available for six weeks and during that time one can challenge the draft decision. After a final decision has been taken and is officially notified, an interested party (Article 1:2 GALA) can challenge the decision by lodging an appeal with the administrative court (District Court) within six weeks after the official notification.

6) Can the public challenge the final authorisation?

The public can challenge the final authorisation but article 8:1 GALA provides that only an interested party (Article 1:2 GALA) has standing in administrative court proceedings and article 6:13 GALA provides that only those that participated in the procedures may lodge an appeal. Who might be considered an interested party has been described above (section 1.4). The CJEU has ruled that article 6:13 GALA is partly in violation of the Aarhus Convention.

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?

Administrative courts are competent to review both substantive and procedural legality of the decision by an administrative authority. The court can establish the facts on its own motion and must also assess whether the administrative authority was competent to take the decision, whether the applicant has
standing before the court and whether the court is competent. There are no other legal questions that the court will answer on his own motion. Challenging decisions (Article 1:3 GALA) and untimely decision-making is possible before an administrative court. Also, an interested party may ask for injunctive relief concerned with these decisions. However, the administrative courts are not competent to hear factual acts and omissions; the civil court is competent.

8) At what stage are these challengeable?
Decisions can be challenged before a court within six weeks after the decision has been officially notified (see above)

9) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
In many administrative law conflicts about decisions, there is an obligatory objection procedure (Article 7:1 GALA) before the interested party may bring the case to court. However, if the uniform extensive public preparation procedure was followed to take the decision, which is the case for any permit required under the IE Directive, this obligation does not exist and an interested party can file a court action with the administrative court within six weeks after the official notification of the final decision. See above.

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?
Article 6:13 GALA provides that the appeal of an interested party that wants to file a court action with the administrative court and did not participate in previous administrative procedures without good reason will be inadmissible. See above.

11) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
There is no difference between the rules provided in an administrative law case and the rules applicable to decisions concerning the application of the IED. Dutch courts aim to provide procedures with a fair balance between the parties; in administrative matters this may mean that the courts will be more proactive towards ‘weaker’ parties and as a result, because of the complex nature of the technical issues in environmental matters, are perhaps more inclined to ask for expert advice.

12) How is the notion of “timely” implemented by the national legislation?
There is no specific legislation aimed at implementing the notion of timely with regards to the IED and the EIA Directive as the General Administrative Law Act provides sufficient provisions on timely decision making and timely court procedures.

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?
There is no specific legislation concerning injunctive relief about decisions with regards to the IED and the EIA Directive as the General Administrative Law Act provides provisions on the possibilities of injunctive relief which have been discussed in paragraph 1.7.2 sub 2.

14) Is information on access to justice provided to the public in a structured and accessible manner?
The administrative authority will provide information on access to justice when publishing the notification that a (environmental) decision has been taken (see https://www.overheid.nl/ or http://overwbuurt.overheid.nl). The courts provide structured and accessible (online) information on access to justice. Also, the governmental websites dealing with legal aid provide information to citizens. See in more detail paragraph 1.7.4 sub 2.

1.8.3. Environmental liability

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?
In the Netherlands, the Environmental Liability Directive is implemented in title 17.2 of the Environmental Management Act. The scope of implementation in the Environmental Management Act is similar to the scope of the directive: strict liability for environmental damage caused by any of the activities mentioned in Annex III of the directive (mainly integrated pollution prevention and control installations), and fault-based liability for other activities.

Judicial review by an administrative court is available when application of title 17.2 Environmental Management Act (EMA) leads to a (single case) decision by an administrative authority as defined in Article 1:3(2) General Administrative Law Act. When such a decision is taken, the general provisions for access to justice will apply. This means that any natural person, legal entity, administrative authority and/or NGO considered to be an interested party as defined in Article 1:2 General Administrative Law Act will have standing in an administrative court procedure against such a decision. Also, the administrative authorities mentioned in Article 17.2(3) EMA will be allowed to request for a decision on environmental remediation. A (single case) decision might be a decision at the request of a third party (interested party) for preventive or remedial action (Article 17.15(1) EMA), a decision to take preventive measures in the event of imminent environmental damage (Article 17.12(4) EMA), a decision to oblige someone to take all feasible measures in the event that environmental damage has already occurred (Article 17.13(5) EMA), a decision by the competent authority to take preventive measures or all feasible measures itself if the damage has already occurred (Articles 17.10 and 17.14(2) EMA), a decision as to whether or not to agree with the remedial measures proposed by the party causing the damage (Article 17.14(3) EMA), the decision prioritising which environmental damage is remedied first (Article 17.14(4) EMA), and a decision concerning the recovery of costs incurred by the competent authority from the party causing the damage (Article 17.16 EMA).

2) In what deadline does one need to introduce appeals?
The provisions on access to justice in the General Administrative Law Act are applicable and there are no additional special provisions provided in the Environmental Management Act. This means that the deadline is six weeks after the official notification of a decision.

The following applies to the cost recovery aspect. The competence to decide to recover costs expires after a period of five years after the day on which the preventive and remedial measures have been fully completed, by - or on behalf of - the competent authority (Article 17.17 Environmental Management Act). If the party causing the damage has only been identified after the date of completion of the measures, the five-year period starts from the moment of identification. Still, the deadline to introduce an appeal will be six weeks.

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 special requirements stipulated for observations accompanying the request for action. In general, a request or application to take a decision should be done by an interested party (Article 1:2 General Administrative Law Act) and should be sufficiently clear and concrete to be considered a request. A request or application should furthermore be accompanied by those facts and circumstances that the applicant is able to provide (Article 4:2 General Administrative Law Act). Case law has provided that it is duty of the interested party to provide the competent authority with any leads for the investigation. It is then up to the competent authority to investigate whether action is required.

4) Are there specific requirements regarding 'plausibility' for showing that environmental damage occurred, and if yes, which ones?
There are no special requirements stipulated regarding 'plausibility'. A request or application should furthermore be accompanied by those facts and circumstances that the applicant is able to provide (Article 4:2 General Administrative Law Act). Case law has provided that it is duty of the interested party to provide the competent authority with any leads for the investigation. It is then up to the competent authority to investigate whether action is required.

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)?
There are no special time limits stipulated for the notification of the decision by the competent authority. If an request/application for an administrative single case decision is filed with the administrative authority, it is legally obliged to deliver a decision within either the term provided in sectoral legislation or – if no such term is provided – within a reasonable time period, which is deemed to be eight weeks according to the Article 4:13 General Administrative Law Act. Although not stipulated by law, the administrative authority may decide that the uniform extensive public preparation procedure of section 3.4 GALA is applicable for a decision on the basis of title 17.2 EMA. In that case, a decision will be drafted and will be made publicly known. The draft decision and the documents on which it is based will be available for anyone’s viewing for six weeks. During that time anyone can participate in the decision-making process by submitting their views to the competent authority. The competent authority will have to respond to these views before taking and publishing the final decision. Such a final decision has to be taken within 6 months of the application.

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?
Yes. See above. An interested party may request a decision on preventive measures in case of imminent threat of environmental damage.

7) Which are the competent authorities designated by the MS?
Article 17.9 EMA stipulates which are the competent authorities. When the damage has been caused by an (industrial) installation, the administrative authority that is competent to grant the permit and is the competent enforcement agency is the competent authority. However, if the damage has occurred or will occur predominantly in water systems, the authority that is competent for that water system is the competent authority. When the damage has been caused outside an (industrial) installation, different competent authorities are designated depending on the damage being predominantly caused to soil, water, habitats, species (see Article 17.9(3) EMA). Where, in the event of environmental damage or imminent threat thereof, more than one administrative authority has been designated as the competent authority, or powers have been assigned to another administrative authority by this or any other law, consultations must be held in good time between those administrative authorities with a view to promoting the best possible coordination between the decisions to be taken or the measures to be taken. The administrative bodies must coordinate with each other (Article 17(5) EMA).

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?
There are no special requirements stipulated in the implementation of the Environmental Liability Directive. Therefore, the general provisions of the General Administrative Law Act are applicable and they stipulate that procedures of administrative review (either an objection procedure or the uniform extensive public preparation procedure) must be followed before judicial proceedings can be instigated (Article 8:1 and 7:1 GALA).

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?
There are no special regulations provided for administrative law cases with cross-border characteristics. The general provisions of the General Administrative Law Act are applicable. However, in certain cases the government of another country will be informed of the possible environmental effects by decisions, plans or programmes of the Dutch authorities (section 7.11 EMA concerning environmental impact assessment) or in the event that an installation is operated in such a way that environmental damage occurs or may occur outside the borders of the Netherlands (Article 17.13 EMA).

2) Notion of public concerned?
There are no special regulations provided for administrative law cases with cross-border effects. The general provisions on standing in administrative procedures and judicial proceedings that are stipulated in the General Administrative Law Act (e.g. the appellant must be an interested party (article 1:2 GALA) and must have participated in the preparatory procedure (article 6:13 GALA)) are applicable. See explained in more detail in paragraph 1.4 and 1.8.1 sub 7 and 8.

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)?
There are no special regulations provided for administrative law cases where NGOs of an affected country want to participate in the decision-making procedure, the procedure of administrative review or the judicial proceedings. The general provisions on standing in administrative procedures and judicial proceedings that are stipulated in article 1:2 and article 6:13 of the General Administrative Law Act are applicable. See explained in more detail in paragraph 1.4 and 1.8.1 sub 7 and 8. GALA. As far as we know, there are also no special regulations provided for individuals of an affected country related to legal aid and/or pro bono assistance.

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)?
There are no special regulations provided for administrative law cases where individuals of an affected country want to participate decision making, administrative review or judicial proceedings. The general provisions on standing in administrative procedures and judicial proceedings that are stipulated in article 1:2 and article 6:13 of the General Administrative Law Act are applicable See explained in more detail in paragraph 1.4 and 1.8.1 sub 7 and 8. As far as we know, there are also no special regulations provided for individuals of an affected country related to legal aid and/or pro bono assistance. See above.

5) At what stage is the information provided to the public concerned (including the above parties)?
There are no special regulations provided for administrative law cases where individuals of an affected country want to have information. The general provisions on providing information (notification duties of decisions and plans) are stipulated in the General Administrative Law Act and perhaps the Government Information (Public Access) Act (WOB, Wet openbaarheid van bestuur). Also, decisions taken by the competent authority in light of the implementation of the Environmental Liability Directive must be notified to the public in accordance with the general provisions stipulated in the General Administrative Law Act. The competent authority must oblige the party causing the damage to provide (additional) information. If the cause of the damage is an unusual event within an installation, title 17.1 EMA will provide additional safeguards to protect the environment and human health.

6) What are the timeframes for public involvement including access to justice?
There are no special regulations provided for administrative law cases with cross-border characteristics. The general provisions of the General Administrative Law Act are applicable. When the uniform extensive preparatory procedure is applicable, in most cases the public will have six weeks to state their views on a draft decision. Lodging an appeal procedure against the final decision is possible for an interested party during the period of six weeks after notification of the final decision.

7) How is information on access to justice provided to the parties?
There are no special regulations provided for administrative law cases with cross-border characteristics or for foreign applicants and non-foreign applicants. See above. This means that the decision of the administrative authority or the judgment will have to provide access to justice information.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?
There are no special regulations provided for administrative law cases with cross-border characteristics or for foreign applicants and non-foreign applicants. For court cases in which one of the parties does not have an adequate command of Dutch, the government has set up a register of court interpreters and
sworn translators. In certain cases (involving criminal or immigration law), the courts can only use interpreters and translators whose names are listed in this register. In civil cases this is not mandatory. Using the register, litigants (such as private individuals and enterprises) and people providing legal services (such as lawyers) can easily find an interpreter or translator who fulfills the requirements of integrity and quality laid down in the Sworn Interpreters and Translators Act. The register of court interpreters and sworn translators (only in Dutch) can in fact be accessed by any member of the public. However, in most environmental cases the appellant will bear the costs of translation or interpretation. See explained in more detail in paragraph 1.4 sub 5.

9) Any other relevant rules?
There are no other relevant rules.

[1] All Dutch legislation is available here (search for Dutch legislation).
[2] Many relevant judgments are published here (search for Dutch case law)
[6] See also case C-529/15.

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?

There is no difference between the regulation provided in an administrative law case outside the scope of EIA and IED, access to information and ELD and within. The articles 1:2 GALA on ‘interested parties’ that have standing and article 6:13 GALA are relevant. In general the level of access to national courts can be considered very effective as administrative court procedures are accessible, not expensive and allow for an active court to investigate the matter. However, recently discussed on the application of article 6:13 GALA has been triggered by the CJEU (case C826/18), because it ruled that this provision is partly in violation of the Aarhus Convention as it requires interested parties to participate in the preparatory procedure for a decision in order to have access to justice. See explained in more detail in paragraph 1.4 and 1.8.1 sub 7 and 8.

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 difference between the regulation provided in an administrative law case outside the scope of EIA and IED, access to information and ELD and within. The scope of administrative review (if applicable) and judicial review will cover procedural and substantive legality as long as grounds for appeal have been brought forward by the appellant.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

The system of judicial review mandates that all administrative review procedures must be used and exhausted before an appeal may be lodged (Article 6:13 GALA). There is no difference between the regulation provided in an administrative law case outside the scope of EIA and IED, access to information and ELD within. See explained in more detail paragraph 1.3 and 1.4.

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.?

Article 6:13 GALA provides for the general rule that it is necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc. There is no difference between the regulation provided in an administrative law case outside the scope of EIA and IED, access to information and ELD within. See explained in more detail paragraph 1.8.1 sub 7 and 8.

5) Are there some grounds/arguments precluded from the judicial review phase?

There are no grounds/arguments precluded from the judicial review phase, however, when a decision consists of multiple parts that may be quashed separately, anyone bringing grounds against such a part of a decision must have brought grounds against that part in any (administrative preparatory or review) procedure to be admissible (Article 6:13 GALA). There is no difference between the regulation provided in an administrative law case outside the scope of EIA and IED, access to information and ELD within.

6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

There is no difference between the rules provided in an administrative law case and the rules applicable to decisions concerning the application of EU law outside of EIA Directive/IED. Dutch courts aim to provide procedures with a fair balance between the parties; in administrative matters this may mean that the courts will be more proactive towards ‘weaker’ parties and therefore because of the complex nature of the technical issues in environmental matters are perhaps more inclined to ask an expert advice.

7) How is the notion of “timely” implemented by the national legislation?

There is no specific legislation concerning the notion of timely with regards to areas addressed by EU law outside the IED and the EIA Directive, as the General Administrative Law Act provides sufficient provisions on timely decision making and timely court procedures.

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?

There is no specific legislation concerning injunctive relief concerning the issues relevant here. The General Administrative Law Act provides provisions on the possibilities of injunctive relief which have been discussed in more detail in paragraph 1.7.2.

9) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court?

What are the safeguards against the costs being prohibitive, and do these include express statutory reference to a requirement that costs should not be prohibitive?

There is no specific legislation concerning the costs of access to justice and the consequences of losing the procedure other than the general provision provided by the GALA. See above. The ‘loser pays principle’ does not apply in administrative court cases, although the administrative authority will have to
pay the court fee for the applicant in most cases when the decision is annulled. Also, in most cases, the authority will have to pay a calculated sum of legal costs (such as the costs related to lawyers representing the applicant) to the applicant if the decision is quashed by the court. The applicant will only be forced to pay for the costs of the public authority when he has obviously misused the possibility of judicial review. This is practically never the case. For third parties, in most cases the costs will not be reimbursed. There is no express statute that requires that costs should not be prohibitive.

1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the Strategic Environmental Assessment (SEA) Directive 2001/42/EC

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?

There is no special regulation provided for access to justice when a Strategic Environmental Assessment is required other than the general provisions discussed above. This means that administrative review and judicial review is only available against the final decision when it can be considered a decision as defined in Article 1:3 GALA and is not considered a general binding rule or a policy rule (or a plan without direct binding effect for the public). In a large number of cases, there is therefore no administrative review or judicial review available. When there is, however, only an interested party (Article 1:2 GALA) has standing, as is the case in any administrative court procedure. See above.

In most cases, the uniform extensive public preparation procedure is followed to prepare the decision for which a Strategic Environmental Impact Assessment is required and in most of those administrative procedure anyone has the right to state their views on a draft decision. In judicial appeal procedures, however, access to justice is provided only for interested parties (article 1:2 GALA). The effectiveness of the level of access is quite high as the costs and the financial risks of lodging an appeal are low and the formal requirements for standing are reasonable. Be that as it may, there are doubts as to whether the system provided by article 6:13 GALA that requires all interested parties to state their views against a draft decision in the preparatory procedure is in accordance with the Aarhus Convention.

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 special regulation provided for access to justice when a Strategic Environmental Assessment is required other than the general provisions discussed above. There is no specific legislation concerning injunctive relief. The General Administrative Law Act provides provisions on the possibilities of injunctive relief which have been discussed above. There is no specific regulation provided for access to justice when a Strategic Environmental Assessment is required. See above for information on the general rules on access to justice in administrative court cases.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

The system of judicial review mandates that all administrative review procedures must be used and exhausted before appeal may be lodged (Article 6:13 GALA). There is no special regulation provided for access to justice when a Strategic Environmental Assessment is required. See above for information on the general rules on access to justice in administrative court cases.

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.?

Article 6:13 GALA provides for the general rule that it is necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc. There is no specific regulation provided for access to justice when a Strategic Environmental Assessment is required. See above for information on the general rules on access to justice in administrative court cases.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There is no specific legislation concerning injunctive relief. The General Administrative Law Act provides provisions on the possibilities of injunctive relief which have been discussed above. There is no specific regulation provided for access to justice when a Strategic Environmental Assessment is required. See above for information on the general rules on access to justice in administrative court cases.

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?

There is no special legislation concerning the costs of access to justice and the consequences of losing the procedure other than the general provision provided by the GALA. See above. The ‘loser pays principle’ does not apply in administrative court cases, although the administrative authority will have to pay the court fee for the applicant in most cases when the decision is annulled. Also, in most cases, the authority will have to pay a calculated sum of legal costs (such as the costs related to lawyers representing the applicant) to the applicant if the decision is quashed by the court. The applicant will only be forced to pay for the costs of the public authority when he has obviously misused the possibility of judicial review. This is practically never the case. For third parties, in most cases the costs will not be reimbursed. There is no express statute that requires that costs should not be prohibitive.

1.3. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with the public participation requirements of Article 7 of the Aarhus Convention in respect of plans and programmes not submitted to the procedures set out in the Strategic Environmental Assessment (SEA) Directive 2001/42/EC

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?

There is no special regulation provided for access to justice whether a Strategic Environmental Assessment is required or not. There is no specific legislation concerning injunctive relief. The General Administrative Law Act provides provisions on the possibilities of injunctive relief which have been discussed above. There is no specific regulation provided for access to justice when a Strategic Environmental Assessment is required other than the general provisions discussed above. This means that administrative review and judicial review is only available against the final decision when it can be considered a decision as defined in Article 1:3 GALA and is not considered a general binding rule or a policy rule (or a plan without direct binding effect for the public). In a large number of cases, there is therefore no administrative review or judicial review available. When there is, however, only an interested party (Article 1:2 GALA) has standing, as is the case in any administrative court procedure. See above.

In most cases, the uniform extensive public preparation procedure is followed to prepare the decision for which a Strategic Environmental Impact Assessment is required, and in most of those administrative procedures anyone has the right to state their views. In judicial appeal procedures, however, access to justice is provided only for interested parties (article 1:2 GALA). The effectiveness of the level of access is quite high as the costs and the financial risks of lodging an appeal are low and the formal requirements for standing are reasonable. Be that as it may, there are doubts whether the system provided by article 6:13 GALA that requires all interested parties to state their views against a draft decision in the preparatory procedure is in accordance with the Aarhus Convention.

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 special regulation provided for access to justice when a Strategic Environmental Assessment is required or when it is not. The scope of administrative review (if applicable) and judicial review will cover procedural and substantive legality as long as grounds for appeal have been brought forward by the appellant. See above for information on the general rules on access to justice in administrative court cases.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? The system of judicial review mandates that all administrative review procedures must be used and exhausted before appeal may be lodged (Article 6:13 GALA). There is no special regulation provided for access to justice when a Strategic Environmental Assessment is required or when it is not. See above for information on the general rules on access to justice in administrative court cases.

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.? Article 6:13 GALA provides for the general rule that it is necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc. There is no special regulation provided for access to justice when a Strategic Environmental Assessment is required or when it is not. See above for information on the general rules on access to justice in administrative court cases.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions? There is no specific legislation concerning injunctive relief. The General Administrative Law Act provides provisions on the possibilities of injunctive relief which have been discussed above. There is no special regulation provided for access to justice when a Strategic Environmental Assessment is required or when it is not. See above for information on the general rules on access to justice in administrative court cases.

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? There is no specific legislation concerning the costs of access to justice and the consequences of losing the procedure other than the general provision provided by the GALA. See above. The ‘loser pays principle’ does not apply in administrative court cases, although the administrative authority will have to pay the court fee for the applicant in most cases when the decision is annulled. Also, in most cases, the authority will have to pay a calculated sum of legal costs (such as the costs related to lawyers representing the applicant) to the applicant if the decision is quashed by the court. The applicant will only be forced to pay for the costs of the public authority when he has obviously misused the possibility of judicial review. This is practically never the case. For third parties, in most cases the costs will not be reimbursed. There is no express statute that requires that costs should not be prohibitive.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation

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 no special general regulation provided for access to justice concerning plans and programmes that are required by EU environmental legislation. This means that administrative review and judicial review is only available against the final decision when it can be considered a decision as defined in Article 1:3 GALA and is not considered a general binding rule or a policy rule (or a plan without direct binding effect for the public). In a large number of cases there is therefore no administrative review or judicial review, e.g. air quality plans. When there is, e.g. against a management plan for a Natura 2000 area when it implies that certain activities will not require a permit on the basis of the implementation of the Habitats Directive, only an interested party (Article 1:2 GALA) has standing, as is the case in any administrative court procedure. See above.

In most cases, the uniform extensive public preparation procedure is followed to prepare the decision and in most of those administrative procedures anyone has the right to state their views. In judicial appeal procedures, however, access to justice is provided only for interested parties (article 1:2 GALA). The effectiveness of the level of access is quite high as the costs and the financial risks of lodging an appeal are low and the formal requirements for standing are reasonable. Be that as it may, there are doubts whether the system provided by article 6:13 GALA that requires all interested parties to state their views against a draft decision in the preparatory procedure is in accordance with the Aarhus Convention.

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)? Relevant for the competence of the Dutch administrative courts is primarily the question whether the plan or the programme can be considered a decision as defined in Article 1:3 GALA that does not consist of general binding rules or policy rules. Plans and or programmes that are required by EU environmental law are often considered either policy documents to allow government to achieve a certain goal or provide an (indirect) assessment framework for assessing the applications for a permit or for adopting a zoning scheme that affect citizens (directly) and which decisions can be challenged in court. In many cases, however, the plans and programmes are not considered to be a decision against which interested parties should be awarded the possibility of judicial review.

This is not just the case because the plans and programmes will be followed by decisions that can be challenged but also because in the procedure of judicial review of these decisions, the interested party may introduce a plea of illegality concerning the plan or programme that was the basis for the decision. Only if the plan or programme itself does directly provide citizens with binding legal consequences, e.g. the management plan of a Natura 2000 area that will allow certain activities without a permit, judicial review will be open for an interested party (Article 1:2 GALA).

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? There is no special general regulation provided for access to justice concerning plans and programmes that are required by EU environmental legislation. In a procedure of judicial review of a decision the applicant may enter a plea of illegality concerning a plan or programme and the administrative court must assess whether that ground of appeal is well-founded. It is generally thought that this assessment is done with more deference for the public authority that adopted the plan or programme and will still cover both procedural and substantive legality, although procedural flaws are considered less relevant for the effectiveness of the level of access.

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? The system of judicial review mandates that all administrative review procedures must be used and exhausted before appeal may be lodged (Article 6:13 GALA). There is no special general regulation provided for access to justice concerning plans and programmes that are required by EU environmental legislation. See above.

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.? Article 6:13 GALA provides for the general rule that it is necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc. There is no special general regulation provided for access to justice concerning plans and programmes that are required by EU environmental legislation.

6) Are there some grounds/arguments precluded from the judicial review phase?
There are no grounds/arguments precluded from the judicial review phase, however, when a decision consists of multiple parts that may be quashed separately, anyone bringing grounds against such a part of a decision must have brought grounds against that part in any (administrative preparatory or review) procedure to be admissible. There is no special general regulation provided for access to justice concerning plans and programmes that are required by EU environmental legislation. The general provisions stipulated in GALA are applicable.

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
There is no difference between the rules provided in an administrative law case and the rules applicable to plans and programmes. Dutch courts aim to provide procedures with a fair balance between the parties; in administrative matters this may mean that the courts will be more proactive towards ‘weaker’ parties and therefore and because of the complex nature of the technical issues in environmental matters are perhaps more inclined to ask an expert advice.

8) How is the notion of “timely” implemented by the national legislation?
There is no specific legislation aimed at implementing the notion of timely with regards to plans and programmes required by European Law, as the General Administrative Law Act provides sufficient provisions on timely decision making and timely court procedures. There is no special general regulation provided for access to justice concerning plans and programmes that are required by EU environmental legislation.

9) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?
There is no specific legislation concerning injunctive relief. The General Administrative Law Act provides provisions on the possibilities of injunctive relief which have been discussed in paragraph 1.7.2 above. There is no special general regulation provided for access to justice concerning plans and programmes that are required by EU environmental legislation.

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?

There is specific legislation concerning the costs of access to justice and the consequences of losing the procedure other than the general provision provided by the GALA. See above. The ‘loser pays principle’ does not apply in administrative court cases, although the administrative authority will have to pay the court fee for the applicant in most cases when the decision is annulled. Also, in most cases, the authority will have to pay a calculated sum of legal costs (such as the costs related to lawyers representing the applicant) to the applicant if the decision is quashed by the court. The applicant will only be forced to pay for the costs of the public authority if he has obviously misused the possibility of judicial review. This is practically never the case. For third parties the costs will in most cases not be reimbursed. There is no express statute that requires that costs should not be prohibitive.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts

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?

There is no special general regulation provided for access to justice concerning executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts. This means that administrative review and judicial review is only available against the final decision when it can be considered a decision as defined in Article 1:3 GALA and is not considered a general binding rule or a policy rule (or a plan without direct binding effect for the public). In a large number of cases, there is therefore no administrative review or judicial review. When there is, only an interested party (Article 1:2 GALA) has standing, as is the case in any administrative court procedure. See above.

In cases where general binding rules are used, there is no competence of the administrative courts and the uniform extensive public preparation procedure is not applicable as there are separate provisions on the preparation of general binding rules in the Netherlands. In many other cases where a decision has to be taken, the uniform extensive public preparation procedure is followed to prepare the decision and in most of those administrative procedure anyone has the right to state their views. There is no direct access to administrative courts for judicial review and therefore the effectiveness is dependent on the judicial review of decisions based on the binding normative instruments (general binding rules).

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 special general regulation provided for access to justice concerning executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts. In a procedure of judicial review of a decision based on the general binding rules implementing European law, however, the appellant may enter a plea of illegality concerning these executive and/or generally applicable legally binding normative instruments, and the administrative court must assess whether that ground of appeal is well-founded. It is generally thought that this assessment is done with more deference for the public authority that adopted the normative instrument. It will still cover both procedural and substantive legality, although procedural flaws are considered less relevant for the question of whether the competent authority could apply the plan of programme to take the contested decision.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

The system of judicial review mandates that all administrative review procedures must be used and exhausted before appeal may be lodged (Article 6:13 GALA). However, this requirement is irrelevant here, as there is no special general regulation provided for access to administrative courts concerning executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts.

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.?

Article 6:13 GALA provides for the general rule that it is necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc. However, this requirement is irrelevant here, as there is no special general regulation provided for access to administrative courts concerning executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There is no specific legislation concerning injunctive relief. The General Administrative Law Act provides provisions on the possibilities of injunctive relief which have been discussed in paragraph 1.7.2 above. There is no special general regulation provided for access to administrative courts concerning executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory 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?

There is specific legislation concerning the costs of access to justice and the consequences of losing the procedure other than the general provision provided by the GALA. The 'loser pays principle' does not apply in administrative court cases, although the administrative authority will have to pay the court fee for the applicant in most cases when the decision is annulled. Also, in most cases, the authority will have to pay a calculated sum of legal costs (such as the costs related to lawyers representing the applicant) to the applicant if the decision is quashed by the court. The applicant will only be forced to pay for the costs of the public authority if he has obviously misused the possibility of judicial review. This is practically never the case. For third parties, in most cases the costs will not be reimbursed. There is no express statute that requires that costs should not be 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]

There is no special general regulation provided for access to justice concerning executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts. Also, the preliminary reference procedure is not codified in Dutch procedural law. In a procedure of judicial review of a decision, the applicant may enter a plea of illegality concerning an EU (regulatory) act or decision and the administrative court must assess whether that ground of appeal is well-founded and whether a preliminary reference procedure with the ECJ is deemed necessary.

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[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-126/09-C-131/09 and C-162/10, 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 Hoekschevaards Landschap, ECLI:EU:C:2017:774.

[6] For an example of such a preliminary reference see Case C-281/16, Vereniging Hoekschevaards Landschap, ECLI:EU:C:2017:774.

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Other relevant rules on appeals, remedies and access to justice in environmental matters

The sanctions for the administrative authority for not responding within the prescribed term have been described above. When a decision is not provided before the end of the term provided by law, or when no term is provided within eight weeks after the request, the applicant will have to send a notice of default and allow the administrative authority another two weeks to decide. If a decision still is not taken after those two weeks, there are two consequences.

First, for each day after that term the administrative authority will have to pay a penalty to the applicant for each day that no decision is made (with a maximum of EUR 1,442). Second, the applicant can ask the court for judicial review in order to force the administrative authority to come up with a decision.

That court procedure will be about the question of whether the administrative authority did indeed not decide within the provided time frame and the procedure must take no more than eight weeks. If the conclusion by the court is indeed that no decision was made before the deadline, the court will order the administrative authority to take the decision within a two-week period and will award a penalty for each day that a decision still has not been taken after those two weeks.

If an administrative authority does not comply with a judgment of an administrative court, it will be most likely be the case that no decision is taken. Judicial review will be available for an interested party when the time frame for taking a decision has passed (see above in paragraph 1.8.2). If a natural person or a legal person does not comply with the judgment of the administrative court, it will most likely be the case that this person acts in violation of administrative law, in accordance with a suspended permit or in violation of the conditions of his permit. Therefore, an interested party may request enforcement measures with the competent administrative authority, which is - in general - entitled to take enforcement action (either an administrative order to take physical action or other relevant rules on appeals, remedies and access to justice in environmental matters).

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Access to justice in environmental matters - Netherlands

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  1. Access to justice at Member State level
  3. Other relevant rules on appeals, remedies and access to justice in environmental matters.

Last update: 27/07/2021
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

Dutch regulation aimed at protecting the environment has been developing strongly since the early 70s. It developed as a highly fragmented accumulation of rules to protect the environment and human health, divided over a wide number of policy fields and regulations. The Dutch Constitution provides a basis for the regulation that should provide citizens with a habitable environment and allow for the protection and the improvement of the environment. The many legislative acts adopted by Parliament aim to protect the environment and often form the legal basis for executive decrees, which provide more detailed regulations and are adopted by either the Dutch Government or by a specific Minister who is responsible for a certain policy area. Protecting the environment, however, is also the responsibility of governmental bodies at the provincial and the municipal levels. Ensuring compliance and enforcement of environmental regulation is often the responsibility of these lower tiers of government as there is no national environmental protection agency in the Netherlands.

Most (sectoral) environmental laws, executive decrees and regulations have frequently been amended over time, often because of the adoption /implementation of EU environmental regulation and case law of the Court of Justice of the European Union. Over the years, the Dutch legislator has striven to implement coordinative measures on a procedural level and has even introduced integrative legislation. Both the regulation for adopting policy documents and the system of environmental permits have been strongly affected by these procedural and coordinative legislative efforts. However, at the moment there remain many specific (sectoral) acts in order to protect specific parts of the environment, e.g. for water, soil, air, waste, nature conservation and spatial planning. The Netherlands is now (2020) on the brink of implementing a restructured body of regulation that aims to improve environmental regulation with the introduction of the Environment and Planning Act (EPA). The EPA will (most likely) come into force in 2022. This act aims to replace and streamline many of the existing relevant sectoral acts and provide government with the instruments to both protect and improve the quality of the physical living environment in the Netherlands and regulate human activities that could be detrimental to it.

Although specific environmental legislation often provides for additional relevant articles on public participation and access to justice, the Dutch legislator has tried to implement a uniform system of general rules on public participation and access to justice in administrative decision-making, including environmental decisions. In many cases concerning environmental decision-making, the law provides that anyone has the right to state their views on a draft decision before the final decision is taken. Only those with a specific interest related to the decision taken have access to the administrative court that will provide judicial review. This includes natural persons, legal entities and NGOs. Many cases concerned with environmental legislation will be dealt with by the administrative courts. The Dutch system does not provide for environmental tribunals or environmental courts; however, the courts with general competence will provide a relevant role for environmental cases that fall outside the competence of the administrative courts. The rights of citizens in all procedures are affected by both EU regulations and international law. The same is true for the regulation on transparent government. The Netherlands offers an adequate legal framework for the promotion of a transparent government in the Netherlands as it provides anyone with the right to request access to information contained in documents held by an administrative authority that relates to an administrative matter.

2) Constitution – main (content of + including references) provisions on environment and access to justice in the national constitution (if applicable) including procedural rights

Article 21 of the Dutch Constitution (Grondwet) obliges Government to guarantee its citizens a habitable environment and arrange for the protection and the improvement of the environment. Together with Article 11, which secures the right to personal integrity and Article 22, which awards a right to health, these provisions are the main (social) fundamental rights related to the environment laid down in the Dutch Constitution. Access to justice is secured by Article 17, which states that no one can be kept from the competent court against his will. These articles order the legislator to adopt legislative acts and secure these rights; however, citizens cannot rely on the national constitutional rights before the courts when discussing these legislative acts as the Netherlands does not have a Constitutional court. However, in administrative court procedures against single case administrative decisions based on such legislative acts, citizens may rely directly on rights vis-à-vis the government that are granted by the Constitution, like the duty of the government to establish a habitable environment and arrange for the protection and the improvement of the environment, as long as the court does not assess the constitutionality of the legislative act itself (Article 120 Dutch Constitution). In the (near) future a new paragraph will be added to this provision in the Constitution. It will grant every citizen of the Netherlands the right to a fair trial within a reasonable time before an independent and impartial court to establish his rights and obligations or to determine the merits of any legal proceedings against him. The proposal thus establishes a new fundamental right for citizens in Chapter 1 of the Constitution. Chapter 6 of the Dutch Constitution is also relevant as it states that the law will make clear which court is competent (Article 112 of the Dutch Constitution). The Netherlands has no constitutional court and therefore relies on its parliamentary system and the Council of State as a legislative adviser to guarantee the proper functioning of the Dutch constitution. In practice, the European Convention on Human Rights and Fundamental Freedoms, the Charter of Fundamental Rights of the European Union and the Aarhus Convention are more relevant in legal procedures than the Dutch Constitution. The Netherlands has no constitutional court and therefore relies on its parliamentary system and the Council of State as a legislative adviser to guarantee the proper functioning of the Dutch constitution. In practice, the European Convention on Human Rights and Fundamental Freedoms, the Charter of Fundamental Rights of the European Union and the Aarhus Convention are more relevant in legal procedures than the Dutch Constitution.

3) Acts, Codes, Decrees, etc. - main provisions on environment and access to justice, national codes, acts

Procedures against administrative decisions in environmental matters are governed by both the general provisions of (administrative) procedural law, which are stipulated in the General Administrative Law Act (GALA, in Dutch: Algemene wet bestuursrecht), mainly chapters 6, 7 and 8 which stipulate the general provisions on access to administrative courts, and by some additional provisions in specific acts of which the most important ones are the Environmental Management Act (EMA, in Dutch: Wet milieubeheer), the General Act on Environmental Permitting (GAEP, in Dutch: Wet algemene bepalingen omgevingsrecht), the Spatial Planning Act (SPA, in Dutch: Wet ruimtelijke ordening), the Water Act (in Dutch: Waterwet) and the Nature Conservation Act (in Dutch: Wet natuurbescherming).

After years of preparation, the Dutch legislator has recently adopted a new Environment and Planning Act (in Dutch: Omgevingswet) which will most likely be in force in 2022. This act will completely replace or replace relevant parts of the Environmental Management Act, the General Act on Environmental Permitting, the Spatial Planning Act, the Water Act, the Nature Conservation Act and many other environmental acts.

4) Examples of national case-law, role of the Supreme Court in environmental cases

Although it is not a typical case, the best known example of national case-law from the Netherlands Supreme Court is probably its decision in the Urgenda-case [ECLI:NL:HR:2019:2007] (in 2015, the Hague District Court (private law sector) became the first court of law that ordered a State to adopt more measures to tackle climate change. It ruled that the State must take more action to reduce greenhouse gas emissions in the Netherlands and ordered it to
ensure that Dutch greenhouse gas emissions in the year 2020 would be at least 25 per cent lower than the 1990 levels. The Urgenda Foundation, partly on behalf of 886 Dutch concerned citizens, had requested that the court issue a ruling on the basis of tort law. In late-2018, the Hague Court of Appeal confirmed the District Court’s judgment, albeit on different grounds, and just before the end of 2019, the Supreme Court upheld this ruling, adding to the already extended and impressive reasoning. The Supreme Court in the judiciary system of general competence has casassion power only and provides unifying case law with regards to the application of private law.

The highest court in the Netherlands for judicial review of decisions by government bodies that concern the environment is the Administrative Jurisdiction Division of the Council of State (Afdeling bestuursrechtspraak van de Raad van State). This court provides unifying case law concerning the application of administrative and environmental laws and regulations. It is both an appellate court and a court of first instance and has reformatory competence. Recent influential judgments are concerned with the Dutch Programmatic Approach to Nitrogen (ECLI:NL:RVS:2019:1603 and ECLI:NL:RVS:2019:1604). This approach was codified in general binding rules (executive decree/delegated regulation) on the basis of the Nature Conservation Act, and the court had to decide on its legality in several cases brought by environmental organisations and concerned with decisions on permitting and enforcement of nature conservation legislation. The regulation provided that agricultural entrepreneurs (farmers) could be allowed to expand either by applying for a permit or by way of exemption, even though their activities would be detrimental to Natura 2000 areas. These areas are protected on the basis of the Dutch Nature Conservation Act which serves as an implementation of the EU Habitats Directive. The Administrative Jurisdiction Division of the Council of State decided that the Dutch Programmatic Approach to Nitrogen could not form the legal basis for allowing economic activities as the regulation was in breach of Article 6 of the EU Habitats Directive in several respects.

Another relevant development in light of access to justice in environmental cases has been the recent judgment of the Administrative Jurisdiction Division of the Council of State in which it redefined which parties qualify as an interested party and will therefore have standing in administrative court proceedings on the basis of Article 8:1, in conjunction with Article 1:2 General Administrative Law Act (ECLI:NL:RVS:2017:2271). For many years, the courts had decided that anyone who could possibly experience the environmental effects of an environmental permit was considered an interested party. The court now reasoned that this was not in line with its own case-law in relation to zoning schemes and licenses for public events and decided that the question on standing, e.g. who is an interested party as defined in Article 1:2 General Administrative Law Act, would have to be answered consistently in all cases concerning decisions that have an effect on the environment. Anyone who is directly and actually affected by an activity permitted by the decision - such as a zoning plan or a permit - is, in principle, an interested party. However, the criterion 'consequences of any significance' serves as a possibility for a correction. Consequences of any significance are missing if the effect on the applicant’s interests can be determined objectively, but the consequences for the person involved are so small that a personal interest in relation to the decision is lacking. In this assessment, consideration is given to the factors of distance, visibility, spatial impact and environmental consequences (e.g. odour, noise, light, vibration, emission, risk) of the activity permitted by the decision. The nature, intensity and frequency of the actual consequences may also be important. Legal standards do not determine whether the person concerned has a personal interest in the decision. If the decision and the grounds for appeal cause to do so, the question of whether such a standard is met will be considered in the substantive assessment of the judicial review. Ultimately, it is up to the administrative court to decide who is an interested party. The litigant in question therefore does not have to prove that he is an interested party in a decision.

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?

Once a treaty has come into force in international law, legislative, administrative and judicial authorities must accept the newly created legal situation as lawful and must take it into consideration when making their decisions. They must do all that is possible to apply the terms of the treaty considering their constitutional position in the State organization. The parties have the right to invoke international treaties directly in administrative or court procedures if these rights are considered self-executing (binding on all). Domestic statutory regulations may not be applied if such application is in conflict with provisions that are binding on all persons (Article 94 of the Dutch Constitution). They can also rely upon EU law if it has direct effect. Article 21 of the Dutch Constitution could be invoked by parties in procedures against decisions by administrative authorities. In most cases, however, it will not have the desired effect because of the discretion that Government has in achieving the objective(s) of this provision. Any provision of an international treaty can be invoked in administrative and judicial proceeding after it has been published and when such a provision is of a generally binding nature (Article 93 of the Dutch Constitution). This is true for several relevant provisions of the European Convention on Human Rights and Fundamental Freedoms and the Aarhus Convention, which was adopted by both the Netherlands and the European Union.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

Legal protection in the Netherlands is first of all provided by the courts of general jurisdiction that are competent to decide on private law (between private parties) and criminal law cases (Article 112 of the Dutch Constitution and Article 2 Judiciary (Organization) Act). This system has three tiers. A case is heard first by the District Court (in Dutch: Rechtbank) and if a party does not agree with the judgment, he may lodge an appeal with the Court of Appeal (in Dutch: Gerechtshof). The Court of Appeal re-examines the facts of the case and reaches its own conclusions. Thereafter, it is usually possible to refer a dispute to the highest court, the Supreme Court of the Netherlands (in Dutch: Hoge Raad). The Supreme Court of the Netherlands examines only whether the lower court(s) observed proper application of the law in reaching its judgment. At this stage, the facts of the case as established by the lower court(s) are no longer subject to discussion.

Judicial review of (single case) administrative law decisions that are concerned with the environment are adjudicated by a District Court (administrative law sector) as a court of first instance. An appeal may be lodged with one of the highest administrative law courts in the Netherlands. For environmental decisions this is the Administrative Jurisdiction Division of the Council of State (in Dutch: Afdeling bestuursrechtspraak van de Raad van State). This court will also hear some relevant cases (e.g. zoning schemes) as a court of first and only instance.

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)?

The Netherlands is divided into 11 districts, each with its own District Court. District Courts are divided into 3 sectors: a civil law sector, a criminal law sector and an administrative law sector. The 11 districts are divided into 4 areas of jurisdiction for the Courts of Appeal for civil and criminal disputes and some specific administrative disputes (e.g. tax law). With regard to criminal and civil law, the justices of the Court of Appeal only deal with cases where an appeal has been lodged against the judgment passed by the District Court. There is no special court or tribunal for environmental matters. The law will stipulate that anyone who could possibly experience the environmental effects of an environmental permit was considered an interested party. However, the criterion 'consequences of any significance' serves as a possibility for a correction. Consequences of any significance are missing if the effect on the applicant’s interests can be determined objectively, but the consequences for the person involved are so small that a personal interest in relation to the decision is lacking. In this assessment, consideration is given to the factors of distance, visibility, spatial impact and environmental consequences (e.g. odour, noise, light, vibration, emission, risk) of the activity permitted by the decision. The nature, intensity and frequency of the actual consequences may also be important. Legal standards do not determine whether the person concerned has a personal interest in the decision. If the decision and the grounds for appeal cause to do so, the question of whether such a standard is met will be considered in the substantive assessment of the judicial review. Ultimately, it is up to the administrative court to decide who is an interested party. The litigant in question therefore does not have to prove that he is an interested party in a decision.

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Administrative Law Act). An interested party may lodge an appeal against the judgment of the District Court with the Administrative Jurisdiction Division of the Council of State, which is the highest administrative law court for environmental decisions.

3) Specialties as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges

Usually the cases are heard by the District Court by a single-judge division, but the court can decide to appoint three judges to a case which is complex or which involves fundamental issues. In environmental matters governed by administrative law and in a lot of other areas, appeal is a matter for the Administrative Jurisdiction Division of the Council of State (in Dutch: Afdeling bestuursrechtspraak van de Raad van State), which will have a case dealt with by three judges although it could decide to have a simple case heard by a single judge. In other areas Dutch administrative law provides for a special appeals tribunal, like the Central Appeals Tribunal (in Dutch: Centrale Raad van Beroep) for cases involving civil servants and social security issues, the Court of Appeal for appeals against tax assessments, and the Trade and Industry Appeals Tribunal (in Dutch: College van Beroep voor het Bedrijfsleven) for disputes in the area of social-economic administrative law and for appeals for specific laws, such as the Competition Act. The proceedings before all these courts are regulated by the provisions of Chapters 6, 7 and 8 of the General Administrative Law Act and therefore do not differ much. None of the courts are allowed to have laymen contribute to the judgments.

In many administrative disputes, the hearing by the administrative law sector of the District Court is preceded by a procedure under the auspices of the administrative authority, either by allowing (in most cases) anyone to state their views about a draft decision or by obliging an interested party to lodge an objection against a decision before one can bring a case to the administrative law court for judicial review. With regard to the requirement of participation in the administrative procedure preceding the judicial review, the Court of Justice of the European Union (CJEU) in its judgment in case C-826/18 that this requirement is partially in violation of requirements of the Aarhus Convention (ECLI:EU:C:2021:7).

When a case is being dealt with in an objection procedure or by an administrative court, the applicant has the possibility to ask the court for a provisional or interim measure in a specific procedure if there is sufficient reason and a sufficiently urgent interest (Articles 8:81-8:86 General Administrative Law Act). If the interim measures requested are allowed by the administrative court it will mean, in most cases, that the challenged decision is suspended. In procedures about administrative decisions that affect the environment, there is the possibility that the court will appoint a specific independent expert, the Foundation for Advising Administrative Courts in environmental and zoning cases (in Dutch: Stichting Advies & Raadplegingsdiensten voor Bestuursrecht). This foundation is funded by government and has a specific expertise in environmental matters. The law provides that it will write a report on any environmental case at the request of an administrative court. In administrative court procedures, the courts do not have the possibility to investigate parts of an administrative decision that have not been challenged by the applicant. Any court, however, has the authority to investigate the facts of the case by hearing witnesses, by asking for (written) evidence or by appointing an expert, as long as it concerns the conflict that has been brought to court by the parties in the procedure. Administrative courts will use these powers in cases where the applicant has supplied sufficient information to doubt the facts that the administrative authority has based its decision on. Case law proves that parties to the conflict being decided by the courts have the duty to provide evidence on their own matters, although the administrative authority of course always has the duty to take due care in preparing any administrative decision.

4) Level of control in case of administrative appeals, concept of own motion, what are its limits? Rules on court action on its own motion

In procedures against administrative decisions, a competent court will quash (or annull) the decision if the applicant has brought forward arguments that prove the decision to be in breach of the law. There are very few elements that the court will investigate on its own motion; it will annul the decision if the public authority or person that has taken decision was not competent to do so, and it will declare an appeal inadmissible if any of the formal requirements are not met. When the appeal is well-founded, the judgment will inherently lead to the annulment of the decision. An administrative court does have the competence to determine that its judgment should take the place of the annulled decision or the annulled part thereof (either deciding that the legal consequences of the annulled decision will remain valid or that the judgment provides an amended administrative decision). Exercising that authority will be justified only in cases where it is sufficiently obvious what decision the administrative body would have to take after the annulment. The administrative courts have found more and more ways to make use of this competence in cases where the administrative decision was annulled. However, by default, many cases in which the decision is annulled will lead to a new decision by the same administrative authority. Courts are able to award compensatory damages to citizens against the public authority when there are grounds to do so (on the basis of tort), a request has been made by that citizen and the challenged decision has been found in breach of the law.

The provisions on the procedural steps for hearing the case in many cases award the court some discretion; this is the case for the application of the courts discretionary powers concerning establishing the facts (expert advice; written testimony etc.). In all cases, the procedure must provide for formal public hearing and a deadline for providing evidence and statements of ten days before the formal hearing. After the formal hearing and the closing of the case, judgment will be delivered within 6 or 12 weeks.

1.3. Organisation of justice at administrative and judicial level

1) System of the administrative procedure (ministries and/or specific state authorities)

Administrative environmental decisions are taken by administrative authorities of municipalities, provinces or on state level. In many cases the administrative authorities of the municipality are competent to take a decision (adopting a zoning scheme; granting a permit). For specific decisions, the provincial level is competent. Also, at the State level, a specific Minister (see [3] https://www.government.nl/) might be competent.

2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?

The administrative procedures in environmental matters are governed by both the general provisions on administrative procedure of the General Administrative Law Act (in Dutch: Algemene wet bestuursrecht) and by some specific provisions in the General Act on Environmental Permitting (in Dutch: Wet algemene bepalingen omgevingsrecht) and the Environmental Management Act (in Dutch: Wet milieubeheer), the Spatial Planning Act (in Dutch: Wet ruimtelijke ordening) and other special acts.

Articles 8:1 and 7:1 General Administrative Law Act (in Dutch: Algemene wet bestuursrecht) stipulate that any interested party (Article 1:2 General Administrative Law Act) may bring a case against a decision (Article 1:3 General Administrative Law Act) made by an administrative authority (Article 1:1 General Administrative Law Act) to the administrative court, but must first file an objection (in Dutch: bezwaarschrift) with the authority that took the decision. The result of this objection procedure will be a (re)new(ed) decision by the same public authority. Only that decision can be the subject of judicial review by the administrative court.

For a number of important environmental permitting decisions, such as whether or not to grant an environmental permit (e.g. the permitting system that is required on the basis of the EU Industrial Emissions Directive, IED) and the adoption of municipal zoning schemes, the law provides for a procedure that involves public participation based on a draftdecision by the public authority. In order to be able to lodge an appeal against the final decision, one has to participate in the preparatory procedure (article 6:13 GALA). This requirement has been ruled partly in violation of the Aarhus Convention by the Court of Justice of the European Union (CJEU) in its judgment in case C-826/18.[3] When the law provides that this procedure is applicable, a decision will be drafted and will be made publicly known. The draft decision and the documents that it is based on will be available for anyone’s viewing for six weeks. During that time anyone can participate in the decision-making process by submitting their views to the competent authority. The competent authority will have to
respond to these views before taking and publishing the final decision. Such a final decision has to be taken within 6 months of the application for the environmental permit. This administrative procedure is laid down in section 3.4 (uniform extensive public preparation procedure) of the General Administrative Law Act (in Dutch: Algemene wet bestuursrecht) and section 3.3 of the General Act on Environmental Permitting (in Dutch: Wet algemene bepalingen omgevingsrecht). This procedure is applicable when it is stipulated by law or when the administrative authority decides to prepare the decision using this procedure. Any decision that was prepared in this extensive procedure is subject to review by a court directly without a prior objection procedure. Judicial review of an environmental case may take approximately a year.

3) Existence of special environmental courts, main role, competence
Next to the court system consisting of courts with a general competence, the Netherlands judiciary system provides special courts for specific disputes concerned with administrative decisions, such as zoning schemes or permits. There are, however, no special environmental courts or tribunals.

Administrative courts are competent to hear cases on decisions by public authorities. The term decision is defined as the written decision of an administrative authority constituting a public law act (Article 1:3 General Administrative Law Act). However, the administrative courts in the Netherlands are not competent to directly rule in cases concerned with general binding rules, policy rules or factual acts by government authorities (Article 8:2, 8:3 General Administrative Law Act). Those cases can be heard by (the private law sectors of) the District Courts on the basis of tort law. In those proceedings the provisions governing standing in private law will be relevant.

4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)
Most cases against environmental administrative decisions by the competent public authorities are lodged with the District Courts unless another procedure (e.g., appeal in first and only instance with the Administrative Jurisdiction Division of the Council of State) is stipulated. For most cases concerning environmental permits, the District Court and thereafter the Administrative Jurisdiction Division of the Council of State are competent. Cases on zoning plans go directly to the Administrative Jurisdiction Division of the Council of State. For instance: a zoning plan will be adopted according to the uniform extensive public preparation procedure that has to be applied by the competent authority in preparing the decision. Judicial review of a zoning plan is a matter for the Administrative Jurisdiction Division of the Council of State (in Dutch: Afdeling bestuursrechtspraak van de Raad van State) in first and last instance. The approval or refusal of an application for an environmental permit that is required in light of the EU Industrial Emissions Directive (or on other grounds in accordance with Article 2.1(1) sub e of the General Act on Environmental Permitting) will also be prepared by applying the uniform extensive public preparation procedure of section 3.4 General Administrative Law Act but will be subject to judicial review by the District Court first (no administrative review of any kind against the final decision is provided in these cases). An interested party may lodge an appeal against the judgment of the District Court with the Administrative Jurisdiction Division of the Council of State. In such cases on an environmental license, the courts will grant the public authority a small margin of appreciation when establishing what are the Best Available Techniques for the specific installation at hand. In all procedures of judicial review, the applicant may ask for provisional or interim measures in accordance with the general provisions on injunctive relief in administrative procedures (Articles 8:81-8:86 General Administrative Law Act).

The Dutch General Administrative Law Act (GALA) provides all procedural rules for judicial review and the administrative procedure that are to be followed before one can apply for judicial review. It also provides for extraordinary ways of lodging an appeal against decisions that concern the environment (e.g. no obligatory objection procedure when the decision has been prepared by following the uniform extensive public preparation procedure of section 3.4 General Administrative Law Act; no obligatory objection procedure when the decision is designated in an annex to the GALA; judicial review in first and only instance with the Administrative Jurisdiction Division of the Council of State if the decision is designated in an annex to the GALA, etc.). The General Administrative Law Act also provides for extraordinary procedures. During the objection procedure and during all administrative law procedures for judicial review the applicant may ask for provisional or interim measures in accordance with the general provisions on injunctive relief in administrative procedures (Articles 8:81-8:86 General Administrative Law Act).

None of the legislative procedural acts in the Netherlands introduce specific provisions for instigating the preliminary reference procedure with the European Court of Justice. The District Courts and the highest administrative courts make use of the competence to give an interlocutory ruling regulated in Article 8:80a General Administrative Law Act. The competence is, however, not specifically tailored for this use.

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?
Some administrative courts, including the highest administrative court in environmental cases, offer parties the possibility to call in a mediator and try to settle their conflict by finding consensus and without the courts delivering judgment. Although these have proven highly efficient in a small number of cases, the administrative courts have all adopted a new way of hearing cases that allows courts to have a strong focus on procedural justice and investigate possibilities to deal with the case in other ways than by simply amnulling the administrative decision in its judgment.

7) How can other actors help (ombudsperson (if applicable), public prosecutor), accessible link to the sites?
The existence of a National Ombudsman is guaranteed by Article 79a of the Dutch Constitution (in Dutch: Grondwet). The Netherlands has a special National Ombudsman Act (in Dutch: Wet Nationale ombudsman). In addition, the work of the National Ombudsman’s Office is covered by the Dutch General Administrative Law Act (in Dutch: Algemene wet bestuursrecht). The National Ombudsman investigates complaints brought to him by members of the public. He can also launch investigations on his own initiative. There is no special Ombudsman for environmental matters. At anyone’s complaint the Dutch Ombudsman is competent to investigate the behaviour of government. The Ombudsman mostly helps individual citizens who are experiencing problems with government and explains to administrative authorities how they can do things better. Where appropriate, the National Ombudsman responds to problems or complaints by launching investigations. By law, all parties concerned have to cooperate with these. The National Ombudsman is a ‘fall-back provision’. If you have a complaint about government, the first step is to complain to the administrative authority itself. The National Ombudsman can only deal with a complaint if it was first lodged with the administrative authority itself and the complaint was not sufficiently dealt with.  

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)?
In administrative procedures, the basic rule is that an interested party, a person whose interest is directly affected by a decision (Article 1:2(1) General Administrative Law Act), must be able to participate in the procedure that will lead to the decision. This is the case both in the administrative procedure that is stipulated for individual decisions and for cases where the uniform extensive public preparation procedure of section 3.4 General Administrative Law Act is applicable (even in cases where anyone is allowed to submit their views, e.g. Article 3.12, lid 5 General Act on Environmental Permitting (in Dutch: Wet algemene bepalingen omgevingsrecht). Article 1:2(1) General Administrative Law Act states that an interested party is a person (or any legal entity) whose interest is directly affected by a decision. Article 1:2(3) General Administrative Law Act stipulates that with regard to legal entities, their interests are deemed to include the general (or: public) and collective interests which they particularly represent in accordance with their articles of association (bylaws) and as evidenced by their actual activities. The rule that stipulates that an interested party has the right to appeal a decision (Article 1:3 General Administrative Law Act) taken by a public authority (Article 8:1 and 1:2 General Administrative Law Act) is applicable for all administrative review procedures and administrative court proceedings. In 2005, the
actio popularis was removed from the body of Dutch administrative procedural law. The sectoral, environmental legislation does not diverge from this general rule of legal standing; therefore it applies in cases concerned with decision for which an Environmental Impact Assessment (EIA) is required on the basis of EU law and in cases concerned with the application of a permit that is required in accordance with the Industrial Emissions Directive (IED) for an installation as defined in that directive. Although sectoral legislation on environmental matters often stipulates that not just an interested party but anyone is entitled to submit his or her views on a draft decision, legal standing before an administrative court is awarded only to an interested party (Article 1:2 General Administrative Law Act). Administrative authorities may also qualify as an interested party. Article 1:2(1 and 2) General Administrative Law Act reads that the interests entrusted to a public authority by the legislator are deemed to be their interests. The public tasks attributed to them and the competences they have are decisive in assessing which interests are entrusted to them. In accordance with Article 1:1 General Administrative Law Act, the National Ombudsman is not deemed to be such an administrative authority.

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?

The Dutch legislator aims to provide uniform provisions on access to justice. In many cases, the relevant provisions of the General Administrative Law Act (GALA, in Dutch: Algemene wet bestuursrecht) provide clarity as to procedures to be followed and the possibilities of judicial review against a decision. Although some sectoral legislation provides additional regulation, in most cases the rules on standing, appeal requirements, and court fees are uniform. In some environmental cases the law prescribes that an Environmental Impact Assessment (EIA) report has to be drawn up by the applicant before the public authority is able to decide on an application (Chapter 7 of the Environmental Management Act) for a permit or another decision that one can appeal against with an administrative court. Any decision on EIA screening, EIA scoping or acceptance of an EIA report by the public authority can be challenged in court by filing an appeal against the decision by the public authority that allows or refuses the permit or the decision. There are no special rules on standing, forum, hearing, evidence or the extent of the review by the court. EIA is seen as an important instrument to prepare certain decisions that potentially have significant effects on the environment. It ensures those involved that the competent authority is able to respect the duty of careful preparation of the decision. In most cases, the draft-decision is made public together with the EIA report and anyone is allowed to submit views before a final decision is made. Administrative Courts will review both the procedural legality and the substantive legality of administrative decisions as long as the interested parties have made that specific part of the decision a part of the dispute (see Article 6:69(1) General Administrative Law Act).

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.)

An interested party is anyone whose interest is directly affected by an administrative decision. Case law provides that there should be a personal, objectively determinable interest that belongs to the person filing the case. Regarding administrative authorities, the interests entrusted to them are deemed to be their interests. Regarding legal entities (Article 1:2(3) General Administrative Law Act), their interests are deemed to include the general and collective interests that they particularly represent in accordance with their rules of association (bylaws) and as evidenced by their actual activities. This is also true for foreign NGOs. An example of a general interest could be the protection of the environment in a specific area. One of the most relevant criteria for any legal entity claiming to represent a general interest is the fact that its actions should prove that the specific general interest relevant to the case has been looked after by the legal entity, e.g. by providing proof of activities aimed at protecting the environment. Whether a legal entity (e.g. an NGO) represents general interests of protecting the environment is assessed on a case-by-case basis. Lodging appeals or asking for enforcement action will not count as actual activities. However, this requirement is not applied when a collective interest is represented and the members of the association qualify as interested parties.

4) What are the rules for translation and interpretation if foreign parties are involved?

Discrimination based on country of origin and/or language is forbidden by the Dutch Constitution (Article 1). In general the (procedural) law demands that all lawsuits, appeals and other written documents are submitted to the court in Dutch. The judgment and other written documents of the court will also be in Dutch. One exception exists for the Dutch province of Friesland; there, the Frisian language can be used in court (Wet gebruik Friese taal). However, there are possibilities to have relevant documents that are written in another language translated. If the notice of objection or appeal is in a foreign language and a translation is necessary for the objection or appeal to be properly dealt with, the applicant must arrange for a translation and pay for the costs. Furthermore, when someone participates in a court hearing and is unable to speak the Dutch language sufficiently, he is allowed to use his own language and arrange for an interpreter and pay for the costs. Only if the court arranges for an interpreter, and this will - in environmental matters – in general not be the case, will the costs be paid by the court (see Article 8:35 and 8:36 General Administrative Law Act).

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?

Administrative Courts will review both the procedural legality and the substantive legality of administrative decisions as long as the interested parties have made that specific part of the decision a part of the dispute (see Article 6:69(1) General Administrative Law Act). When a public authority has been granted a margin of appreciation by the legislator in weighing the different interests involved in making a specific decision, the court will allow for this margin by applying a marginal review and upholding any decisions that it finds not unreasonable (Article 3:4(2) General Administrative Law Act). In general, courts will review the administrative decision and will ascertain whether the competent authority could justifiably base the decision on the material, technical findings and calculations that were used. There are no written rules of evidence other than the rules that have to be applied when establishing the facts in the administrative procedure that leads to the decision (e.g. good governance principles). In criminal and civil court procedures, there are specific rules on how to provide evidence and who must bear the burden of proof. In civil procedures, the parties have to propose all of the evidence for their statements to the court as soon as possible. The state prosecutor prosecutes and must provide all evidence in criminal procedures concerned with environmental matters. In the rules on administrative court procedures, there are some formal rules on providing evidence but none are about which one of the parties will have the burden of proof. Case law of course provides for rules of thumb concerning substantial rules of evidence. For instance: when the challenged decision restricts a citizen in his or her rights or is of a punitive nature, the burden of proof is on the public authority. Another relevant rule of thumb is: who took the initiative for the administrative decision? If the administrative decision-making started with an application by the citizen involved, the first burden of proof is on the applicant. Policy documents and generally binding rules cannot be directly reviewed by an administrative court. However, the General Administrative Law Act does provide formal rules concerning the establishment of the facts by administrative courts. For instance, the courts are competent to ask parties for written evidence and can also appoint an independent expert, like the Foundation for advising Administrative Courts in environmental and zoning schemes cases (Stichting Advisering Bestuursrechtspraak or STAB). It should be noticed with regard to gathering evidence, that Article 6:22 of the General Administrative Law Act (in Dutch: Algemene wet bestuursrecht) provides that any flaw that will not harm the interests of any of the interested parties can be overlooked by the court. Also relevant in this respect is Article 6:69a GALA, which stipulates that an administrative decision will not be quashed by the court if the decision is in breach of any rule which was not written to protect the interests of the party that filed the case. In environmental matters, however, the provisions protecting the environment, nature and health are deemed to have been written to protect the clean, healthy and acceptable living conditions of citizens that live or own property nearby. Therefore, individuals could also rely on such provisions.
2) Can one introduce new evidence?
Providing new evidence in court for the first time (either in the procedure of first instance or in appeal) is allowed unless the principle of due process is violated. Although the legislator once explained that administrative courts should seek the objective truth and the courts are competent to request evidence on their own motion (ex officio), the current proceedings before the administrative courts, in many ways, resemble the procedure in civil courts where the parties are expected to provide their evidence. Parties are able to present expert opinions, have an expert heard as a witness and ask the court to appoint an expert to conduct an investigation (see division 8.2.2 General Administrative Law Act on the preliminary inquiry). The court will evaluate all the evidence presented and conclude which evidence is most probably in line with the truth. When an expert opinion is presented, it is, of course, not binding on an administrative judge, although judges are likely to follow the opinion of the expert it appointed. The opinion of an expert is also not binding in cases where the court did not appoint the expert but a party presented a report. The courts are always able to assess the quality and the consistency of the report and will take into account whether the expert has reported in accordance with the principle of due care.

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts
In administrative court procedures, the courts do not have the possibility to investigate parts of an administrative decision that have not been challenged by the applicant. Any court, however, has the authority to investigate the facts of the case by hearing witnesses, by asking for (written) evidence or by appointing an expert, as long as it concerns the conflict that has been brought to court by the parties in the procedure. Administrative courts will use these powers in cases where the applicant has supplied sufficient information to doubt the facts that the administrative authority has based its decision on. Case law proves that parties to the case that is before the court have the duty to provide evidence on their own motion and they are allowed to do so. This is also true in environmental matters before administrative courts, although the administrative authority, of course, always has the duty to take due care in preparing any administrative decision.

In procedures about administrative decisions on environmental matters, there is the possibility that if the court appoints an independent expert it will be the Foundation for Advising Administrative Courts in environmental and zoning cases (Stichting Advies Bestuursrechtspraak or StAB). This foundation is funded by government and has a specific expertise in environmental matters. The law provides that it will write a report on any environmental case at the request of an administrative court.

There is no publicly available list or registry of experts in environmental cases. Courts may invite individual experts with expertise on specific aspects of a case before them by selecting them based on their publications about that subject matter.

3.1) Is the expert opinion binding on judges, is there a level of discretion?
The court will establish the facts of the case even when an expert has been appointed by the court. However, a carefully prepared expert opinion delivered to the court by an independent expert will most likely be the basis for the judgment of the court, as the opinion of the expert is valuable to the court.

3.2) Rules for experts being called upon by the court
The formal requirements for an expert called upon by the court are stipulated in Article 8:47 of the General Administrative Law Act. Any administrative court may appoint an expert to conduct an investigation. The appointment must state the task to be performed and set a term within which the expert must submit a written report on the investigation to him. The intention to appoint an expert must be notified to the parties and the court may give the parties the opportunity to express their wishes regarding the investigation in writing within a period of time to be determined by the court. Both the Administrative Jurisdiction Division of the Council of State[4] and the (ordinary) judiciary[5] have introduced Codes of Conduct for experts that are appointed by the court to deliver an expert opinion.

3.3) Rules for experts called upon by the parties
The General Administrative Law Act provides general provisions concerning the expert opinions that public authorities may use to come to its decision. In the administrative procedure leading up to the decision, section 3:3 GALA is concerned with the experts that the public authority is obliged to call upon and are called ‘advisers’. The administrative authority to which the opinion is delivered must provide the adviser, at his request or otherwise, with the information needed to enable him to discharge his duties properly and must set a term if the law does not already provide one. The decision of the public authority will state the name of the advisers. The most relevant provision is Article 3:9 GALA, which provides that when an order is based on an investigation carried out by an adviser, the administrative authority must satisfy itself that the investigation was carried out with due care. The public authority must base its decision on the results of the investigation of the adviser if this is not case. This basic principle is applicable for all expert opinions that decisions are based on (Article 3:2 GALA).

During the procedure before an administrative court, the parties can call upon an expert to report on a specific aspect of the case and submit the report to the court in order to convince the court. For the parties that aim to have the court annul the decision, the law does not provide any rules for experts called upon.

3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?
When the court appoints the expert, the expert will be awarded a set payment from the judiciary for the task. Parties do not bear these costs.

Article 8:36(2) of the General Administrative Law Act provides that the party who has brought or summoned a witness or an expert must reimburse the costs thereof. This also applies to the party to whom an expert's report has been issued. In connection with this, Article 1(b) of the Decree on Administrative Procedure Costs stipulates that the costs of a witness, expert or interpreter brought in or summoned by a party or interested party may be reimbursed. This also applies to the costs of an expert who has reported to a party. According to the established case law of the highest administrative courts, the costs of engaging an expert are eligible for reimbursement if such engagement was reasonable and if the expert costs themselves are reasonable. The question is whether, in view of the facts and circumstances as they existed at the time the expert was called upon, the party that called upon the expert could assume that the expert would make a relevant contribution to the court's answering of a question that may be relevant to the outcome of the dispute.

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
Lawyers play an important role in judicial procedures in environmental matters as environmental law is getting more and more complex. If a case is won in the environmental field, the public authority could reimburse costs for legal counsel if the court so orders. The amount that can be awarded is maximized and is usually well below the actual costs (Article 8:75 General Administrative Law Act). However, in administrative procedures, legal counsel is not obligatory. The same is true for all procedures before the administrative courts. Legal counsel is therefore not mandatory in administrative judicial procedures. In other words, the General Administrative Law Act (in Dutch: Algemene wet bestuursrecht) does not prescribe legal counsel for lodging an appeal, nor for legal representation in court proceedings. In civil court proceedings legal representation is obligatory in many cases, although there is an important exception for cases in which the financial interest of the case is no larger than EUR 25,000. The same applies for criminal court procedures. All lawyers are members of the Bar (in Dutch: Orde van Advocaten). On their website you can find lawyers through some keywords, like areas of specialization such as environmental law (in Dutch: milieurecht/omgevingsrecht). One can also visit the website of the government at https://rechtwijzer.nl/ or https://www.juridischloket.nl/.

1.1 Existence or not of pro bono assistance

https://www.juridischloket.nl/
Law firms could be persuaded to provide pro bono legal assistance and some of them say that they provide such assistance on a regular basis, but most law firms will probably not provide legal assistance for free in relatively normal 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.)?

There are a few websites that provide information on how to get in touch with law firms or lawyers that will provide pro bono existence.

1.3 Who should be addressed by the applicant for pro bono assistance?

The first line of legal aid provided by the Netherlands is online self-help. Information and support are offered on the Rechtwijzer website (Roadmap to Justice). This website provides legal information that is helpful in common legal procedures. To receive pro bono assistance will require getting in touch with a lawyer who or law firm that is willing to provide it.

2) Expert registries or publicly available websites of bars or registries that include the contact details of experts

All lawyers are members of the Bar (in Dutch: Orde van Advocaten). On their website you can find lawyers through some keywords, like areas of specialization such as environmental law (in Dutch: milieurecht/omgevingsrecht). Also, the website for the Legal Services Counters provides a search engine for lawyers and similar information is available at the website that provides a roadmap to justice.

For natural scientists and other non-legal experts there are no registries or general public websites.

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible

There are many NGOs active in the environmental field but there is no complete verified list available of these Dutch NGOs.

4) List of international NGOs, who are active in the Member State

In some cases environmental NGOs, such as Greenpeace, The World Wide Fund for nature or Friends of the Earth Netherlands (in Dutch: Milieudienstige), will be able to help the public lodge appeals.

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)

An administrative environmental decision for which judicial review is possible by an administrative court must be challenged within 6 weeks after the decision has been officially notified (Article 8:7 GALA); either for lodging an administrative review (objection procedure) or a judicial review procedure by the administrative court. In most cases, one is allowed to submit a pro forma appeal which means that another term is awarded to submit grounds for the appeal.

2) Time limit to deliver decision by an administrative organ

If an objection is lodged against a decision, the time limit for deciding on the raised objections by the administrative authority is stipulated in Article 7:10 General Administrative Law Act and is either six or twelve weeks after the term to file an objection has passed. The twelve-week term is only applicable when an external review advisory board of at least three persons is asked to provide advice on the objection(s) filed.

3) Is it possible to challenge the first level administrative decision directly before court?

If the uniform extensive public preparation procedure codified in section 3.4 General Administrative Law Act (GALA) was followed in preparing the environmental decision, the decision should be challenged by lodging an appeal directly with the District Court or with the court that is made competent by the legislator. If this preparatory procedure was not followed, it is obligatory to follow an objection procedure by filing an objection with the administrative authority that has taken the decision before an appeal may be lodged (Article 8:1 and 7:1 GALA).

4) Is there a deadline set for the national court to deliver its judgment?

The General Administrative Law Act sets a time limit for delivering the judgment after the hearing by an administrative court. This time limit is six weeks and can be extended for another six weeks. However, there are no sanctions against courts delivering late judgments. Usually an administrative court will need 9 to 12 months to deliver its judgment.

5) Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)

There is no time limit for the court to set a date for the hearing. If a court date has been set, the parties have until ten days before the hearing to deliver new information or new grounds for their appeal, but they should be aware that the principle of due process could limit the freedom to send in new information or grounds.

1.7.2. Interim and precautionary measures, enforcement of judgments

1) When does the appeal challenging an administrative decision have suspensive effect?

In general, an appeal against a governmental decision in the Netherlands does not have a suspensive effect (see Article 6:16 General Administrative Law). However, sectoral or specific legislation may diverge from this general rule. In most environmental decisions this is not the case.

2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?

If an objection has been filed with the administrative authority, the president of the District Court which has or may have jurisdiction in the proceedings on the merits may, on request, grant a provisional remedy where speed is of the essence because of the interests involved. So as soon as an objection is filed (pro forma), courts are competent to grant injunctive relief at the request of any interested party that has lodged the objection and has proved the urgent need for a precautionary relief because of the interests involved (see Article 8:81 General Administrative Law Act). The injunctive relief can consist of any court ordered action but will, in practically all cases, consist of awarding a suspensive effect or removing the suspensive effect of a decision that was taken by the administrative authority.

There is no appeal against an injunction by the administrative court.

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?

Suspensive effect might be asked for under the conditions stated above and can only be requested during a procedure of legal protection such as an objection procedure or a court procedure.

4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?

In general, administrative decisions can be immediately executed, irrespective of an appeal or a court action. Any execution of a decision that is later annulled by court, however, may lead to liability. In practice, decisions are often not yet executed and a court decision might be awaited.

5) Is the administrative decision suspended once challenged before court at the judicial phase?

Although there are examples of decisions that are - on the basis of sectoral legislation - de jure suspended when an administrative decision is challenged, this is usually not the case as the General Administrative Law Act provides otherwise (Article 6:16 GALA) and that provision applies to most environmental decisions.

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?

If an appeal against a decision has been lodged with the District Court, the president of the District Court which has jurisdiction in the proceedings on the merits may, on request, grant a provisional remedy where speed is of the essence because of the interests involved. So, as soon as an appeal is lodged (pro forma), courts are competent to grant injunctive relief at the request of any interested party that has lodged the appeal and has proved the urgent need for a
injunctive relief because of the interests involved (see Article 8:81 General Administrative Law Act). The injunctive relief can consist of any court ordered action but will, in practically all cases, consist of awarding a suspensive effect or removing the suspensive effect of a decision that was taken by the administrative authority. There is no appeal against an injunction by the administrative court.

When a suspensive effect has been ordered by the administrative court, the decision may not be executed. No one may make use of the permission that has been given by such a decision. If this occurs anyway, an interested party may ask for enforcement action by the public authority. Also, anyone who claims that the actions are to be considered a tort, may apply for an injunctive relief with the District Court (private law sector).

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.

Administrative procedures such as the preparatory procedure and the objection procedure are free of charge. For an administrative court to hear an applicant’s case, it is necessary to pay a fee. The fee for court proceedings in first instance is stipulated in Article 8:41 of the General Administrative Law Act (in Dutch: Algemene wet bestuursrecht). In general, the fee is not considered to be very high. It varies on the basis of the type of person that instigates the procedure and the type of case and substantive law that applies to the case. Article 8:41(3) General Administrative Law Act mentions the different fees explicitly. In 2020 the fee is EUR 48 for any natural person that lodges an appeal or an injunction against a decision by an administrative authority that is concerned with social security and related legislation (see Article 8:41(3) General Administrative Law Act). It is EUR 178 for a natural person in any other case and EUR 354 for any legal person lodging an appeal or an injunction. Fees for proceedings before an Administrative Court of Appeal are somewhat higher and are stipulated in Article 8:109 GALA, they are EUR 131, 265 and 532, respectively. If the appeal is successful, these costs will usually have to be paid by the administrative authority (Article 8:75 and 8:114 General Administrative Law Act). In very rare cases of abuse of the right to appeal, the court might decide that the applicant should bear the (fixed) costs of the administrative authority such as the court fees and costs for lawyers. The courts practically never make use of this competence.

2) Cost of injunctive relief/interim measure, is a deposit necessary?

The costs of the injunctive relief procedure before the administrative courts are the same as the court fees for the judicial review by the court.

3) Is there legal aid available for natural persons?

The courts cannot provide exemptions from court fees. The Dutch legal aid system provides legal aid to people of limited means. Anyone in need of professional legal aid but unable to (fully) bear the costs is entitled to call upon the provisions as set down in the Legal Aid Act (in Dutch: Wet op de Rechtsbijstand). Residing under the competence of the Ministry of Justice & Security, an independent governing body called the Legal Aid Board (in Dutch: Raad voor Rechtsbijstand) is entrusted with all matters concerning administration, supervision and expenditure as well as with the actual implementation of the legal aid system. This includes matching the availability of legal experts with the demand for legal aid, as well as the supervision and quality control of the actual services provided.

In general, the Dutch legal aid system can be described as a threefold model as it encompasses three lines that provide legal aid consisting of a public preliminary provision, public first-line and private second-line help. See the website of the Legal Aid Board for more information or the specific website for the system of legal aid. One could also visit the website of the judiciary that provides information on the system of legal aid.

Second, there are the Legal Services Counters that act as what is commonly known as the ‘front office’ of legal aid. Legal matters are clarified by providing information and advice either online, by telephone or at one of the 30 Legal Services Counters. Clients may be referred to a private lawyer or mediator, who act as the secondary line of legal aid. Clients may also apply for help from a subsidised lawyer or mediator directly. As a third option, such a lawyer (or mediator) submits an application to the Legal Aid Board on behalf of his client. If legal aid is granted, a certificate is issued which allows the lawyer in question to deal with the case. Lawyers and mediators are paid by the Legal Aid Board to provide their services to clients of limited means. Generally, they are paid a fixed fee according to the type of case, although exceptions can be made for more time-consuming cases.

The regular fixed fee is seen as insufficient to cover the actual costs of procedures by those providing this type of legal aid. Furthermore, over time the rules on who can make use of this type of legal aid have been tightened which means fewer persons qualify for this aid.

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 are no legal clinics dealing with environmental cases that are available to the general public. The legal aid system in the Netherlands is meant primarily for natural persons. Legal personalities often have insurance for legal services. In some cases, NGOs like Greenpeace will organize the protests against a decision by a public authority and will help interested parties with lodging appeals or will appeal themselves.

5) Are there other financial mechanisms available to provide financial assistance?

The Netherlands provides a legal aid system to natural persons which has been described above. Also, there is the possibility to take out legal assistance insurance, but this is not provided by government.

6) Does the ‘loser party pays’ principle apply? How is it applied by courts, are there exceptions?

The ‘loser pays principle’ does not apply in administrative court cases, although the administrative authority will have to pay the court fee for the applicant in most cases when the decision is annulled. Also, in most cases, the authority will have to pay a calculated sum of legal costs (such as the costs related to lawyers representing the applicant) if the decision is quashed by the court. The applicant will only be forced to pay for the costs of the public authority if he has obviously misused the possibility of judicial review. This is practically never the case. For third parties the costs will not be reimbursed in most cases.

In civil matters the ‘loser pays principle’ prevails. In civil court proceedings costs are a bit higher. The fee for court proceedings before a District Court is different (in most common cases in 2020 it is EUR 304 for a natural person and EUR 656 for any legal person, but could be higher when the interests of the case are bigger). When a case is concerned with claims that are either above EUR 25,000 or above EUR 100,000 the fees increase, respectively. Under specific circumstances, one could be classified as needy or poor and a special low fee applies. In all cases, other costs might be the costs for professional legal aid. These costs differ on the basis of the type of lawyer (and his specialisation) the applicant hires. If the claimant or applicant is considered needy or poor, he could ask for subsidised legal aid but will have to pay a personal contribution.

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?

The courts cannot provide exemptions from court fees. Articles 8:74 for court fees and 8:75 GALA for other costs of the procedure provide the legal basis for the judgment of the administrative court concerned with the legal costs. An exemption for the court fees based on case law is very rare and demands - with a reference to the right to access to court enshrined in article 6 ECHR - that an appellant proves that he is in such a specific financial condition that he unable to pay (e.g. earnings of less than 90% of the minimum social benefits scheme).

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?
All Dutch legislation is available [here](https://www.government.nl/) (in Dutch). Some information on the Dutch court system is also available at [https://rechtwijzer.nl/](https://rechtwijzer.nl/) and [https://www.juridischkloet.nl/](https://www.juridischkloet.nl/). The latter refers to the 30 Legal Services Counters that are available throughout the Netherlands where anyone can get legal advice. Environmental information can be requested on the basis of the Government Information (Public Access) Act (WOB, Wet openbaarheid van bestuur) which provides specific provisions concerning with requests for environmental information. Also, chapter 19 of the [Environmental Management Act](https://www.government.nl/) (Wet milieubeheer) implements the specific legal regime for environmental information. More specific information about Dutch environmental law and procedures, including information on access to justice, can be found on the website of the [Knowledge Centre InfoMil](https://www.infomil.nl/).

2) During different environmental procedures how is this information provided? From whom should the applicant request information?

Rules on access to justice are codified in the General Administrative Law Act (Chapter 6, 7 and 8) and are applicable for any administrative decision. However, sectoral legislation such as the Environmental Management Act, the General Act on Environmental Permitting, the Spatial Planning Act, the Water Act, the Nature Conservation Act etc. may provide additional provisions. Information on the main additional provisions have been discussed in the questions above.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?

There are no sector-specific rules.

4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment?

It is obligatory for the administrative authority and the administrative court to provide information about the possibility to lodge either an objection procedure, a judicial review procedure or an appeal and stipulate this information in the decision or the judgment. This is stipulated in Article 3:45 GALA and Article 6:23 GALA.

5) Is translation, interpretation provided to foreign participants? What are the rules applicable?

For court cases in which one of the parties does not have an adequate command of Dutch, the government has set up a register of court interpreters and sworn translators. In certain cases (involving criminal or immigration law), the courts can only use interpreters and translators whose names are listed in this register. In civil cases this is not mandatory. Using the register, litigants (such as private individuals and enterprises) and people providing legal services (such as lawyers) can easily find an interpreter or translator who fulfils the requirements of integrity and quality laid down in the Sworn Interpreters and Translators Act. The [register of court interpreters and sworn translators](https://www.infomil.nl/) (only in Dutch) can in fact be accessed by any member of the public.

1.8 Special procedural rules


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 specific rules relating to standing and access to justice in relation to EIA. The general provisions provided by GALA and specific (environmental) legislation are applicable and explained in more detail in paragraph 1.7.4 sub 1 and 2.

2) Rules on standing relating to scoping (conditions, timeframe, public concerned)

An EIA report is prepared in light of an environmental decision that will be taken by an administrative authority. Judicial review is only available against the environmental decision (permit, planning decision) and not against decisions on screening and scoping, on the conditions set by the administrative authority or on the timeframe. The (preparation of the) EIA report is considered a preparatory requirement for the decision that potentially has a detrimental effect on the environment. In all cases, the uniform extensive public preparation procedure is applicable (section 3.4 GALA) and in that procedure anyone can state their views on the basis of a draft decision and the EIA report. In some cases there is a formal requirement for public consultation before the EIA report will be drafted but it does not stipulate which individuals of the public concerned must be allowed to state their views and in what timeframe. After the administrative authority has taken a final decision, judicial review is available only against that decision and only for an interested party (Article 1:2 GALA), as is the case in most of administrative law procedures in the Netherlands.

3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?

In most environmental decisions, anyone that is against the draft decision and is reasonably deemed capable and available for stating their views is supposed to do so when a draft decision is notified by the administrative authority in the uniform extensive public preparation procedure (section 3.4 GALA). There will be a six-week term to state the views. When a final decision is taken, one should apply for judicial review with the administrative court within six weeks after the official notification of the decision. Anyone who should have stated their views against the draft decision but did not do so will not be able to lodge an admissible appeal with the district court. Also, an appeal against any part of an environmental decision that a court could annul separately from other parts will be inadmissible if the applicant did not state his views on that particular part of the decision in the administrative procedure that led to the final decision.

4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO?

The final decision can be challenged before an administrative court by an interested party. As explained above both a natural or a legal person can be an interested party on the basis of section 1 of Article 1:2 GALA. Also, an NGO can be considered an interested party under the requirements set in section 3 of Article 1:2 GALA. Articles 8:1 and 7:1 General Administrative Law Act (in Dutch: Algemene wet bestuursrecht) stipulate that any interested party (Article 1:2 General Administrative Law Act) may bring a case against a decision (Article 1:3 General Administrative Law Act) made by an administrative authority (Article 1:1 General Administrative Law Act) to the administrative court, but must first file an objection (in Dutch: bezwaarschrift) with the authority that took the decision.

5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?

This question has been answered in paragraph 1.3 sub 2 – 5 since there is no difference in standing or the scope of the judicial review between different kinds of administrative court procedures. The scope of judicial review is determined by the applicant and can include both substantive and procedural legality of decisions. On its own motion, the administrative court may review the competence of the court, the competence of the administrative authority and the adherence to time limits when lodging the objection procedure and the appeals procedure.

6) At what stage are decisions, acts or omissions challengeable?

The administrative courts in the Netherlands are competent to decide in cases concerning decisions (see Article 8:1 and Article 1:3 GALA) or untimely decision-making when a decision was requested. In any case where an EIA report is required, the decision that can be challenged must be such a decision, e.g. granting the permit that was applied for or adopting the zoning scheme. For factual acts or omissions, interested parties may request an enforcement decision or must refer the case to the civil court.

7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

The Dutch legal system for judicial review requires an interested party to participate in one of two possible administrative procedures before they may file a court action. If a decision is prepared by following the uniform extensive public preparation procedure of section 3.4 GALA, any party is obliged to state their views on the draft decision that will be notified (Article 3:15 General Administrative Law Act).
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?

Unless there are good reasons not to be, the appeal to the court by the interested party is inadmissible if that party did not participate in the administrative procedure (Article 6:13 General Administrative Law Act). If the uniform extensive public preparation procedure was not followed, the law requires that an interested party files an objection (Article 7:1 General Administrative Law Act) and that he states his grounds for his objections against the decision taken by the administrative authority in the objection procedure before he can lodge an appeal against the decision. This entails that every interested party must participate in the prescribed review procedure before an appeal at the court can be lodged. At the moment of writing, it is clear that this requirement is in violation of the implementation of the Aarhus Convention in the European Union. As was explained in more detail above in paragraph 1.3 sub 2.

9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

On the basis of Article 6 of the European Convention for Human Rights and the Fundamental Freedoms, the Dutch courts aim to provide procedures with a fair balance between the parties where each party must be afforded a reasonable opportunity to present their case under conditions that do not place them at a disadvantage vis-à-vis their opponent. The courts make sure that both parties to the proceedings know the evidence in the possession of the court and have the opportunity to comment on it with a view to influencing the outcome of the case. In administrative court procedures, the court is deemed to be active and may, if necessary, counterbalance the inequality between the individual and the administrative authority. This fundamental orientation has an impact on the law of administrative procedure as well. During the decision-making, too, an individual should be able to defend his or her position easily.

10) How is the notion of “timely” implemented by the national legislation?

Although the Dutch administrative courts have implemented several relevant guidelines in order to be able to deliver judgments in a timely way, and also the legislator has adopted several instruments to help administrative courts achieve that goal, there is no general legally binding timeframe to deliver judgment besides the term that is codified in Article 8:66 GALA (six weeks after hearing the case). In some specific environmental cases, however, the legislation specifies that the judgment must be delivered in six months; there is no sanction if the court does not comply with this time requirement. However, case law provides that damages can be awarded if a case remains undecided in the system of administrative adjudication unreasonably long (more than four years if the objection procedure, the procedure of judicial review by the District Court and the Court of Appeal are all used).

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?

There are no special rules applicable apart from the general provisions that were discussed above.

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

There are no country-specific IED rules in relation to access to justice in the Netherlands, although the permit on the basis of this Directive is always prepared by following the uniform extensive public procedure (section 3.4 GALA) and anyone is allowed to state their views on a draft decision.

As a consequence, there is no obligatory objection procedure before one can challenge the final decision in court.

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?

Article 8:1 GALA provides that any interested party (Article 1:2 GALA) has standing in administrative court proceedings. Who might be considered an interested party has been described in more detail in paragraph 1.4.

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

Only the final decision (granting or refusal of permit) can be challenged in court.

4) Rules on standing relating to scoping (conditions, timeframe, public concerned)

Only the final decision (granting or refusal of permit) can be challenged in court.

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?

The uniform extensive public preparation procedure is applicable to the granting of a permit for an IED installation. Anyone can state their views on a draft decision. This means that the draft decision will be notified and available for six weeks and during that time one can challenge the draft decision. After a final decision has been taken and is officially notified, an interested party (Article 1:2 GALA) can challenge the decision by lodging an appeal with the administrative court (District Court) within six weeks after the official notification.

6) Can the public challenge the final authorisation?

The public can challenge the final authorisation but article 6:1 GALA provides that only an interested party (Article 1:2 GALA) has standing in administrative court proceedings and article 6:13 GALA provides that only those that participated in the procedures may lodge an appeal. Who might be considered an interested party has been described above (section 1.4). The CJEU has ruled that article 6:13 GALA is partly in violation of the Aarhus Convention.

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?

Administrative courts are competent to review both substantive and procedural legality of the decision by an administrative authority. The court can establish the facts on its own motion and must also assess whether the administrative authority was competent to take the decision, whether the applicant has standing before the court and whether the court is competent. There are no other legal questions that the court will answer on its own motion. Challenging decisions (Article 1:3 GALA) and unlimited decision-making is possible before an administrative court. Also, an interested party may ask for injunctive relief concerned with these decisions. However, the administrative courts are not competent to hear factual acts and omissions; the civil court is competent.

8) At what stage are these challengeable?

Decisions can be challenged before a court within six weeks after the decision has been officially notified (see above).

9) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

In many administrative law conflicts about decisions, there is an obligatory objection procedure (Article 7:1 GALA) before the interested party may bring the case to court. However, if the uniform extensive public preparation procedure was followed to take the decision, which is the case for any permit required under the IE Directive, this obligation does not exist and an interested party can file a court action with the administrative court within six weeks after the official notification of the final decision. See above.

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?

Article 6:13 GALA provides that the appeal of an interested party that wants to file a court action with the administrative court and did not participate in previous administrative procedures without good reason will be inadmissible. See above.

11) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
There is no difference between the rules provided in an administrative law case and the rules applicable to decisions concerning the application of the IED. Dutch courts aim to provide procedures with a fair balance between the parties; in administrative matters this may mean that the courts will be more proactive towards ‘weaker’ parties and as a result, because of the complex nature of the technical issues in environmental matters, are perhaps more inclined to ask for expert advice.

12) How is the notion of “timely” implemented by the national legislation?

There is no specific legislation aimed at implementing the notion of timely with regards to the IED and the EIA Directive as the General Administrative Law Act provides provisions on the possibilities of injunctive relief which have been discussed in paragraph 1.7.2 sub 2.

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?

There is no specific legislation concerning injunctive relief about decisions with regards to the IED and the EIA Directive as the General Administrative Law Act provides provisions on the purposes of injunctive relief which have been discussed in paragraph 1.7.2 sub 2.

14) Is information on access to justice provided to the public in a structured and accessible manner?

The administrative authority will provide information on access to justice when publishing the notification that a (environmental) decision has been taken (https://www.overheid.nl/ or overuwbuurt.overheid.nl). The courts provide structured and accessible (online) information on access to justice. Also, the governmental websites dealing with legal aid provide information to citizens. See in more detail paragraph 1.7.4 sub 2.

1.8.3. Environmental liability[6]

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?

In the Netherlands, the Environmental Liability Directive is implemented in title 17.2 of the Environmental Management Act. The scope of implementation in the Environmental Management Act is similar to the scope of the directive: strict liability for environmental damage caused by any of the activities mentioned in Annex III of the directive (mainly integrated pollution prevention and control installations), and fault-based liability for other activities. Judicial review by an administrative court is available when application of title 17.2 Environmental Management Act (EMA) leads to a (single case) decision by an administrative authority as defined in Article 1:3(2) General Administrative Law Act. When such a decision is taken, the general provisions for access to justice will apply. This means that any natural person, legal entity, administrative authority and/or NGO considered to be an interested party as defined in Article 1:2 General Administrative Law Act will have standing in an administrative court procedure against such a decision. Also, the administrative authorities mentioned in Article 17.2(3) EMA will be allowed to request a decision on environmental remediation. A (single case) decision might be at the request of a third party (interested party) for preventive or remedial action (Article 17.15(1) EMA), a decision to take preventive measures in the event of imminent environmental damage (Article 17.12(4) EMA), a decision to oblige someone to take all feasible measures in the event that environmental damage has already occurred (Article 17.13(5) EMA), a decision by the competent authority to take preventive measures or all feasible measures itself if the damage has already occurred, (Articles 17.10 and 17.14(2) EMA), a decision as to whether or not to agree with the remedial measures proposed by the party causing the damage (Article 17.14(3) EMA), the decision prioritising which environmental damage is remedied first (Article 17.14(4) EMA), and a decision concerning the recovery of costs incurred by the competent authority from the party causing the damage (Article 17.16 EMA).

2) In what deadline does one need to introduce appeals?

The provisions on access to justice in the General Administrative Law Act are applicable and there are no additional special provisions provided in the Environmental Management Act. This means that the deadline is six weeks after the official notification of a decision. The following applies to the cost recovery aspect. The competence to decide to recover costs expires after a period of five years after the day on which the preventive and remedial measures have been fully completed, by - or on behalf of - the competent authority (Article 17.17 Environmental Management Act). If the party causing the damage has only been identified after the date of completion of the measures, the five-year period starts from the moment of identification. Still, the deadline to introduce an appeal will be six weeks.

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 special requirements stipulated for observations accompanying the request for action. In general, a request or application to take a decision should be done by an interested party (Article 1:2 General Administrative Law Act) and should be sufficiently clear and concrete to be considered a request. A request or application should furthermore be accompanied by those facts and circumstances that the applicant is able to provide (Article 4:2 General Administrative Law Act). Case law has provided that it is duty of the interested party to provide the competent authority with any leads for the investigation. It is then up to the competent authority to investigate whether action is required.

4) Are there specific requirements regarding ‘plausibility’ for showing that environmental damage occurred, and if yes, which ones?

There are no special requirements stipulated regarding ‘plausibility’. A request or application should furthermore be accompanied by those facts and circumstances that the applicant is able to provide (Article 4:2 General Administrative Law Act). Case law has provided that it is duty of the interested party to provide the competent authority with any leads for the investigation. It is then up to the competent authority to investigate whether action is required.

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)?

There are no special time limits stipulated for the notification of the decision by the competent authority. If an request/application for an administrative single case decision is filed with the administrative authority, it is legally obliged to deliver a decision within either the term provided in sectoral legislation or – if no such term is provided – within a reasonable time period, which is deemed to be eight weeks according to the Article 4:13 General Administrative Law Act. Although not stipulated by law, the administrative authority may decide that the uniform extensive public preparation procedure of section 3.4 GALA is applicable for a decision on the basis of title 17.2 EMA. In that case, a decision will be drafted and will be made publicly known. The draft decision and the documents on which it is based will be available for anyone’s viewing for six weeks. During that time anyone can participate in the decision-making process by submitting their views to the competent authority. The competent authority will have to respond to these views before taking and publishing the final decision. Such a final decision has to be taken within 6 months of the application.

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?

Yes. See above. An interested party may request a decision on preventive measures in case of imminent threat of environmental damage.

7) Which are the competent authorities designated by the MS?

Article 17.9 EMA stipulates which are the competent authorities. When the damage has been caused by an (industrial) installation, the administrative authority that is competent to grant the permit and is the competent enforcement agency is the competent authority. However, if the damage has occurred or will occur predominantly in water systems, the authority that is competent for that water system is the competent authority. When the damage has been caused outside an (industrial) installation, different competent authorities are designated depending on the damage being predominantly caused to soil,
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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?
There are no special regulations provided for administrative law cases with cross-border characteristics. The general provisions of the General Administrative Law Act are applicable. However, in certain cases the government of another country will be informed of the possible environmental effects by decisions, plans or programmes of the Dutch authorities (section 7.11 EMA concerning environmental impact assessment) or in the event that an installation is operated in such a way that environmental damage occurs or may occur outside the borders of the Netherlands (Article 17.13 EMA).

2) Notion of public concerned?
There are no special regulations provided for administrative law cases with cross-border effects. The general provisions on standing in administrative procedures and judicial proceedings that are stipulated in the General Administrative Law Act (e.g. the appellant must be an interested party (article 1:2 GALA) and must have participated in the preparatory procedure (article 6:13 GALA)) are applicable. See explained in more detail in paragraph 1.4 and 1.8.1 sub 7 and 8.

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)?
There are no special regulations provided for administrative law cases where NGOs of an affected country want to participate in the decision-making procedure, the procedure of administrative review or the judicial proceedings. The general provisions on standing in administrative procedures and judicial proceedings that are stipulated in article 1:2 and article 6:13 of the General Administrative Law Act are applicable. See explained in more detail in paragraph 1.4 and 1.8.1 sub 7 and 8. GALA. As far as we know, there are also no special regulations provided for individuals of an affected country related to legal aid and/or pro bono assistance.

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)?
There are no special regulations provided for administrative law cases where individuals of an affected country want to participate decision making, administrative review or judicial proceedings. The general provisions on standing in administrative procedures and judicial proceedings that are stipulated in article 1:2 and article 6:13 of the General Administrative Law Act are applicable. See explained in more detail in paragraph 1.4 and 1.8.1 sub 7 and 8. As far as we know, there are also no special regulations provided for individuals of an affected country related to legal aid and/or pro bono assistance. See above.

5) At what stage is the information provided to the public concerned (including the above parties)?
There are no special regulations provided for administrative law cases where individuals of an affected country want to have information. The general provisions on providing information (notification duties of decisions and plans) are stipulated in the General Administrative Law Act and perhaps the Government Information (Public Access) Act (WOB, Wet openbaarheid van bestuur). Also, decisions taken by the competent authority in light of the implementation of the Environmental Liability Directive must be notified to the public in accordance with the general provisions stipulated in the General Administrative Law Act. The competent authority may oblige the party causing the damage to provide (additional) information. If the cause of the damage is an unusual event within an installation, title 17.1 EMA will provide additional safeguards to protect the environment and human health.

6) What are the timeframes for public involvement including access to justice?
There are no special regulations provided for administrative law cases with cross-border characteristics. The general provisions of the General Administrative Law Act are applicable. When the uniform extensive preparatory procedure is applicable, in most cases the public will have six weeks to state their views on a draft decision. Lodging an appeal procedure against the final decision is possible for an interested party during the period of six weeks after notification of the final decision.

7) How is information on access to justice provided to the parties?
There are no special regulations provided for administrative law cases with cross-border characteristics or for foreign applicants and non-foreign applicants. See above. This means that the decision of the administrative authority or the judgment will have to provide access to justice information.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?
There are no special regulations provided for administrative law cases with cross-border characteristics or for foreign applicants and non-foreign applicants. For court cases in which one of the parties does not have an adequate command of Dutch, the government has set up a register of court interpreters and sworn translators. In certain cases (involving criminal or immigration law), the courts can only use interpreters and translators whose names are listed in this register. In civil cases this is not mandatory. Using the register, litigants (such as private individuals and enterprises) and people providing legal services (such as lawyers) can easily find an interpreter or translator who fulfills the requirements of integrity and quality laid down in the Sworn Interpreters and Translators Act. The register of court interpreters and sworn translators (only in Dutch) can in fact be accessed by any member of the public. However, in most environmental cases the appellant will bear the costs of translation or interpretation. See explained in more detail in paragraph 1.4 sub 5.

9) Any other relevant rules?
There are no other relevant rules.

[1] All Dutch legislation is available here (search for Dutch legislation).
[2] Many relevant judgments are published here (search for Dutch case law)
[6] See also case C-529/15.

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water, habitats, species (see Article 17.9(3) EMA. Where, in the event of environmental damage or imminent threat thereof, more than one administrative authority has been designated as the competent authority, or powers have been assigned to another administrative authority by this or any other law, consultations must be held in good time between those administrative authorities with a view to promoting the best possible coordination between the decisions to be taken or the measures to be taken. The administrative bodies must coordinate with each other (Article 17(5) EMA).

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?
There are no special requirements stipulated in the implementation of the Environmental Liability Directive. Therefore, the general provisions of the General Administrative Law Act are applicable and they stipulate that procedures of administrative review (either an objection procedure or the uniform extensive public preparation procedure) must be followed before judicial proceedings can be instigated (Article 8:1 and 7:1 GALA).

There are no other relevant rules.
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?

There is no difference between the regulation provided in an administrative law case outside the scope of EIA and IED, access to information and ELD and within. The articles 1.2 GALA on ‘interested parties’ that have standing and article 6:13 GALA are relevant. In general the level of access to national courts can be considered very effective as administrative court procedures are accessible, not expensive and allow for an active court to investigate the matter. However, recently discussion on the application of article 6:13 GALA has been triggered by the CJEU (case C626/18), because it ruled that this provision is partly in violation of the Aarhus Convention as it requires interested parties to participate in the preparatory procedure for a decision in order to have access to justice. See explained in more detail in paragraph 1.4 and 1.8.1 sub 7 and 8.

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 difference between the regulation provided in an administrative law case outside the scope of EIA and IED, access to information and ELD and within. The scope of administrative review (if applicable) and judicial review will cover procedural and substantive legality as long as grounds for appeal have been brought forward by the appellant.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

The system of judicial review mandates that all administrative review procedures must be used and exhausted before an appeal may be lodged (Article 6:13 GALA). There is no difference between the regulation provided in an administrative law case outside the scope of EIA and IED, access to information and ELD and within. See explained in more detail paragraph 1.3 and 1.4.

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.?

Article 6:13 GALA provides for the general rule that it is necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc. There is no difference between the regulation provided in an administrative law case outside the scope of EIA and IED, access to information and ELD and within. See explained in more detail in paragraph 1.8.1 sub 7 and 8.

5) Are there some grounds/arguments precluded from the judicial review phase?

There are no grounds/arguments precluded from the judicial review phase, however, when a decision consists of multiple parts that may be quashed separately, anyone bringing grounds against such a part of a decision must have brought grounds against that part in any (administrative preparatory or review) procedure to be admissible (Article 6:13 GALA). There is no difference between the regulation provided in an administrative law case outside the scope of EIA and IED, access to information and ELD and within.

6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

There is no difference between the rules provided in an administrative law case and the rules applicable to decisions concerning the application of EU law outside of EIA Directive/IED. Dutch courts aim to provide procedures with a fair balance between the parties; in administrative matters this may mean that the courts will be more protective towards ‘weaker’ parties and therefore and because of the complex nature of the technical issues in environmental matters are perhaps more inclined to ask an expert advice.

7) How is the notion of “timely” implemented by the national legislation?

There is no specific legislation aimed at implementing the notion of timely with regards to areas addressed by EU law outside the IED and the EIA Directive, as the General Administrative Law Act provides sufficient provisions on timely decision making and timely court procedures.

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?

There is no specific legislation concerning injunctive relief concerning the issues relevant here. The General Administrative Law Act provides provisions on the possibilities of injunctive relief which have been discussed in more detail in paragraph 1.7.2.

9) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive, and do these include express statutory reference to a requirement that costs should not be prohibitive?

There is no specific legislation concerning the costs of access to justice and the consequences of losing the procedure other than the general provision provided by the GALA. See above. The ‘loser pays principle’ does not apply in administrative court cases, although the administrative authority will have to pay the court fee for the applicant in most cases when the decision is annulled. Also, in most cases, the authority will have to pay a calculated sum of legal costs (such as the costs related to lawyers representing the applicant) to the applicant if the decision is quashed by the court. The applicant will only be forced to pay for the costs of the public authority when he has obviously misused the possibility of judicial review. This is practically never the case. For third parties, in most cases the costs will not be reimbursed. There is no express statute that requires that costs should not be prohibitive.

1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[2]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

There is no specific regulation provided for access to justice when a Strategic Environmental Assessment is required other than the general provisions discussed above. This means that administrative review and judicial review is only available against the final decision when it can be considered a decision as defined in Article 1.3 GALA and is not considered a general binding rule or a policy rule (or a plan without direct binding effect for the public). In a large number of cases, there is therefore no administrative review or judicial review available. When there is, however, only an interested party (Article 1.2 GALA) has standing, as is the case in any administrative court procedure. See above.
In most cases, the uniform extensive public preparation procedure is followed to prepare the decision for which a Strategic Environmental Impact Assessment is required and in most of those administrative procedure anyone has the right to state their views on a draft decision. In judicial appeal procedures, however, access to justice is provided only for interested parties (article 1:2 GALA). The effectiveness of the level of access is quite high as the costs and the financial risks of lodging an appeal are low and the formal requirements for standing are reasonable. Be that as it may, there are doubts as to whether the system provided by article 6:13 GALA that requires all interested parties to state their views against a draft decision in the preparatory procedure is in accordance with the Aarhus Convention.

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 special regulation provided for access to justice when a Strategic Environmental Assessment is required. The scope of administrative review (if applicable) and judicial review will cover procedural and substantive legality as long as grounds for appeal have been brought forward by the appellant. See above for information on the general rules on access to justice in administrative court cases.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? The system of judicial review mandates that all administrative review procedures must be used and exhausted before appeal may be lodged (Article 6:13 GALA). There is no special regulation provided for access to justice when a Strategic Environmental Assessment is required. See above for information on the general rules on access to justice in administrative court cases.

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.? Article 6:13 GALA provides for the general rule that it is necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc. There is no specific regulation provided for access to justice when a Strategic Environmental Assessment is required. See above for information on the general rules on access to justice in administrative court cases.

5) What are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions? There is no specific legislation concerning injunctive relief. The General Administrative Law Act provides provisions on the possibilities of injunctive relief which have been discussed above. There is no specific regulation provided for access to justice when a Strategic Environmental Assessment is required. See above for information on the general rules on access to justice in administrative court cases.

6) 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 'loser pays principle' does not apply in administrative court cases, although the administrative authority will have to pay the court fee for the applicant in most cases when the decision is annulled. Also, in most cases, the authority will have to pay a calculated sum of legal costs (such as the costs related to lawyers representing the applicant) to the applicant if the decision is quashed by the court. The applicant will only be forced to pay for the costs of the public authority when he has obviously misused the possibility of judicial review. This is practically never the case. For third parties, in most cases the costs will not be reimbursed. There is no express statute that requires that costs should not be prohibitive.

1.3. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with the public participation requirements of Article 7 of the Aarhus Convention in respect of plans and programmes not submitted to the procedures set out in the Strategic Environmental Assessment (SEA) Directive 2001/42/EC

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? There is no special regulation provided for access to justice whether a Strategic Environmental Assessment is required or not. This means that administrative review and judicial review is only available against the final decision when it can be considered a decision as defined in Article 1:3 GALA and is not considered a general binding rule or a policy rule (or a plan without direct binding effect for the public). In a large number of cases there is therefore no administrative review or judicial review. When there is, only an interested party (Article 1:2 GALA) has standing, as is the case in any administrative court procedure. See above.

In most cases, the uniform extensive public preparation procedure is followed to prepare the decision for which a Strategic Environmental Impact Assessment is required, and in most of those administrative procedures anyone has the right to state their views. In judicial appeal procedures, however, access to justice is provided only for interested parties (article 1:2 GALA). The effectiveness of the level of access is quite high as the costs and the financial risks of lodging an appeal are low and the formal requirements for standing are reasonable. Be that as it may, there are doubts whether the system provided by article 6:13 GALA that requires all interested parties to state their views against a draft decision in the preparatory procedure is in accordance with the Aarhus Convention.

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 special regulation provided for access to justice when a Strategic Environmental Assessment is required or when it is not. The scope of administrative review (if applicable) and judicial review will cover procedural and substantive legality as long as grounds for appeal have been brought forward by the appellant. See above for information on the general rules on access to justice in administrative court cases.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? The system of judicial review mandates that all administrative review procedures must be used and exhausted before appeal may be lodged (Article 6:13 GALA). There is no special regulation provided for access to justice when a Strategic Environmental Assessment is required or when it is not. See above for information on the general rules on access to justice in administrative court cases.

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.? Article 6:13 GALA provides for the general rule that it is necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc. There is no special regulation provided for access to justice when a Strategic Environmental Assessment is required or when it is not. See above for information on the general rules on access to justice in administrative court cases.

5) What are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?
There is no specific legislation concerning injunctive relief. The General Administrative Law Act provides provisions on the possibilities of injunctive relief which have been discussed above. There is no special regulation provided for access to justice when a Strategic Environmental Assessment is required or when it is not. See above for information on the general rules on access to justice in administrative court cases.

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?

There is no specific legislation concerning the costs of access to justice and the consequences of losing the procedure other than the general provision provided by the GALA. See above. The ‘loser pays principle’ does not apply in administrative court cases, although the administrative authority will have to pay the court fee for the applicant in most cases when the decision is annulled. Also, in most cases, the authority will have to pay a calculated sum of legal costs (such as the costs related to lawyers representing the applicant) to the applicant if the decision is quashed by the court. The applicant will only be forced to pay for the costs of the public authority when he has obviously misused the possibility of judicial review. This is practically never the case. For third parties, in most cases the costs will not be reimbursed. There is no express statute that requires that costs should not be prohibitive.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[4]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the content of the plan (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

There is no special general regulation provided for access to justice concerning plans and programmes that are required by EU environmental legislation. This means that administrative review and judicial review is only available against the final decision when it can be considered a decision as defined in Article 1:3 GALA and is not considered a general binding rule or a policy rule (or a plan without direct binding effect for the public). In a large number of cases there is therefore no administrative review or judicial review, e.g. air quality plans. When there is, e.g. against a management plan for a Natura 2000 area when it implies that certain activities will not require a permit on the basis of the implementation of the Habitats Directive, only an interested party (Article 1:2 GALA) has standing, as is the case in any administrative court procedure. See above.

In most cases, the uniform extensive public preparation procedure is followed to prepare the decision and in most of those administrative procedures anyone has the right to state their views. In judicial appeal procedures, however, access to justice is provided only for interested parties (article 1:2 GALA). The effectiveness of the level of access is quite high as the costs and the financial risks of lodging an appeal are low and the formal requirements for standing are reasonable. Be that as it may, there are doubts whether the system provided by article 6:13 GALA that requires all interested parties to state their views against a draft decision in the preparatory procedure is in accordance with the Aarhus Convention.

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)?

Relevant for the competence of the Dutch administrative courts is primarily the question whether the plan or the programme can be considered a decision as defined in Article 1:3 GALA that does not consist of general binding rules or policy rules. Plans and or programmes that are required by EU environmental law are often considered either policy documents to allow government to achieve a certain goal or provide an (indirect) assessment framework for assessing the applications for a permit or for adopting a zoning scheme that affect citizens (directly) and which decisions can be challenged in court. In many cases, however, the plans and programmes are not considered to be a decision against which interested parties should be awarded the possibility of judicial review. This is not just the case because the plans and programmes will be followed by decisions that can be challenged but also because in the procedure of judicial review of these decisions, the interested party may introduce a plea of illegality concerning the plan or programme that was the basis for the decision. Only if the plan or programme itself does directly provide citizens with binding legal consequences, e.g. the management plan of a Natura 2000 area that will allow certain activities without a permit, judicial review will be open for an interested party (Article 1:2 GALA).

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?

There is no special general regulation provided for access to justice concerning plans and programmes that are required by EU environmental legislation. In a procedure of judicial review of a decision the applicant may enter a plea of illegality concerning a plan or programme and the administrative court must assess whether that ground of appeal is well-founded. It is generally thought that this assessment is done with more deference for the public authority that adopted the plan or programme and will still cover both procedural and substantive legality, although procedural flaws are considered less relevant for the question whether the competent authority could apply the plan of programme to take the contested decision.

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

The system of judicial review mandates that all administrative review procedures must be used and exhausted before appeal may be lodged (Article 6:13 GALA). There is no special general regulation provided for access to justice concerning plans and programmes that are required by EU environmental legislation. See above.

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.?

Article 6:13 GALA provides for the general rule that it is necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc. There is no special general regulation provided for access to justice concerning plans and programmes that are required by EU environmental legislation.

6) Are there some grounds/arguments precluded from the judicial review phase?

There are no grounds/arguments precluded from the judicial review phase, however, when a decision consists of multiple parts that may be quashed separately, anyone bringing grounds against such a part of a decision must have brought grounds against that part in any (administrative preparatory or review) procedure to be admissible. There is no special general regulation provided for access to justice concerning plans and programmes that are required by EU environmental legislation. The general provisions stipulated in GALA are applicable.

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

There is no difference between the rules provided in an administrative law case and the rules applicable to plans and programmes. Dutch courts aim to provide procedures with a fair balance between the parties: in administrative matters this may mean that the courts will be more proactive towards ‘weaker’ parties and therefore and because of the complex nature of the technical issues in environmental matters are perhaps more inclined to ask an expert advice.

8) How is the notion of “timely” implemented by the national legislation?

There is no specific legislation aimed at implementing the notion of timely with regards to plans and programmes required by European Law, as the General Administrative Law Act provides sufficient provisions on timely decision making and timely court procedures. There is no special general regulation provided for access to justice concerning plans and programmes that are required by EU environmental legislation.

9) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?
There is no specific legislation concerning injunctive relief. The General Administrative Law Act provides provisions on the possibilities of injunctive relief which have been discussed in paragraph 1.7.2 above. There is no special general regulation provided for access to justice concerning plans and programmes that are required by EU environmental legislation.

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?

There is specific legislation concerning the costs of access to justice and the consequences of losing the procedure other than the general provision provided by the GALA. See above. The ‘loser pays principle’ does not apply in administrative court cases, although the administrative authority will have to pay the court fee for the applicant in most cases when the decision is annulled. Also, in most cases, the authority will have to pay a calculated sum of legal costs (such as the costs related to lawyers representing the applicant) to the applicant if the decision is quashed by the court. The applicant will only be forced to pay for the costs of the public authority if he has obviously misused the possibility of judicial review. This is practically never the case. For third parties the costs will in most cases not be reimbursed. There is no express statute that requires that costs should not be prohibitive.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts

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?

There is no special general regulation provided for access to justice concerning executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts. This means that administrative review and judicial review is only available against the final decision when it can be considered a decision as defined in Article 1.3 GALA and is not considered a general binding rule or a policy rule (or a plan without direct binding effect for the public). In a large number of cases, there is therefore no administrative review or judicial review. When there is, only an interested party (Article 1.2 GALA) has standing, as is the case in any administrative court procedure. See above.

In cases where general binding rules are used, there is no competence of the administrative courts and the uniform extensive public preparation procedure is not applicable as there are separate provisions on the preparation of general binding rules in the Netherlands. In many other cases where a decision has to be taken, the uniform extensive public preparation procedure is followed to prepare the decision and in most of those administrative procedure anyone has the right to state their views. There is no direct access to administrative courts for judicial review and therefore the effectiveness is dependent on the judicial review of decisions based on the binding normative instruments (general binding rules).

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 special general regulation provided for access to justice concerning executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts. In a procedure of judicial review of a decision based on the general binding rules implementing European law, however, the appellant may enter a plea of illegality concerning these executive and/or generally applicable legally binding normative instruments and the administrative court must assess whether that ground of appeal is well-founded. It is generally thought that this assessment is done with more deference for the public authority that adopted the normative instrument. It will still cover both procedural and substantive legality, although procedural flaws are considered less relevant for the question of whether the competent authority could apply the plan of programme to take the contested decision.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

The system of judicial review mandates that all administrative review procedures must be used and exhausted before appeal may be lodged (Article 6:13 GALA). However, this requirement is irrelevant here, as there is no special general regulation provided for access to administrative courts concerning executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts.

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.?

Article 6:13 GALA provides for the general rule that it is necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc. However, this requirement is irrelevant here, as there is no special general regulation provided for access to administrative courts concerning executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There is no specific legislation concerning injunctive relief. The General Administrative Law Act provides provisions on the possibilities of injunctive relief which have been discussed in paragraph 1.7.2 above. There is no special general regulation provided for access to administrative courts concerning executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts.

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?

There is specific legislation concerning the costs of access to justice and the consequences of losing the procedure other than the general provision provided by the GALA. The ‘loser pays principle’ does not apply in administrative court cases, although the administrative authority will have to pay the court fee for the applicant in most cases when the decision is annulled. Also, in most cases, the authority will have to pay a calculated sum of legal costs (such as the costs related to lawyers representing the applicant) to the applicant if the decision is quashed by the court. The applicant will only be forced to pay for the costs of the public authority if he has obviously misused the possibility of judicial review. This is practically never the case. For third parties, in most cases the costs will not be reimbursed. There is no express statute that requires that costs should not be 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?

There is no special general regulation provided for access to justice concerning executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts. Also, the preliminary reference procedure is not codified in
Dutch procedural law. In a procedure of judicial review of a decision, the applicant may enter a plea of illegality concerning an EU (regulatory) act or decision and the administrative court must assess whether that ground of appeal is well-founded and whether a preliminary reference procedure with the ECJ is deemed necessary.

[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.


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Other relevant rules on appeals, remedies and access to justice in environmental matters

The sanctions for the administrative authority for not responding within the prescribed term have been described above. When a decision is not provided before the end of the term provided by law, or when no term is provided within eight weeks after the request, the applicant will have to send a notice of default and allow the administrative authority another two weeks to decide. If a decision still is not taken after those two weeks, there are two consequences. First, for each day after that term the administrative authority will have to pay a penalty to the applicant for each day that no decision is made (with a maximum of EUR 1,442). Second, the applicant can ask the court for judicial review in order to force the administrative authority to come up with a decision. That court procedure will be about the question of whether the administrative authority did indeed not decide within the provided time frame and the procedure must take no more than eight weeks. If the conclusion by the court is indeed that no decision was made before the deadline, the court will order the administrative authority to take the decision within a two-week period and will award a penalty for each day that a decision still has not been taken after those two weeks.

If an administrative authority does not comply with a judgment of an administrative court, it will most likely be the case that no decision is taken. Judicial review will be available for an interested party when the time frame for taking a decision has passed (see above in paragraph 1.8.2). If a natural person or a legal person does not comply with the judgment of the administrative court, it will most likely be the case that this person acts in violation of administrative law, in accordance with a suspended permit or in violation of the conditions of his permit. Therefore, an interested party may request enforcement measures with the competent administrative authority, which is - in general - entitled to take enforcement action (either an administrative order to take physical action or instead impose on the offender a duty backed by a penalty payment).

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Access to justice in environmental matters - Austria

To find more national information about access to justice in environmental matters, please click on one of the links below:

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Access to justice at Member State level

1. 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

Austria is a federal republic with nine federal provinces (*Bundesländer*) and environmental law is divided between the federal government, the federal states and district authorities. Environmental law in Austria is largely subject to administrative law – aside from certain single provisions on environmental criminal law and environmental civil law.

According to the Austrian *Federal Constitutional Law* (*Bundes-Verfassungsgesetz – B-VG*), the power of legislation and execution in Austria is divided between the Federation and the nine different provinces. Article 10 B-VG lists all areas falling under the legislative and executive authority of the Federation, such as civil law affairs, railways and aviation or mining. Article 11 lists areas where legislation is the business of the Federation and execution that of the provinces. 

According to Article 12, for certain issues, legislation as regards principles is the business of the Federation, while the issue of implementing laws and execution is the business of the provinces. All matters not expressly assigned to the Federation for legislation or also execution remain within the provinces’ autonomous sphere of competence. Environmental protection is thus a cross-sectoral issue which is distributed between the federal government and the federal provinces. Thus, to regulate environmental protection, federal legislation (e.g. Waste Management Act, Industrial Code, Environmental Impact Assessment Act, Water Act, Forestry Act) exists alongside provincial legislation (e.g. acts concerning nature protection or construction law).
The [General Administrative Procedure Act (Allgemeines Verwaltungsverfahrensgesetz 1991 – AVG)] regulates all general administrative proceedings (e.g. in environmental matters). In certain areas, respective laws governing a particular matter provide additional or exceptional provisions. Natural or legal persons are generally granted procedural rights if their subjective or legal interests are likely to be affected by a decision. In certain legal areas, such as water, waste, clean air, nature protection or environmental impact assessment, environmental NGOs are granted specific rights, including access to justice.

2) Constitution – main (content of + including references) provisions on environment and access to justice in the national constitution (if applicable) including procedural rights

The general constitutional framework in Austria is defined in the [Federal Constitutional Law (Bundes-Verfassungsgesetz – B-VG)]. There is no constitutional right to protection of the environment as such, but Austria recognises the protection of the environment in its State Goal Resolution including, in particular, the protection of air, water, soil and the prevention of disturbances caused by noise. This resolution is laid down in the [Federal Constitutional Act on sustainability, animal protection, comprehensive environmental protection, on water and food security as well as research (BVG über die Nachhaltigkeit, den Tierschutz, den umfassenden Umweltschutz, die Sicherstellung der Wasser- und Lebensmittelversorgung und die Forschung)](1). It is a mandate for action by all state organs of legislation, administration and jurisdiction to take measures for environmental protection and sustainability. However, the resolution establishes a programmatic norm at the constitutional level that does not entail an individual right that can be taken to Court and legally enforced. Nevertheless, it can be of importance in weighing and balancing interests in a decision and is, thus, of relevance in the Court's decision-making process.

The Administrative Courts (Verwaltungsgerichte) decide on complaints against acts or omissions by administrative authorities. According to Article 132 B-VG, a complaint against the ruling of an administrative authority for illegality may be raised by someone who alleges infringement of his rights. Complaint may also be raised against the exercise of direct administrative power or compulsion by someone who alleges infringement of his rights because of these. For breach of the duty to reach a decision appeal may be raised by someone who claims as party in an administrative procedure to be entitled to get a decision. The Supreme Administrative Court (Verwaltungsgerichtshof – VwGH) decides, inter alia, on final complaints against the decision of an Administrative Court for illegality and motions to set a deadline for violation of the breach of the duty to reach a decision by an Administrative Court. A person who claims to have had his rights infringed by the ruling may raise final appeal. Regarding constitutional rights, Article 144 B-VG provides for individuals to make claims before the Constitutional Court (Verfassungsgerichtshof – VGH), if their fundamental rights are infringed. Its basic requirements are interference with the individual’s “subjective right”, i.e. that the party can only object to norms that exist to protect an individual on the one hand, and an infringement of an individual’s fundamental right on the other hand. In Austria, the European Convention on Human Rights (ECHR) has constitutional status. It protects a number of rights that can be linked to environmental protection (e.g. right to justice, the right to life, the right to respect for private and family life). Furthermore, by adopting the [Federal Constitutional Act for a Nonnuclear Austria (BVG für ein atomfreies Österreich)], Austria renounced the use of nuclear energy.

3) Acts, Codes, Decrees, etc. - main provisions on environment and access to justice, national codes, acts

For individuals such as neighbours or environmental organisations to participate or file an appeal against a decision in environmental matters is not specified in any single legal act. However, within the scope of some highly relevant legal acts, access to justice in environmental matters is guaranteed. On a federal level, key environmental provisions with regard to access to justice are the Environmental Impact Assessment Act (Umweltverträglichkeitsprüfungsgesetz 2000 – UVP-G 2000), the Industrial Code (Gewerbeordnung 1994 – GewO 1994), the Air Pollution Control Act (Immisionsschutzgesetz – Luft – IG-L), the Air Emission Act (Emissionsgesetz-Luft 2018 – EG-L 2018), the Waste Management Act (Abfallwirtschaftsgesetz 2002 – AWG 2002), the Water Act (Wasserrechtsgesetz 1959 – WRG 1959), the Environmental Liability Act (Bundes-Umwelthaftungsgesetz), the Environmental Information Act (Umweltinformationsgesetz). The Aarhus Participation Act (Aarhus Beteiligungsgesetz 2018) as an amendment of WRG, AWG, and IG-L introduced provisions on access to justice in the areas of waste, water and air protection.


4) Examples of national case-law, role of the Supreme Court in environmental cases

The Constitutional Court assesses governmental ordinances for conformity with legislation as well as legislation for conformity with constitutional provisions. The Supreme Administrative Court, on the other hand, has control over the conformity of rulings by administrative authorities (such as permits or other decisions) with legal provisions. Both act as Courts of cassation.

Important case-law on the matter includes the Protect case, which was also subject to a preliminary ruling[2] by the European Court of Justice. Following the specifications of the ECJ, the Supreme Administrative Court granted the environmental NGO concerned access to justice in water law proceedings including party status to participate in the administrative proceedings by directly applying relevant EU legislation.[3] In further rulings[4], the Supreme Administrative Court confirmed the party status of environmental NGOs with retrospective effect, at least to the date of entry into force of the European Charter of Fundamental Rights. Nevertheless, Austrian authorities seem to consider that it applies only in a single specific case. Despite this ruling, most federal acts and the federal provinces limit retroactive effect to one or two years – some of them to back to the date of the ruling following the Protect case.

Austrian Courts have been increasingly prepared to directly grant access to justice in cases regulated by EU law, even where national legislation does not provide for any remedies. E.g. the adaptation of different federal acts within the Aarhus Participation Act 2018 was a reaction to recent case-law, such as that of the Supreme Administrative Court (Verwaltungsgerichtshof – VwGH) on the Air Quality Plan of the province of Salzburg[5] granting an environmental organisation access to justice against omissions and to review ordinances. In its judgement, the Administrative Court also referred to the European Court of Justice (ECJ) in the Protect case.

As Administrative Courts are bound by the Supreme Administrative Court’s ruling, they followed the case-law in other areas too, e.g. within the framework of the Flora-Fauna-Habitats Directive.[6]

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?

In general, parties can only rely directly on International agreements if they have constitutional or statutory status and if their content is sufficiently determined.[7] The competent bodies (Parliament, Federal Government, Federal President) can decide to what extent an international agreement is to be fulfilled by separate acts or regulations.[8]
As an exception, courts have granted environmental NGOs direct party status in certain environmental procedures, although national legislation did not provide for this standing. This was due to the ECJ ruling in the Protect case[9], which had not yet been sufficiently transferred into national law. However, the Supreme Administrative Court considers Article 9(3) of the Aarhus Convention itself as to be too indefinite to be directly applied,[10] so direct applicability was always limited to cases regulated by EU environmental law.

Austria ratified the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) in 2005 without proposing to incorporate the agreement by separate acts or regulations into the Austrian legal framework. However, to date, different steps have been made to implement the Aarhus Convention on a national level based on a number of decisions of the European Court of Justice. For example, the federal Aarhus Participation Act 2018 aims to grant the public a larger say in approval procedures and subsequent review rights in certain waste, water and air-related procedures. The Environmental Information Act enhances transparency in the field of environmental information and access to environmental data.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

Generally, there are two levels in the Austrian court system. In administrative matters, decisions are made by an administrative authority, which can be appealed against before the provincial Administrative Courts (Landesverwaltungsgericht – LVwG). In specific cases such as the EIA, the Federal Administrative Court (Bundesverwaltungsgericht – BvWg) decides on appeals against decisions of an administrative authority as specified in Article 102 of the Federal Constitutional Law (B-VG). An appeal to the Supreme Administrative Court (Verwaltungsgerichtshof – VwGH) is admissible against the decision of an Administrative Court if it depends on the resolution of a legal question of fundamental importance. This is in particular the case if the ruling departs from the case-law of the Supreme Administrative Court, such case-law does not exist or the legal question to be resolved has not been answered in a uniform manner by the previous case-law of the Supreme Administrative Court. Most Aarhus Participation Acts limit the legal review of NGOs to one level. In this case, according to the prevailing view, they do not have a right of final appeal to the Supreme Administrative Court.

There is an exception to this rule regarding decisions of municipalities within their own sphere of competency. This includes areas such as land use, building control, areas constructed for traffic and disaster control. In these cases, an appeal has to be at first addressed to the municipal council or its board in accordance with Section 63 General Administrative Procedure Act (Allgemeines Verwaltungsverfahrensgesetz 1991 – AVG). Only after the administrative action has been exhausted on a municipal level, one can make an appeal before the respective Administrative Court.

In civil and criminal procedures, the District Courts (Bezirksgerichte – BG) decide as first instance. Provincial Courts (Landesgerichte – LG) serve as courts of first instance in more severe cases and also act as appeal courts in relation to the district courts. There are four different Courts of Appeal (Oberlandesgerichte – OLG), which function as appellate courts solely vis-à-vis the district courts. The Supreme Court (Oberster Gerichtshof – OGh) is the court of final instance in civil and criminal suits.

In certain cases, the Austrian Constitutional Court (Verfassungsgerichtshof – VfGH) can also be addressed regarding decisions of an Administrative Court if the complainant claims to have been infringed in his/her constitutionally guaranteed rights by the decision. Furthermore, a person who claims to be infringed in his/her rights directly by an ordinance can bring the Constitutional Court as the ordinance has become effective without a judicial decision or a ruling having been rendered.

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)?

While ordinary courts are competent to decide on criminal and civil matters, administrative matters, including administrative penal law, fall within the responsibility of administrative authorities and courts. The material jurisdiction of courts is defined in the relevant federal or provincial acts. If no specific regulation can be found in the relevant administrative legislation, the District Administrative Authority (Bezirksverwaltungsbehörde) is responsible. If the Federal Administrative Court is not responsible, the territorial jurisdiction in administrative penal matters depends on the location of the authority that issued or did not issue the administrative decision. Otherwise, the territorial jurisdiction depends on the place in which an exercise of direct administrative power and compulsion was commenced or on the place in which the conduct occurred or activities were carried out.

According to Article 138 of the Federal Constitutional Law (B-VG), the Constitutional Court decides on conflicts of competence (1) between courts and administrative authorities, (2) between Courts of Justice and Administrative Courts or the Supreme Administrative Court as well as between the Constitutional Court itself and all other courts, and (3) between the Federation and a province or between the provinces amongst themselves.

3) Specialties as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges

For large-scale proceedings, i.e. if more than 100 people are expected to be involved, there are specific administrative rules (Sections 44a-44g AVG). This structure is especially relevant in EIA procedures. In these cases, the authority may publicly announce submissions by edict. If a submission has been announced by edict, persons will lose their party standing in the relevant administrative procedure if they do not object in writing to the authority in due time. A particularity for environmental procedures is the Ombudsman for the Environment. Environmental Ombudsmen have standing rights in environmentally relevant administrative procedures as well as party rights in EIA or Waste Management procedures. Their action is especially relevant within environmental conservation procedures. Their task is to enforce observance of objective environmental law. They are a formal/official party to the procedure (Formalpartei).

As parties in the above mentioned environmental procedures they are also competent to challenge administrative decisions.[11] According to Section 19(3) Environmental Impact Assessment Act (Umweltverträglichkeitsprüfungsgesetz 2000 – UVP-G 2000), Environmental Ombudsmen are entitled to require observance of legal provisions serving to protect the environment or the public interests in their competence as a subjective right in the procedure and to complain to the Administrative Court. They are not generally entitled to file complaints with the Administrative Courts as they do not base their status on a subjective right. However, in certain cases, they have been legally given a right to complain (e.g. in EIA or waste management procedures). Environmental Ombudsmen are entitled to have access to the Administrative Court in Environmental Liability procedures. As the Environmental Ombudsmen have the status of a formal party they do not have the competence to file complaints with the Constitutional Court.

There are no special environmental tribunals and no judges explicitly responsible for environmental matters; however, all Austrian Administrative Courts have organisational units responsible for environmental matters.

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

The Federal Administrative Court as well as the Supreme Administrative Court cannot initiate a review process of the administrative decision on their own motion. If an appeal is filed, both courts can review the decision in terms of its procedural as well as substantive legality. While the court has to review all facts deemed necessary for a ruling, the scope of judicial review is usually set out by the complaints brought forward.

Provisions relevant to the proceedings before the Administrative Courts are regulated by the Proceedings of Administrative Courts Act (Verwaltungsgerichtsverfahrensgesetz – VwGvG). Regarding complaints against decisions of authorities, the Administrative Courts decide on the merits of a case if (1) the relevant facts have been established or (2) the establishment of the relevant facts by the Administrative Court itself is in the interest of fixed proceedings or results in a substantial cost saving.[12] If neither of these prerequisites is met, the Administrative Court shall decide on the merits of the case if the authority does not object when submitting the complaint. If the authority failed to carry out required investigations into the facts, the Administrative Court...
can set aside the contested administrative decision by means of an order and refer the matter back to the authority for the issue of a new administrative decision. If the authority has to exercise discretion in its decision, the Administrative Court may set aside the contested administrative decision and remand the matter to the authority for the issue of a new administrative decision. In both cases, the authority is bound by the legal evaluation of the Administrative Court.

Decisions of the Administrative Courts can be appealed against before the Supreme Administrative Court, who does not decide in the matter itself. Free consideration of evidence (freie Beweiswürdigung) is the basic principle in evidence procedures. For further elaboration see section 1.5. The basic rule in administrative evidence (as well as criminal) proceedings is manifested by the states’ duty to find all relevant facts on a certain case (Officialmaxime). Thus, the authority is obliged to conduct evidence procedures on its own motion. This rule must also be followed by the Administrative Courts in appeal procedures. Evidence procedures before ordinary civil courts are governed by the principle of disposition (Dispositionsgrundsatz). Hence, it is basically up to the parties to begin a process to stop it or change the subject of proceedings they initiated.

1.3. Organisation of justice at administrative and judicial level

1) System of the administrative procedure (ministries and/or specific state authorities)

Issues of environmental protection are mainly regulated in public administrative law with action taken by the federal or state authorities. Important environmental areas regulated on the federal level are industrial pollution, water, waste management, clean air and in horizontal issues such as EIA. The nine Federal Provinces have important legislative competences in the area of nature protection. Permits issued by public authorities are the prevailing instrument used in environmental administration law (other instruments being bans on serious environmental damage, or codes of conduct). They precede a formal application by an applicant.

In the case of federal legislation, the Governor and the provincial authorities subordinate to him generally exercise the executive power of the Federation. In matters of indirect federal administration, the Governor is bound by instructions from the Federal Government and individual Federal Ministers. In this form of “indirect federal administration”, the responsible authority is usually the District Administrative Authority. In independent cities (Statutarstädte) this is the City Administration, otherwise the District Commission (Bezirksverwaltungsbehörden). For certain environmental areas (e.g. mining, water protection and usage, or environmental impact assessments) other authorities such as the provincial Government (Landesregierung) or the responsible Federal Ministers (Bundesministerinnen/Bundesminister) or other Federal Authorities are in charge of administrative matters as well (“direct federal administration”). The legal areas in which federal direct administration can be instituted, are listed exhaustively in Article 102(2) Federal Constitutional Law (Bundes-Verfassungsgesetz – B-VG). They include demarcation of frontiers, customs, federal finances, matters pertaining to association and assembly, patent matters and the protection of designs, the traffic system, river and navigation police, mining, Danube control and conservation, fodder and fertilisers as well as plant preservatives including their admission and, in the case of seed and plant commodities or the preservation of monuments.

In the field of provincial legislation, the supreme administrative authority is the provincial Government (Landesregierung). Other key provincial administrative authorities are the District Administrative Authorities (Bezirksverwaltungsbehörden).

2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?

Generally, decisions of an administrative authority must be appealed against to the relevant Administrative Court within four weeks after the decision has been issued. The appeal needs to be made in written form and must include the name of the decision, the authority concerned, the reasons for appeal and actions required. Within a municipality’s own sphere of competence, appeals must be filed by the party within a two week period with the authority that issued the administrative decision of first instance.[13] The period starts for each party with the receipt of the written copy of the administrative decision, in the case of oral pronouncement simultaneously with it.

If the authority has not made a decision on a matter within six months or, if the law provides for a shorter or longer period allowed for a decision, within that period, parties can file a complaint alleging breach of the duty to reach a timely decision (Säumnisbeschwerde) with the respective Administrative Court. Unless otherwise provided in federal or provincial legislation, an Administrative Court is required to decide on requests initiating proceedings filed by parties and complaints without undue delay, however, at the latest within six months after receipt of the request or complaint. The Administrative Court can suspend proceedings on a complaint if (1) the Administrative Court has to resolve a legal issue in a considerable number of proceedings pending or expected to become pending in the near future and if, at the same time, proceedings on a final complaint against a ruling or an order by an Administrative Court are pending with the Supreme Administrative Court in which the same legal issue must be resolved, and (2) there are no rulings by the Supreme Administrative Court to resolve that legal issue, or the previous rulings by the Supreme Administrative Court do not answer the legal issue to be resolved in a uniform manner.[14]

3) Existence of special environmental courts, main role, competence

There is no special environmental court in Austria.

4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)

Decisions of administrative authorities

In case of a complaint against the decision of an administrative authority, the respective authority may set aside or modify the contested administrative decision or dismiss the complaint for formal reasons or on the merits within two months (preliminary decision on a complaint). If the authority wants to dispense with issuing a preliminary decision on a complaint, the authority submits the complaint, together with the files of the administrative proceedings, to the Administrative Court.[15] Within two weeks of service of the preliminary decision on a complaint, each party can file a request with the authority that the complaint be submitted for decision to the Administrative Court (request for the Administrative Court to hear a complaint).[16]

Rulings of Administrative Courts

Final complaint (Revision) against the ruling of an Administrative Court is admissible if (1) the resolution depends on a legal question of essential importance, in particular because the ruling departs from the case-law of the Supreme Administrative Court, (2) such case-law does not exist or (3) the legal question to be resolved has not been answered in a uniform manner by the previous case-law of the Supreme Administrative Court.[17] Each Administrative Court ruling must contain information on the possibility to file an ordinary or extraordinary final complaint with the Supreme Administrative Court.

5) Extraordinary ways of appeal, Rules in the environmental area, Rules for Introducing preliminary references

The federal Environmental Liability Act offers the possibility of an environmental complaint for private individuals who have been violated in their rights due to an environmental damage. The complaint is a request to the authorities to take action. If the authority does not react, there is usually no legal remedy. In certain cases, official liability (Amtschaftungsbeschwerde) can be claimed if a financial loss and the guilt of the authority can be proven.

Regarding constitutional rights, Article 144 of the Federal Constitutional Law (Bundes-Verfassungsgesetz – B-VG) provides for individuals to make claims before the Constitutional Court (Verfassungsgerichtshof) if their fundamental rights are infringed. Its basic requirements are interference with the individual's "subjective right", i.e. that the party can only object to norms that exist to protect an individual on the one hand, and an infringement of an individual's fundamental right on the other hand. There are a number of constitutional rights that can be linked to environmental protection, e.g. the right to justice, the right to life, the right to health, the right to respect for private and family life.
The Administrative Court may find in its ruling that a final complaint is not admissible in accordance with Article 133(4) B-VG. In this case, a final complaint must separately contain the reasons for which it is deemed admissible contrary to the finding of the Administrative Court ("extraordinary final complaint").

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?

There is the possibility of extrajudicial dispute settlement (aussengerichtliche Streitschlichtung). Support can be provided by mediators, which are listed [here] on the website of the Ministry of Justice. Mediation is indeed used for conflict settlement in Austria. A study commissioned by the former Federal Ministry for Agriculture, Forestry, the Environment and Water Management[19] on the basis, potential and instruments of environmental mediation in Austria stated that mediation procedures are used in environmental matters and that these procedures can have quite productive outcomes. 

For example, the Austrian Environmental Impact Assessment Act (EIA Act)[20] explicitly provides for an interruption of the EIA procedure for a mediation procedure at the request of the project applicant. One example of mediation in a large-scale environmental procedure was the extension of Vienna Airport.

7) How can other actors help (ombudsperson (if applicable), public prosecutor), accessible link to the sites?

The ombudsman for the environment (Umweltanwaltschaft) advocates for the protection of the environment and is regulated differently in all federal states. These institutions serve as a key point of contact for citizens who notice environmental problems. They have standing rights in some environmentally relevant administrative procedures – especially they act within environmental conservation procedures. Furthermore, they have legal standing in EIA and other procedures, e.g. in the field of waste management or nature protection.[21] As a formal party to the procedure (Formalpartei), their task is to claim the observance of objective environmental law. As parties to the abovementioned environmental procedures they are competent to challenge these administrative decisions.

Burgenland
Carinthia
Lower Austria
Upper Austria
Salzburg
Styria
Tyrol
Vorarlberg
Vienna

The task of general ombudspersons (Volksanwaltschaft) is to control the actions of administrative organs. All citizens can lodge a complaint free of charge about an Austrian administrative authority. Complaints against administration authorities can be lodged throughout Austria, on any administrative issue including water or forestry legislation and other environmental issues. Complaints against provincial and local authorities can be lodged in all provinces except Vorarlberg and Tyrol, where local ombudspersons are available. Complaints about ongoing proceedings can only be lodged if they relate, for example, to the duration of the proceedings, errors with deliveries, refusal to provide information or gross discourtesy on the part of officials.

General ombudspersons: website [https://www.volksanwaltschaft.gv.at/en], Email: post@volksanwaltschaft.gv.at

Local ombudspersons Tyrol: website [https://www.tirol.gv.at/en/], Email: landesvolksanwaltschaft@tirol.gv.at

Local ombudspersons Vorarlberg: website [https://www.landesvolksanwalt.at], Email: buero@landesvolksanwalt.at

The public prosecutor is responsible for the public prosecution in criminal proceedings. Neither the Austrian Criminal Code (Strafgesetzbuch – StGB) nor the Administrative Penalty Code (Verwaltungsstrafgesetz – VStG) provide for private criminal prosecution in environmental matters. Nevertheless everyone who suspects that criminal offenses have been committed is entitled to report this to the respective law enforcement agencies.

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)?

The general rule for standing in Administrative Courts only gives parties to administrative proceedings access to review proceedings. These are persons "who make use of the services performed by an authority or who are affected by the activity of such authority, are persons involved, and to the extent they are involved in the matter on the grounds of a legal title or a legal interest"[22] The question of who qualifies as a legal subject with such a legal right or legal interest is specified in the applicable administrative provisions – e.g. the Industrial Code (Gewerbeordnung 1994 – GewO 1994), trade regulations, the Water Act (Wasserrechtsgesetz 1959 – WRG 1959), the Waste Management Act (Abfallwirtschaftsgesetz 2002 – AWG 2002), Forestry Act (Forstgesetz 1975 – ForstG), the Air Pollution Control Act (Immissionschutzgesetz – Luft – IG-L), etc.

While the plaintiff is always considered a party, legal standing is not granted to individuals and environmental associations in all areas of environmental protection. It is a general rule in the Austrian judicial system that individuals are only granted standing if and as far as their individual rights are affected. Individuals are not entitled to plead laws protecting not their personal legal interests, but the environment in general. In certain legal areas, such as environmental impact assessment, waste management, IPPC and Seveso sites, water management, clean air or nature protection, the relevant acts regulating administrative procedure also grant recognised environmental NGOs standing to challenge environmental administrative decisions.

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?

As there is no single legal act granting private persons and NGOs access to justice in environmental matters, the situation differs for each legal area. The question who qualifies as a legal subject is specified in the applicable administrative provisions – e.g. the Industrial Code (Gewerbeordnung 1994 – GewO 1994), trade regulations, the Water Act (Wasserrechtsgesetz 1959 – WRG 1959), the Waste Management Act (Abfallwirtschaftsgesetz 2002 – AWG 2002), Forestry Act (Forstgesetz 1975 – ForstG), the Air Pollution Control Act (Immissionschutzgesetz – Luft – IG-L), etc.

On a federal level, key environmental provisions with regard to access to justice are the Environmental Impact Assessment Act (Umwelteinflussprüfungsverordnung 2000 – UVP-G 2000), the Industrial Code (Gewerbeordnung 1994 – GewO 1994), the Air Pollution Control Act (Immissionsschutzgesetz – Luft – IG-L), etc. The Administrative Court may find in its ruling that a final complaint is not admissible in accordance with Article 133(4) B-VG). In this case, a final complaint must separately contain the reasons for which it is deemed admissible contrary to the finding of the Administrative Court ("extraordinary final complaint").

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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.)

Standing rules for NGOs


The requirements for the recognition of an environmental organisation as a party are laid down in Section 19 EIA Act (UVP-G 2000). This provision requires it to be organised in the form of a non-profit organisation for at least three years, to have at least 100 members and to have environmental protection as its main objective. Federations must comprise at least five member associations. All organisations must prove every three years that they still meet the recognition requirements. A list of all recognised environmental organisations is available on the Website of the Ministry for Climate Action, Environment, Energy, Mobility, Innovation and Technology.[23]

As a party, NGOs can make objective claims regarding compliance with environmental protection regulations as subjective rights.[24] and have a right of appeal to the Supreme Administrative Court (Verwaltungsgerichtshof – VwGH). Most acts granting NGOs standing to challenge, do not grant them full party status, but rather a kind of standing to challenge decisions – a system which was specially introduced when Austrian legislators started to implement the Aarhus Convention. In this case, according to the prevailing view, they do not have a right of final appeal to the Supreme Administrative Court.

Standing rules for citizens’ groups

Citizens’ groups (Bürgerinitiativen) have subjective standing rights exclusively in EIA proceedings. The requirement for admission to the proceedings is a statement, which needs to be signed by at least 200 people who are entitled to vote in the relevant local municipality. This statement, including a list of signatures, has to be submitted to the EIA authority during the period for public inspection. Only with this formal act is the Citizens’ group under the EIA Act established and thus granted party status in the EIA procedure. As a party, the citizens’ group can also claim in respect of objective environmental law.

Standing rules for neighbours/individuals

In specific cases such as procedures regarding plant installations (Genehmigung von Betriebsanlagen) and EIA proceedings, neighbours can be granted legal standing when they are directly affected by “smell, noise, smoke, dust, vibration or otherwise”.[25] Their legal standing can be lost if objections are not raised in due time and objections are only admissible to the extent that they concern their “subjective right”, E.g.: the Waste Management Act names landowners and neighbours as individuals that have legal standing. In the water protection process, neighbours are to be involved in the proceeding if the party’s property is affected. They are entitled to present their interests in the proceedings, but cannot raise objections.

In the nature conservation process, neighbours and citizens’ groups have no legal standing, but environmental organisations and the regional ombudsmen for the environment do in certain cases.

Although various steps have been taken, the on-going procedure before the Aarhus Convention Compliance Committee shows that, according to environmental organisations, a lack of implementation concerning access to justice in environmental proceedings remains. Apart from clean air regulation, the different acts do not provide for standing concerning plans or programmes, or omissions by authorities or private persons.

4) What are the rules for translation and interpretation if foreign parties are involved?

If a party or a person does not have sufficient command of the German language, is deaf or dumb, or their hearing is severely impaired, an official interpreter or translator available to the authority must be called in. All interpreters or translators provided are officially accredited and listed. Except for administrative penal proceedings, where according to Article 6 EHRC translation costs must not be imposed on the accused, costs of a translator are to be paid by the respective party – and ultimately by the losing party (unless the party was entitled to legal aid).

According to the Ethnic Groups Act (Volksgruppengesetz), in certain regions with Slovenian, Croatian or Hungarian minorities, proceedings must be held in the respective language or bilingually without causing translation costs for the parties.

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

Before the authority can make a legally binding decision, unless facts are already clear beforehand,[26] it must conduct an investigation. The only exception is if there is a stipulation of cash benefits according to a legal, statutory or tariff-based standard or in the event of danger of delay (Mandatsbescheid).[27]

1) Evaluation of evidence – are there any limits in obtaining or evaluating evidence, can the court request evidence on its own motion?

The basic rule in evidence proceedings is the State’s duty to gather all relevant facts on a given case (Offiziellemaxime). Thus, the authority is obliged to conduct evidence procedures on its own motion. Anything feasible and suitable for ascertaining the relevant facts of a case can constitute evidence.[28] This includes expert opinions.

Regarding limits to obtaining evidence, there is generally no ban on the use of illegally obtained evidence (Verwertungsverbot). However, evidence that undermines laws or other legal provisions or violates the rights of third parties (e.g. the right to privacy) is inadmissible. For example, an individual who was not allowed as a witness to the proceedings cannot instead be interviewed as a person to provide information as part of the expert evidence. Furthermore, evidence resulting from anonymous statements which are not revealed to the party is inadmissible. Costs of a translator are to be paid by the respective party – and ultimately by the losing party (unless the party was entitled to legal aid).

According to the Aarhus Convention Compliance Committee, standing for foreign NGOs, etc.)

Rules on gathering and evaluating evidence in administrative procedures, including expert opinions, also apply to Administrative Court procedures. Additionally, if the courts deem it necessary or a party requests so, an oral hearing must be conducted. In this case, any evidence must be directly presented in the hearing.

2) Can one introduce new evidence?

Regarding decisions of municipalities within their own sphere of competency,[30] parties can introduce new evidence in first instance administrative procedures as well as second instance procedures.[31] They have a right to provide information on all relevant aspects of the case and are entitled to request the presentation of evidence.[32] The authority is entitled to reject the request if it deems it irrelevant to the case.

If there are new facts or evidence presented in a complaint that the authority or court considers material, the authority or the court must notify the other parties without delay and give them the opportunity to acknowledge the contents and comment on them within a reasonable period of no longer than two weeks.[33]

In EIA procedures, the authority can declare the investigation procedure closed when the case is ready for decision.[34] After this declaration, no new facts and evidence may be presented at the instance in question.

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts

The authority must call upon officially registered independent experts (Sachverständige) if an unclear fact of the case requires clarification. A list of all official experts and interpreters is available on the website of the Ministry of Justice.[35]
Unofficial experts may only be called upon by the authority if official experts are either unavailable or if the nature of the case requires a specific expert or a significant acceleration of the procedure is to be expected.[36]

As there are no specific rules on expert opinions within the Administrative Court procedures, the rules of the administrative procedure apply accordingly.[37]

3.1 Is the expert opinion binding on judges, is there a level of discretion?

Free consideration of evidence (freie Beweiswürdigung) is the basic principle in evidence procedures, which is why the expert opinion is not binding. However, the authority or court must not proceed arbitrarily, making decisions at their own discretion. The main difference between “free discretion” and “free consideration of evidence” is to assess any evidence based on the laws of logic and to form a will within a legal framework.

The authority or court must check the opinion on accuracy, conclusiveness and completeness. If the authority or court is not convinced of the quality of the opinion, a second expert opinion must be solicited.

3.2 Rules for experts being called upon by the court

The expert is generally appointed by the court ex officio. In general, the role of the expert is not to answer questions of law but to share his expert opinion regarding unclear facts of the case. The expert must disclose the basis (his specialist knowledge) and key facts on which the report is based in order to ensure accountability and conclusiveness. The latter is fundamental for the expert evidence to be considered in the decision-making process. Experts can gather their own evidence for their report (e.g. interrogate the parties or third parties).

A conclusive expert opinion can only be countered by an expert opinion at the same professional level. However, parties can always contest the expert opinion due to a lack of conclusiveness or incompleteness without introducing a counter-expert opinion. The authority or court must examine such an intervention and take it into consideration in the decision-making process.

Court-appointed experts must be rejected ex officio in cases of impartiality. Experts can also be rejected by a party if they can demonstrate their impartiality or lack of expertise.[38]

3.3 Rules for experts called upon by the parties

Parties to administrative and court review procedures have the right to submit their own evidence in the course of the hearing, including expert opinions, or to submit an evidence request for a court-appointed expert. A motion by the party to hear evidence can only be rejected if the evidence is assumed to be true or if the evidence is considered irrelevant or unsuitable.

It is also possible for the parties to engage “private experts” (Privatsachverständige) to provide a report on a topic. However, these reports are only treated as private documentation and prove nothing but the opinion of the author.

3.4 What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?

In general, each party involved in an administrative proceeding will bear all of its own costs.[39] Unless provided otherwise, the authority bears the costs incurred for its activities performed in the administrative proceeding ex officio. Unless provided otherwise by specific legislation, this also applies to procedures before the Administrative Courts.

For administrative procedures there is a cost category for every motion. The cost categories are stated in the Austrian Official Tax Regulation (Bundesverwaltungsabgabenverordnung 1983 – BvwAbgV). This regulation provides environmentally relevant cost categories, such as water authorisations, industrial and commercial matters, electricity, or railway issues. Furthermore, the provisions of the Public Charges Act (Gebührengesetz 1957 – GebG) apply on writings and official acts undertaken by administrative bodies and the Regulation on Commission Charges (Bundes-Kommissionsgebührenverordnung 2007 – BKommpGebV) applies on the acts set by an administrative body outside of its office. The court fees in civil procedures depend on the value in litigation the Austrian Judicial Charges Act (Gerichtsgebührengesetz – GGG).

The fee for filing an appeal with the Administrative Court is EUR 30. The fee for filing an appeal with the Supreme Administrative Court or the Constitutional Court is EUR 240.

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

Legal assistance is required in certain civil and criminal procedures as well as in proceedings before the Supreme Administrative and Constitutional Court. Legal aid (Verfahrenshilfe) is solely guaranteed within civil and criminal procedures or in the scope of applicability of Article 6(1) ECHR or Article 47 ECFR[40] in these cases as well as in administrative penal procedure. In environmental matter, this might e.g. be the case in the field of environmental criminal law.

Lawyers, however, apply only to the defendant. If the Administrative Court has decided to grant legal aid, it notifies the committee of the bar association to appoint a lawyer as a representative can be requested. An application for legal aid within regular administrative procedures is therefore usually not possible.

The federal bar associations also offer an introductory consultation free of charge (erste anwaltliche Auskunft).[41] On the website, contact details of lawyers can be accessed, also according to their specific field of expertise (e.g. environmental law).

1.1 Existence or not of pro bono assistance

The federal bar associations offer an introductory consultation free of charge (erste anwaltliche Auskunft).[42] Environmental lawyers provide a free-of-charge legal advice on environmental law for individuals, citizens’ initiatives and eNGOs.[43] There are no conditions for accessing the legal counselling – every individual person can have access, as well NGOs and the ombudsman for the environment. ÖKOBÜRO does not provide legal representation within environmental administrative and review procedures.

Furthermore, the Green Alternative Association for the support of citizens’ groups (Grüne-Alternative Verein zur Unterstützung von BürgerInnen-Initiativen – BIV) supports citizens’ initiatives financially in environmental review procedures.[44]

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.)?

If someone has a low income and is in a precarious financial situation, it is possible to apply for legal aid (Verfahrenshilfe). Part of the legal aid might be temporary exemption from the procedural costs. Legal aid must be applied for by the date of filing the complaint at the latest.

1.3 Who should be addressed by the applicant for pro bono assistance?

An application for legal aid must be filed within the timeframe for the relevant submission or remedy and addressed to the responsible Court. As cases of legal aid are assigned to the responsible advocate, lawyers are usually not contacted directly by the defendant or acting individual.

2) Expert registries or publicly available websites of bars or registries that include the contact details of experts

A list of all lawyers active in Austria including their contact data and filterable by legal areas is available on the website of the Federal Bar Association.[45]

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible

The following environmental organisations are active in the field of access to justice:

- BirdLife Austria
- Four Paws Austria
- Global 2000 (Friends of the Earth Austria)
1) **Time limit to challenge an administrative environmental decision (not judicial) by an administrative body (either superior or same level).**

Generally, decisions of an administrative authority must be appealed against within four weeks after the decision has been issued. However, shorter or longer time limits may be applicable based on the specific applicable law. The specific time limit for appeal is also highlighted in the decision itself. The time limit begins for each party with notification of the decision by post or with the deposit of the notice at the post office. If the decision is announced in a hearing, the time limit starts from the day of the announcement. The appeal must reach the authority within the time limit. It is sufficient for the appeal to be delivered to the post office within the given time limit. Challenging an administrative environmental decision is not possible if the party has expressly waived the complaint after the notification has been delivered.

2) **Time limit to deliver a decision by an administrative organ**

The authority must decide on the matter within six months unless a shorter or longer decisions period is provided by the specific applicable law. E.g., according to the Environmental Information Act (Umweltinformationsgesetz – UIG), the authority must react to requests of information within one month or, in complex cases, within two months. Official notifications rejecting request for information must be issued at latest within two months. If the authority exceeds the legally stipulated time limit to make a decision, a default complaint (Säumnisbeschwerde) can be filed by the concerned party.[47]

The expiry of the decision period must be certified. Premature default complaints will be rejected. The defaulting authority then has the option of presenting the matter to the administrative court or deciding on the matter themselves within three months. In the first case, the Administrative Court can only make a decision on relevant legal issues regarding the matter and the defaulting authority has up to eight weeks to make a decision based on the legal assessment of the Administrative Court. If the defaulting authority still does not make a decision, the Administrative Court ultimately has to decide on the matter based on the factual and legal situation at the time.

In matters within the municipalities' own sphere of competence, the concerned party must file a motion for devolution (Devolutionsantrag), but only when the responsible municipality body has exceeded its decision deadline. In this case, the responsibility to decide on the matter is transferred to the municipal authority of second instance. Only if this authority also exceeds its decision period is a default complaint admissible.

3) **Is it possible to challenge the first level administrative decision directly before court?**

There is a right to appeal directly to an Administrative Court (Verwaltungsgericht) against first level administrative decisions. However, there is an exception to this principle regarding decisions of municipalities that lie within their competency. This includes areas such as land use, building control, areas constructed for traffic and disaster control. In these cases, an appeal can only be addressed to the municipal council or its board in accordance with Section 63 General Administrative Procedure Act (Allgemeines Verwaltungsverfahrensgesetz 1991 – AVG).

The appeal to the Administrative Court against a first level administrative decision must be submitted to the authority that issued the decision in first instance. This authority then has the option of settling the complaint by means of a preliminary decision (Beschwerdeverfahrenscheidung), which has to be issued within two months. The concerned party can then file an application for submission (Vorlageantrag) within two weeks to the authority that issued the decision and ask for the complaint to be submitted to the Administrative Court for decision. The administrative court subsequently decides on the matter (unless the complaint is to be dismissed or the proceedings to be discontinued). If the authority has failed to investigate the matter sufficiently, the administrative court can overturn the contested decision and refer the matter back to the authority to issue a new decision. The authority is bound by the legal assessment on which the administrative court based its decision.

4) **Is there a deadline set for the national court to deliver its judgment?**

Generally, the administrative court must deliver its judgment without unnecessary delay and at least within six months, unless a different decisions period is provided by the specific applicable law. If the administrative court violates its decision-making obligation, an infringement application (Fristsetzungsantrag) can be filed by the lawyer representing the concerned party before the Supreme Administrative Court. Legal representation by a lawyer during the infringement proceedings is obligatory. The Supreme Administrative Court does not decide on the case itself but orders the defaulting administrative court to issue a decision within a period of grace.

5) **Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)**

Legal aid (Verfahrenshilfe) must be applied for at the latest when filing the complaint. If the party has applied for legal aid within the complaint period, it starts to run from the point when the decision regarding the appointment of the lawyer reached the representative and the decision to be appealed was delivered to the lawyer.

If new facts or evidence are presented during a complaint procedure which appear significant to the authority or the administrative court, the other parties must be informed immediately and given the opportunity to take note of the content of the complaint and comment on it. For this possibility to comment, parties must be granted a reasonable period of time, but not exceeding two weeks. The submission of new objections or arguments in the legal review is generally only admissible if they could not have been made during the administrative procedure. According to some provincial acts, the person or organisation may elaborate in its appeal why points in questions are raised for the first time.
The complainant must request a hearing to be held as part of the complaint or in the request for a preliminary ruling. The other parties must be given the opportunity to submit an application to hold a hearing within a reasonable period of time, but not exceeding two weeks.

1.7.2. Interim and precautionary measures, enforcement of judgments

1) When does the appeal challenging an administrative decision have suspensive effect?

Generally, an appeal has suspensive effect. As a result, the obligations imposed in the contested decision must not be provided for the time being, granted revoked rights do not apply for the time being and the decision is not yet binding. During the preliminary proceedings, the administrative authority can exclude the suspensive effect of the appeal, if – after weighing public interests and interest of other parties concerned – early enforcement of the decision is required due to the risk of delay. The Administrative Court can rule out the suspensive effect for the same reason.

However, some material laws provide explicit legal exclusions from the suspensive effect.

2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?

In case of measures that cannot be postponed because of imminent danger, the authority may issue an administrative decision without any prior investigation procedure. Against such an administrative decision, an appeal may be lodged with the issuing authority within two weeks. The appeal does not have suspensive effect. Within two weeks after receipt of the appeal, the authority must institute the investigation procedure, otherwise the administrative decision becomes ineffective.

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?

There is no possibility to apply for injunctive relief during the administrative appeal by the authority or the superior authority.

4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?

Unless the appeal leads to a suspensive effect (see 1.), the administrative decision comes into force once the deadline to appeal has expired and no further legal remedies are permitted.

5) Is the administrative decision suspended once challenged before court at the judicial phase?

Generally, decisions of an administrative Court can be challenged (“asked to be revised”) before the Supreme Administrative Court (Verwaltungsgerichtshof – VwGH). Such appeals (Revision) usually do not have suspensive effect. However, if the execution of the contested decision threatens the appealing party to suffer a disproportionate disadvantage, a suspensive effect can be granted on request.

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?

There are no national regulations to this regard.

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.

Legal costs and fees consist of court fees (to be paid when filing a claim or appeal), lawyers’ fees and actual expenses such as expert/translator costs and travel costs of witnesses. The parties’ own costs, such as internal investigation costs or the costs to prepare for the proceedings, are not considered as reimbursable. For administrative procedures, there is a cost category for every motion. The cost categories are stated in the Austrian Official Tax Regulation (Bundesverwaltungsabgabenverordnung 1983 – BvwAbgV).

In general, each party involved in an administrative or judicial review proceeding shall bear all its costs incurred. [49] Unless provided otherwise, the authority bears the costs incurred for its activities performed in the administrative proceedings ex officio.

There are no administrative review procedures, as complaints against decisions must be addressed to the Administrative Courts. The Attorney’s Tariff Act (Rechtsanwaltstarifgesetz) regulates lawyer’s fees. Lawyers have to be paid for each individual performance which the lawyer makes in the course of the proceeding.

As general rule in all Administrative Court procedures, also in relation to the environment, the court may call in official experts (Amtssachverständige) to gather evidence on a specific matter. However, the parties are free to appoint a private expert at their own expenses in order to obtain the relevant expert knowledge they wish in order to be able to argue in the procedure. The private experts are not experts within the meaning of the General Administrative Procedure Act (AVG), but the opinion of private experts can be presented to the court as evidence to support the legal position of the parties.

Private expert fees are subject to wide fluctuations, depending on every individual case. The expert fees for evaluation of major projects in different fields (e. g. a project with an area of 10 acres or transport infrastructure at least 10 km in length) without detailed on-site research can range up to EUR 50.000.

The fee for filing an appeal with the Administrative Court is EUR 30. The fee for filing an appeal with the Supreme Administrative Court or the Constitutional Court is EUR 240.

2) Cost of Injunctive relief/interim measure, is a deposit necessary?

There are no regulations on deposits regarding injunctive relief or interim measures.

3) Is there legal aid available for natural persons?

If someone has a low income and is in a precarious financial situation, it is possible to apply for legal aid. Part of the legal aid might also be temporary exemption from procedural costs. Legal aid must be applied by the date of filing the complaint at the latest. Pro bono legal assistance is solely guaranteed within civil and criminal procedures as well as in administrative penal procedure and in the scope of applicability of Article 6(1) ECHR or Article 47 ECFR: if a defendant in a criminal administrative procedure before an Administrative Court is not able to bear the costs of his defence without impediment to the requirements for the basic necessities of life, the Administrative Court may assign a defence lawyer to the defendant whose costs do not have to be borne by the defendant if this is required in the interest of dispensing justice, in particular in the interest of adequate defence, and pursuant to Article 6(1)(3)(c) ECHR or Article 47 ECFR [50].

Forms for the application for legal aid can be access on the websites of the Federal Ministry for Justice,[51] the Federal Administrative Court,[52] the Supreme Administrative Court,[53] the Constitutional Court.[54]

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?

Pro bono legal assistance (Verfahrenshilfe) is solely guaranteed within civil and criminal procedures in these cases as well as in administrative criminal procedures, in the scope of applicability of Article 6(1) ECHR or Article 47 ECFR and in final complaint procedures before the Supreme Administrative Court. This might e.g. be the cases in the field of environmental criminal law. In these cases, it is possible to apply for legal aid if someone has a low income and is in a precarious financial situation. Part of the legal aid might be as well the temporary exemption from procedural costs. Legal aid must be applied for by the date if filing the complaint at the latest.

Legal persons can be granted legal aid mutatis mutandis, if bearing the costs of conducting proceedings is not possible without impediment to the requirements for the basic necessities by the party or a person with a financial involvement in the proceedings. [55]
Apart from this, in environmental matters, no legal aid can be requested. An application for legal aid within regular administrative procedures is therefore not possible.

The federalbar associations offer an introductory consultation free of charge (erste anhaltliche Auskunft)[1]. The association ÖKOBÜRO (Alliance of the Austrian Environmental Movement) is the only Austrian environmental NGO and public interest environmental law organisation that provides legal counselling on environmental matters. Environmental lawyers provide a free-of-charge legal advice on environmental law for individuals, citizens’ initiatives and eNGOs.[57] There are no conditions for accessing the legal counselling – every individual person can have access as well NGOs and the ombudsman for the environment. ÖKOBÜRO do not provide legal representation within environmental procedures.

5) Are there other financial mechanisms available to provide financial assistance?

The Green Alternative Association for the support of citizens’ groups (Grün-Alternativer Verein zur Unterstützung von BürgerInnen-Initiativen – BIV)[58] supports citizens’ initiatives financially in environmental procedures.

6) Does the “loser party pays” principle apply? How is it applied by courts, are there exceptions?

The “loser party pays” principle applies only in civil proceedings. Under this principle, the defeated party has to bear all costs including experts/witnesses/lawyers costs (as far as those costs were reasonable and necessary) as well as all other costs of the litigation at the end of the proceeding. In the case of partial success, the costs are divided aliquot.

In administrative proceedings each party shall bear all its costs incurred.[59] Apart from administrative penal proceedings, this principle applies to Administrative Court proceedings accordingly. Unless provided differently, the authority or court bears the costs incurred for its activities performed in the administrative proceeding ex officio.

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?

Part of the legal aid in administrative penal procedures as well as in procedures before the Supreme Administrative Court can be temporary exemption from procedural costs such as special handling charges, cash expenses or administrative charges.

If a defendant in a criminal administrative procedure before an Administrative Court is not able to bear the costs of his defence without impediment to the requirements for the basic necessities of life, the Administrative Court, may assign of a defence lawyer to the defendant whose costs do not have to be borne by the defendant if this is required in the interests of dispensing justice, in particular in the interest of adequate defence, and pursuant to Article 6(1)(3)(c) ECHR or Article 47 ECFR [60].

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?

The government of Austria provides a legal information system (Rechtsinformationssystem – RIS) online, where all legal provisions including case law can be accessed. A selection of Austrian Laws in English can be found here, including the Federal Constitutional Law, the Environmental Impact Assessment Act and the General Administrative Procedure.

The Federal Ministry of Climate Action, Environment, Energy, Mobility, Innovation and Technology provides structured information regarding EIA, see here. Practical information on SEA and EIA is available at http://www.partizipation.at/. The Austrian public administration also provides a Business Service Portal (Unternehmensserviceportal) which offers information for businesses regarding environmental legal issues including the Environmental Information Act and the EIA procedure.

Structured dissemination focusing on environmental access to justice for affected individuals, NGOs and other third-parties is mainly provided by the ombudsman for the environment in the federal states as well as NGOs such as the environmental umbrella organisations ÖKOBÜRO – Alliance of the Austrian Environmental Movement and Umweltbeiratverband.

2) During different environmental procedures how is this information provided? From whom should the applicant request information?

The specific rules on public participation in environmental procedures are determined in the respective material laws. Generally, any planned project must be publicised in an appropriate and timely manner (e.g. official notice in the municipality, advertisement in newspapers, information on the website of the respective authorities). An applicant is advised to access information at the respective authority, where the application has to be filed as well.

For large-scale proceedings, i.e. if more than 100 people are expected to be involved, there are specific administrative rules regarding access to information. [61] This structure is especially relevant in the case of EIA procedures. In these cases, the authority may publicly announce submissions by edict.

Within the implementation of Article 9(3) Aarhus Convention, different electronic online platforms have been introduced, both on Federal and Provincial level.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?

There must be a period for public inspection of the application as well as all relevant documents relating to the planned project, where objections to the planned project can be raised. The public has the right to comment on the project or to put forward counter-opinions. These comments must be taken into account in EIA procedures when preparing the environmental impact assessment and in EIA and IPPC procedures when deciding on the application for approval. The decision including the taken measures and the discussions regarding the comments must be made public.

In EIA procedures a timetable for the procedure must be published online. The authority as well as the affected municipality or municipalities must make the application available for at least six weeks and, if possible, electronically. Additionally, they must publish information on the internet, in a widely-read newspaper in the region and in another regular newspaper. Large-scale proceedings include stricter rules on access to information. Official documents must be delivered by edict[62] and the authority must make clear that all documents are accessible at the authority’s office.

4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment?

As a general rule, all administrative decisions or court rulings must contain the operative part and the information regarding appeals (Rechtsmittelbelehrung).

[63] The instructions on the right to appeal must indicate whether or not an appeal may be filed against the decision, and, if so, indicate the contents and form that the appeal must have and the authority to which and the period by which it must be submitted. [64]

Regarding EIA procedures, the administrative decision and judgment must be made public and must include information regarding access to justice (e.g. regarding the possibility to appeal).

Decisions by the Federal Administrative Court on EIA cases must be published on the website for at least eight weeks and must be made publicly and physically available at the local authority during the office hours for public inspection. This possibility must be pointed out at the public municipality’s official board.[65]

5) Is translation, interpretation provided to foreign participants? What are the rules applicable?


1.8. Special procedural rules


Country-specific EIA rules related to access to justice
The Environment Agency Austria (Umweltbundesamt GmbH) provides an overview of all relevant published information regarding EIA procedures on its website. In Austria, the EIA procedure is structured as a “concentrated approval procedure” (konzentiertes Genehmigungsverfahren) for a project. There is only a single approval procedure, deciding on all the necessary authorisations for a project. This applies to all permits required under federal or state law and covers a wide range of materials, such as water law, nature conservation law, building law, protection of historical monuments, etc.

1) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

The purpose of a screening process (Feststellungsverfahren) is to estimate the environmental impact of a project and to determine whether or not an environmental impact assessment is necessary. The screening can be done ex officio by the authority. In some cases, e.g. regarding individual case examinations (Einzelfallprüfungen), a screening is required by law. The project applicant, a cooperating authority and the ombudsman for the environment can also request a screening. In certain procedures (e.g. federal highways/high-speed railways) the local municipalities are also entitled to request a screening.

During the screening process, only the cooperating authority and the water management planning body have the right to be heard. The authority has to issue a decision regarding the results of the screening (Feststellungsbescheid) within six weeks. In case of a decision stating that no EIA procedure is needed, recognised environmental NGOs and neighbours have a right to appeal within four weeks, starting on the day the decision was made public online. However, the right to appeal does not imply a right to apply for a screening process or grant legal standing in a screening process. Citizens’ groups do not have the right to appeal.

According to Section 19(1) EIA Act (UVP-G 2000), neighbours are “persons who might be threatened or disturbed or whose rights in rem might be harmed at home or abroad by the construction, operation or existence of the project as well as the owners of facilities in which persons stay temporarily on a regular basis with regard to the protection of such persons.” This definition does not include persons who stay temporarily in the vicinity of the project and do not have rights in rem.

2) Rules on standing relating to scoping (conditions, timeframe, public concerned)

A preliminary scoping procedure (Vorverfahren) can be initiated at the request of the project applicant. The application must include an outline of the project as well as a concept regarding the environmental impact declaration (Umweltverträglichkeiterklärung). The goal of a preliminary scoping procedure is to ensure a time-efficient EIA procedure, identifying any deficiencies in the project or submitted concept or other obstacles regarding the actual EIA procedure. The authority must react to the application within three months after consulting the participating authorities and, if necessary, also third parties. Other parties aside from the project applicant, including the public, cannot request a preliminary scoping procedure nor challenge a lack thereof.

3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?

Neighbours, citizens’ groups, officially recognised environmental NGOs, the Ombudsman for the Environment (see details under 1.2.3.), the Ombudsman for Economic Location, affected municipalities and the water management planning body have party status in EIA procedures. Other parties may be determined based on the applicable material law in an EIA procedure. As parties, they have the right to file a complaint with the Federal Administrative Court (Bundesverwaltungsgericht – BVwG) or, if necessary, a final appeal to the Supreme Administrative Court (Verwaltungsgerichtshof – VwGH). The administrative decision from the EIA authority must be made public for at least eight weeks. Access to information regarding the decision must be provided online as well. Two weeks after publishing the decision, it is considered to be delivered to those persons who did not also participate in the EIA procedure (or not in time).

The complaint against the administrative decision from the EIA authority must be submitted to the authority within four weeks after the decision was made public. Otherwise the decision is final and legally binding. An appeal can also be filed with the Federal Administrative Court against administrative decisions regarding whether or not the project falls under the requirements of an EIA procedure (Feststellungsbescheid).

4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO?

The administrative decision must be appealed against within four weeks, otherwise the decision is final and legally binding. The right to appeal also applies to neighbours and officially accredited NGOs. The decision by the Federal Administrative Court (Bundesverwaltungsgericht – BVwG) can be challenged by neighbours, citizens’ groups and officially recognised environmental NGOs before the Supreme Administrative Court (Verwaltungsgerichtshof – VwGH). An appeal before the Constitutional Court (Verfassungsgerichtshof – VGH) is only possible if individual rights are violated. For neighbours and local citizens’ groups, this is usually easier to prove than for NGOs.

With regard to individuals abroad, according to Section 19(1) EIA Act (UVP-G 2000), the principle of reciprocity applies to neighbours in states not parties to the Agreement on the European Economic Area. According to Section 19(11) EIA Act (UVP-G 2000), an environmental organisation from another state may exercise the rights of a party if this state has been notified pursuant to the regulations on cross-border procedures, if the effects impact that part of the environment in the foreign state whose protection is pursued by the environmental organisation and if the environmental organisation could participate in an EIA procedure or a development consent procedure if the project was implemented in the respective state.

5) Scope of judicial review — control on substantive/procedural legality. Can the court act on its own motion?

The Federal Administrative Court as well as the Supreme Administrative Court cannot initiate a review process of the administrative decision on their own motion. If an appeal is filed, both courts can review the decision in terms of its procedural as well as substantive legality. While the court has to review all facts deemed necessary for a ruling, the scope of judicial review is usually set out by the complaints brought forward.

A review of decisions of Administrative Courts before the Constitutional Court is only possible with regard to violations of constitutionally guaranteed rights or a violation in the form of an illegal act alleged by the complainant. An individual application (Individualantrag) is possible when the applicant can claim that his/her fundamental rights are directly violated by law. This is the case if the law, for example, has become effective for an individual without the basis of a judicial decision.

6) At what stage are decisions, acts or omissions challengeable?

The official EIA procedure starts with the submission of the application by the project applicant. The project applicant must submit an environmental impact statement (Umweltverträglichkeiterklärung) along with the application, where the main alternatives examined, the environmental impact of the project and the measures to avoid or reduce these effects are described. This application must be made public for at least six weeks (see 1.7.4.3.). During this period, the public is entitled to comment on the submitted application documents and the project applicant’s environmental impact statement.

Further points of intervention of the public are the right to inspect the EIA report as well as the right to comment in hearings. As pointed out above, an appeal from affected neighbours or a recognised environmental organisation can be made to the Federal Administrative Court against administrative decisions as to whether the project falls under the requirements of an EIA procedure (Feststellungsbescheid). The environmental report as part of the final EIA decision can be challenged before the Federal Administrative Court (see Section 1.8.1.4.). Furthermore, an appeal can be filed with the Federal Administrative Court if decisions are not made within the given deadline (Säumnisbeschwerde).
7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? Decisions as to whether or not the project falls under the requirements of an EIA procedure as well as final administrative EIA decision can (only) be challenged directly at the Federal Administrative Court, which serves as the administrative review body in EIA procedures.

8) In order to have standing before the national courts is it necessary to participate in the public consultation stage of the administrative procedure – to make comments, participate at hearing, etc., not meaning the requirement determined under point 12? The EIA procedure binds the party status to participation during the administrative procedure. This includes participation during the public consultation phase as well as participation in hearings, which can be scheduled ex officio or at the request of a party. Parties must submit interventions during the public consultation phase in order to be granted standing.

Except for the project applicant, any party loses its party status if it does not raise any objections until at least one day before the hearing or during the hearing (Präklusionswirkung). However, preclusion can only occur if the hearing was published properly as determined in Section 42 (2) General Administrative Procedure Act (Allgemeines Verwaltungsverfahrensgesetz 1991 – AVG). (See details for publication also under 1.7.4.2.) If the party can demonstrate that an unforeseen or inevitable event prevented it from raising objections in due time and that it is not at fault or only by a minor oversight, it can apply for reinstatement of its party status (Antrag auf Wiedereinsetzung). This application has to be filed within two weeks after the cause preventing the party to raise objections has been removed.

Regarding the EIA procedure before the Administrative Courts: If objections are put forward for the first time in the complaint, they are only admissible if the complaint justifies why they could not have been raised earlier during the objection period in the administrative procedure and the complainant demonstrates that he or she is not at fault or only due to a minor failure to object during the objection period.

9) Fair, equitable – what meaning is given to equality of arms in the national jurisdiction? The right to a fair trial derives from Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which has constitutional status in Austria. This includes the right to a fair trial in administrative justice. Furthermore, the right to party status derives from the constitutional principle of equality.[73] The guarantee of equality of arms within procedures is also embedded in the obligation to provide necessary guidance (Manuduktionspflicht). Authorities and courts are required to give persons not represented by professional counsel instructions on steps they need to take in the proceedings and to instruct them on the legal consequences connected directly with such acts or the failure to perform them.[74] This obligation can be regarded as general procedural principle.[75] Access to justice for members of the public aims to grant standing to all actors who are perceived as having a substantial interest in the respective case. They have the possibility to make known the elements on which their claim is based and can discuss any claim, evidence or document presented to the judge through an intervention mechanism. However, the economic inequalities between parties (despite pro bono legal assistance) as well as newly introduced counterweights such as the Ombudsman for Economic Location (Standortanwalt) as a party in EIA procedures, have raised concerns regarding the equality of arms within civil society.

10) How is the notion of “timely” implemented by the national legislation? Regarding interventions by parties, the notion of “timely” is interpreted as “submitted within the legal timeframe”, or in case of a hearing, until the hearing. Regarding the decision-making obligation, authorities and Courts are generally asked to issue decisions as soon as possible and “without unnecessary delay” (ohne unnötigen Aufschub), latest until the given deadline.[76] Administrative Courts must decide within a timeframe of at maximum 6 months.[77]

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? Details on the general rules regarding injunctive relief can be found under 1.7.2. The EIA Act (UVP-G 2000) does not provide specific rules for EIA procedures. In general, the appeal against administrative decisions has a suspensive effect unless the Federal Administrative Court ruled out the possibility in an individual case.

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

The authorisation procedure for IPPC sites is regulated in the Industrial Code (Gewerbeordnung 1994 – GewO 1994), the Waste Management Act (Abfallwirtschaftsgesetz 2002 – AWG 2002), the Emission Protection Act for Steam Boilers (Emissionsschutzgesetz für Kesselanlagen) and the Mining Act (Mineralrohstoffgesetz – MinRoG). According to these acts, neighbours and environmental organisations, including foreign NGOs are provided party status (legal standing) and full legal review in IPPC/IED procedures.

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?

Neighbours are defined as persons who might be threatened or disturbed or whose rights in rem might be harmed as well as the owners of facilities in which persons stay temporarily on a regular basis with regard to the protection of such persons. Following the principle of reciprocity, neighbours are also owners of nearby land outside the Austrian territory. Regarding environmental NGOs, these acts all refer to Section 19 EIA Act (UVP-G 2000) which requires them to be organised in the form of a non-profit organisation for at least three years, to have at least 100 members and to have environmental protection as their main objective. Federations must comprise at least five member associations. All organisations must prove every three years that they still meet the recognition requirements.

Foreign NGOs are granted party status to the extent they raised written complaints during the period for public inspection, if (a) there has been an official cross-border notification of the respective state, (b) the project is likely to have significant effects on the area of the state for which the environmental organisation advocates, and (c) the organisation is entitled to participate in similar procedures in its state of origin. In the regular EIA procedure, neighbours and environmental NGOs have the status of a party and thus are entitled to participate in the procedure and challenge possible procedural decisions (such as the appointment of an expert) as well as the final EIA decision. In their respective area of recognition, in procedures concerning IPPC/IED waste treatment plants, mining facilities, steam boilers >50 MW and industrial sites, environmental organisations are entitled to claim the observance of environmental provisions in the procedure and to resort to remedies if and to the extent they raised written complaints during the period for public inspection. If objections are raised for the first time, they are permissible only if the complaint gives reasons why it has not been possible to raise them already during the objection period in the application procedure and if the complainant demonstrates that the fact that he failed to raise the objections during the objection period is not or only to a minor degree his fault.

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

Only the project applicant – in waste management procedures also the Ombudsman for the Environment – has party status in the screening procedure. There are no rules on access to justice of members of the public within screening procedures.

4) Rules on standing relating to scoping (conditions, timeframe, public concerned)

There are no rules on access to justice for members of the public within scoping procedures.
5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions? Environmental NGOs and neighbours can challenge decisions to permit or significantly change a waste treatment permit, mining facilities, steam boilers >50 MW and industrial sites within the IED regime.

6) Can the public challenge the final authorisation? Environmental NGOs and neighbours are entitled to challenge the final authorisation of waste treatment, mining facilities, steam boilers >50 MW and industrial sites within the IED regime.

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? Foreign and Austrian environmental NGOs are entitled to judicial review regarding permitting decisions or decisions significantly amending a site to the extent they raised written complaints during the period for public inspection. There are no general provisions granting members of the public the option to challenge omissions. If the authority has not made a decision on a matter within six months or, if the law provides for a shorter or longer period allowed for a decision, within that period, parties can file a complaint alleging breach of the duty to reach a timely decision (Säumnisbeschwerde) with the respective Administrative Court. Parties to the procedure may also challenge the omission to serve or issue a permit.

The Federal Administrative Court as well as the Supreme Administrative Court cannot initiate a review process of the administrative decision on their own motion. If an appeal is filed, both courts can review the decision in terms of its procedural as well as substantive legality. While the court has to review all facts deemed necessary for a ruling, the scope of judicial review is usually set out by the complaints brought forward.

8) At what stage are these challengeable? Procedural decisions or omissions by the responsible authority may be challenged at any stage during the authorisation procedure.

9) Before filing a court action, is there a requirement for exhaustion of administrative review procedures prior to recourse to judicial review procedures? The administrative decision can (only) be challenged directly at the Federal Administrative Court, which serves as the administrative review body in IPPCIED 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 general, the principle of preclusion applies. If an oral hearing has been properly announced, a person may lose party standing unless he or she raises an objection with the authority by the day preceding the hearing or during the hearing itself. A person presenting prima facie evidence of having been prevented to raise objections in due time by an unforeseeable or unavoidable event, may raise objections within two weeks after the reason for being prevented has ceased to exist, at the latest however by the date of the legally effective decision of the subject matter (see also answer 1.8.2.2). Foreign and Austrian environmental NGOs are entitled to judicial review to the extent they raised written complaints during the period for public inspection. In procedures according to the Waste Management Act, their right to challenge decisions is limited to violation of environmental protection provisions set under Union law (Section 42(3) AWG 2002).

11) Fair, equitable – what meaning is given to equality of arms in the national jurisdiction? The right to a fair trial derives from Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which has constitutional status in Austria. This includes the right to a fair trial in administrative justice. Furthermore, the right to party status derives from the constitutional principle of equality.

Public access to justice in environmental procedures aims to grant standing to all actors who are perceived as having a substantial interest in the respective case. They have the possibility to make known the elements on which their claim is based and can discuss any claim, evidence or document presented to the judge through an intervention mechanism.

12) How is the notion of “timely” implemented by the national legislation? Regarding interventions by parties, the notion of “timely” is interpreted as “submitted within the legal timeframe”, or in case of a hearing, until the date of the hearing.

Regarding the decision-making obligation, authorities and courts are generally asked to issue decisions as soon as possible and “without unnecessary delay” (ohne unnötigen Aufschub), latest until the given deadline.

If the authority has not made a decision on a matter within six months or, if the law provides for a shorter or longer period allowed for a decision, within that period, parties can file a complaint alleging breach of the duty to reach a timely decision (Säumnisbeschwerde) with the respective Administrative Court. Administrative Courts must decide within a timeframe of at maximum 6 months.

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? There is no injunctive relief, but an appeal generally has suspensive effect according to the general administrative rules of procedure. During the preliminary proceedings, the administrative authority may exclude the suspensive effect of the appeal, if – after weighing public interests and interest of other parties concerned – early enforcement of the decision is required due to the risk of delay. The Administrative Court can rule out the suspensive effect for the same reason.

14) Is information on access to justice provided to the public in a structured and accessible manner? Regarding IPPC/IED procedures, the administrative decision and judgment must be made public and must include information regarding access to justice (e.g. regarding the possibility to appeal). As of the expiry of a period of two weeks following announcement on the authority’s website – according to some procedure also in a common newspaper – the official notice is considered as delivered vis-à-vis environmental organisations entitled to take legal action.

1.8.3. Environmental liability

County-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? According to Section 13 of the Federal Environmental Liability Act (Bundes-Umwelthaftungsgesetz – B-UHG), natural and legal persons have the right to appeal a decision on environmental remediation if they are parties to the procedure. They can be parties to the procedure if they have filed an environmental complaint (Umweltbeschwerde) according to Section 11 B-UHG or requested in writing to be a party to the procedure on remediation measures within two weeks after its publication.

The right to file an environmental complaint is granted to environmental organisations recognised according to Section 19 EIA Act (UVP-G 2000) as well as natural and legal persons whose individual rights or interests might be infringed by environmental damage. Relevant individual rights or interests are considered to be the protection of human life and health, individual rights to use certain water bodies, fishing rights, property and other rights in rem related to real estate.
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 cross-border EIA procedures, the affected foreign parties need to be informed of the proposed activity, the possible cross-border environmental impacts, and the nature of possible decisions that can be taken in the EIA procedure. The competent authority is obliged to send this information to the affected foreign parties. The EIA documentation has to include a description of the project, reasonable alternatives, a description of the actual environmental conditions at the project site, and an enumeration of mitigation measures. The notification must be given as early as possible, if adequate already during the scoping procedure and latest at the time of notification of the public in Austria.[83]

If an IPPC/IED project or a major change thereto may significantly affect the environment in another state or if a state likely to be concerned requests it, the responsible authority must notify the respective state. The notification must be given no later than the date of the national notification. It must include relevant information on possible cross-border impact as well as the relevant administrative procedure. The authority must set an appropriate timeframe to express the desire to participate in the procedure.

In case of cross-border environmental damage, the concerned state must be notified. An environmental organisation recognised pursuant to Section 19(7) EIA Act has locus standi and is entitled to claim the observance of environmental provisions in the procedure if and to the extent it filed written complaints during the period for public inspection. It is also entitled to lodge a complaint with the Federal Administrative Court and to appeal to the Supreme Administrative Court.[84] An environmental organisation from a foreign state may exercise the same rights, if this state has been notified, if the effects impact that part of the environment in the foreign state whose protection is pursued by the environmental organisation and if the environmental organisation could participate in an EIA procedure and a development consent procedure if the project were implemented in this foreign state.[85]

2) Notion of public concerned?

The notion of the public concerned is similar to that of the public in Austria. Individuals must meet the criteria of “neighbours”: i.e. persons who might be threatened or disturbed or whose rights in rem might be harmed as well as the owners of facilities in which persons stay temporarily on a regular basis with regard to the protection of such persons. Environmental organisations must meet the criteria applicable to participate in the respective environmental procedures in their state.

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)?

On the basis of reciprocity, NGOs have standing in Austrian EIA procedures, subject to certain conditions which also apply to their Austrian “counterparts”: NGOs of the affected country have legal standing according to Section 19(11) EIA Act (UVP-G 2000) if (1) the foreign state has been notified of the planned activity, (2) the environment in the relevant area of the foreign state might be affected by the proposed activity and its protection is pursued by the NGO, and (3) if the NGO could participate in an EIA procedure if the project was implemented in this foreign state.

If an NGO has expressed its wish to participate in the procedure, it may submit statements and, to this extent, file an appeal to the Administrative Court within four weeks. The decision by the competent authority must contain information on the possibility to appeal, including timeframe and the institution to which it must be addressed.

There is no legal aid granted or pro bono assistance in environmental administrative procedures in Austria.

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)?

On the basis of reciprocity, neighbours in the affected country have standing in Austrian EIA and IPPC/IED procedures if they meet the criteria of “neighbours”. Neighbours are considered persons who might be threatened or disturbed or whose rights in rem might be harmed as well as the owners of facilities in which persons stay temporarily on a regular basis with regard to the protection of such persons. Foreign neighbours and municipalities (acting as neighbours) are guaranteed legal standing according to Section 19(11) EIA Act (UVP-G 2000). The above-mentioned parties will enjoy the same party rights as Austrian NGOs or neighbours do.

Foreign citizens’ groups do not have legal standing in cross-border EIA as they do not fulfil the criteria established for national citizens’ groups – namely the foreign individuals lack the right to vote in Austria.[86]

5) At what stage is the information provided to the public concerned (including the above parties)?

Information must be provided as early as possible, if adequate already during the EIA scoping procedure and latest at the time of the notification of the public in Austria.[87]

6) What are the timeframes for public involvement including access to justice?
A copy of the application, of the other relevant documents and of the environmental impact statement must be available for public inspection for at least six weeks. Decisions can be appealed within four weeks after delivery of the decision. For persons who did not become party to the procedure, decisions are considered delivered two weeks after publication of the decision.

7) How is information on access to justice provided to the parties?

Information on access to justice is provided within the decision/official notice by the responsible authority.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?

If a party or a person does not have sufficient command of the German language, an interpreter (official interpreter) or translator available to the authority must be called in. All interpreters or translators provided are officially accredited and listed. Interpretation costs and costs of a translator are to be paid by the party needing interpretation.

9) Any other relevant rules?

If the party can demonstrate that an unforeseen or inevitable event prevented it from raising objections in due time and that it is not at fault or only by a minor oversight, they can apply for reinstatement of their party status (Antrag auf Wiedereinsetzung). This application has to be filed within two weeks after the cause preventing the party to raise objections has been removed.

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[1] See Article 3 leg cit.
[8] Article 50(2) 2 BV-G.
[11] As their role is not foreseen by EU law, however, one federal province (Upper Austria) excludes in its Aarhus Participation Act the Ombudsman for the Environment from procedures concerning European environmental law.
[14] Section 34 VwGVG.
[16] Section 15 VwGVG.
[20] Section 16(2) EIA Act (UVP-G).
[21] However, as mentioned in footnote 11, according to the Upper Austrian Aarhus Participation Act, Environmental Ombudsmen are excluded from procedures concerning European environmental law.
[22] Section 8 General Administrative Procedure Act (AVG).
[23] Liste der anerkannten Umweltorganisationen (23 July 2020).
[25] Section 72(2) Industrial Code (GewO).
[26] Section 56 General Administrative Procedure Act (AVG). NR26
[27] Section 57 General Administrative Procedure Act (AVG).
[28] Section 46 General Administrative Procedure Act (AVG).
[31] Section 65 General Administrative Procedure Act (AVG).
[32] Section 43 (4) General Administrative Procedure Act (AVG).
[33] Section 10 Proceedings of Administrative Courts Act (VwGVG).
[34] Section 16 (3) EIA Act (UVP-G).
[36] Section 52(2) and (3) General Administrative Procedure Act (AVG).
[37] Section 17 Proceedings of Administrative Courts Act (VwGVG).
[38] Section 53 General Administrative Procedure Act (AVG).
[39] Section 74 General Administrative Procedure Act (AVG).
[40] Section 8a Proceedings of Administrative Courts Act (VwGVG).
[48] Section 57 General Administrative Procedure Act (AVG).
[49] Section 74 General Administrative Procedure Act (AVG).
[50] Section 40 Proceedings of Administrative Courts Act (VwGVG).

On the provincial level, main provisions on access to justice can be found in the different Nature Protection Acts of the federal provinces. Apart from Styria and Upper Austria, provinces have also introduced provisions on access to justice in their hunting legislation (Jagdgesetze). Burgenland, Carinthia, Salzburg, Tyrol, and Vorarlberg have additionally introduced similar provisions in their Fisheries Acts (Fischereigesetze). The province of Vienna has recently sent out for public consultation a draft law amending its corresponding legislation [87] Vienna Nationalparkgesetz, [87] Wiener Naturschutzgesetz, [87] Wiener Fischereigesetz and [87] Wiener Jagdgesetz.

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 appeal against the first level administrative decision must be submitted to the authority that issued the decision in first instance. This authority then has the option of setting the complaint by means of a preliminary decision (Beschwerdevorverteidigung), which has to be issued within two months. The concerned party can then file an application for submission (Vorlageantrag) within two weeks to the authority that issued the decision and ask for the complaint to be submitted to the administrative court for decision. The administrative court subsequently decides on the matter (unless the complaint is to be dismissed or the proceedings discontinued). If the authority has failed to investigate the matter sufficiently, the Administrative Court can overturn the contested decision and refer the matter back to the authority to issue a new decision. The authority is bound by the legal assessment on which the administrative Court based its decision.

The requirements for the recognition of an environmental NGO as being entitled to appeal are laid down in Section 19 EIA Act. [2] This provision requires it to be organised in the form of a non-profit organisation for at least three years, to have at least 100 members and to have environmental protection as its main
objective. Federations must comprise at least five member associations. All organisations must prove every three years that they still meet the recognition requirements.

Individuals are entitled to review procedures if their subjective rights are affected by a decision. This can be the case in water, clean air, waste management or hunting and fishing procedures.

Generally, decisions of an administrative authority must be appealed against within four weeks after the decision has been issued. The appeal needs to be made in written form and must include the name of the decision, the authority concerned, the reasons for appeal and actions required.

Even before the entry into force of the Aarhus Participation Act, national courts were inclined to grant access to justice by direct application of EU legislation with reference to European case-law.[3] Recent cases show that this practice remains in areas not regulated by the Aarhus Participation Act, such as the Forestry Act (Forstgesetz 1975 – ForstG).[4]

Although authorities may not directly grant access to justice where it is not provided by national law, for cases determined by European law access to justice rights are mainly granted before regional Administrative Courts. There are however still decisions by these courts, even within the realm of EU law, denying legal standing and access to justice or restricting it.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

If an appeal is filed, Administrative Courts can review the decision in terms of its procedural as well as substantive legality. While the court has to review all facts deemed necessary for a ruling, the scope of judicial review is usually set out by the complaints brought forward.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Administrative decisions in environmental law can (only) be challenged directly at the Federal Administrative Court, which serves as the administrative review body in environmental procedures. The appeal, however, must first be submitted to the authority that issued the decision in first instance. This authority then has the option of settling the complaint by means of a preliminary decision (Beschwerdevorentscheidung; see 2.1.1.).

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 general, the principle of preclusion (Präklusion) applies:[5] Except for the project applicant, any party loses its party status and thus standing if it does not raise any objections until at least one day before the hearing or during the hearing. However, preclusion can only occur if the hearing was published properly as determined in Section 42 General Administrative Procedure Act (Allgemeines Verwaltungsverfahrensgesetz 1991 – AVG) and in the area-specific legislation (in most environmental, an electronic online platform is used).

Regarding environmental organisations, the preclusion rules differ in each legislative act. Sometimes it is sufficient for the NGO to elaborate in its appeal why the points in question are being raised for the first time; in other cases it is not possible to file an appeal if the NGO has not submitted a statement in the preceding administrative procedure.[6]

5) Are there some grounds/arguments precluded from the judicial review phase?

Individuals, apart from the project applicant, must allege interference with the subjective publicly granted rights.

In water procedures, environmental organisations may only raise arguments concerning potentially significant adverse effects on water quality. In waste management procedures, access to justice for environmental organisations is limited to breaches of EU environmental law. In procedures regarding air quality plans or national air pollution control programmes, persons need to be directly concerned. Similar limitations can be found in most provincial provisions.

6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

The right to a fair trial derives from Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which has constitutional status in Austria. This includes the right to a fair trial in administrative justice. Furthermore, the right to party status derives from the constitutional principle of equality.[10]

Access to justice by the public in environmental trials aims to grant standing to all actors who are perceived as having a substantial interest in the respective case. They have the possibility to make known the elements on which their claim is based and can discuss any claim, evidence or document presented to the judge through an intervention mechanism. However, economic inequalities between parties (despite pro bono legal assistance), e.g. because of costly expert opinions, remain.

7) How is the notion of “timely” implemented by the national legislation?

Regarding interventions by parties, the notion of “timely” is interpreted as “submitted within the legal timeframe”, or in case of a hearing, until the date of the hearing. This is mostly decided on a case-by-case basis. E.g. if there are new facts or evidence presented in a complaint, the authority or the court must notify the other parties thereof without delay and give them the opportunity to comment within a reasonable period of no longer than two weeks, or in case of a hearing, until the hearing.

Regarding the decision-making obligation, authorities and courts are generally asked to issue decisions as soon as possible and “without unnecessary delay” (ohne unnötigen Aufschub), no later than the given deadline.[11] If the authority or court has not made a decision on a matter within six months or, if the law provides for a shorter or longer period allowed for a decision, within that period, parties can file a complaint alleging breach of the duty to reach a timely decision. In case of authorities the respective Administrative Court decides on the complaint (Säumnisbeschwerde), in case of Administrative Courts (Fristsetzungsantrag), the Supreme Administrative Court. The complaint is first filed with the court or authority who has the chance to make up for its omission within two weeks.

Administrative courts must decide within a timeframe of at maximum 6 months.[12]

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?

There is no injunctive relief system, but an appeal generally has suspensive effect according to the general administrative rules of procedure. During the preliminary proceedings, the administrative authority may exclude the suspensive effect of the appeal, if – after weighing public interests and interest of other parties concerned – early enforcement of the decision is required due to the risk of delay. The Administrative Court can rule out the suspensive effect for the same reason. According to certain provisions such as Section 43a of the Upper Austrian Nature and Landscape Protection Act (Oö. Natur- und Landschaftsschutzgesetz 2001 – Oö. NSchG 2001), the suspensive effect of appeals is excluded unless the authority grants it upon application.

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?

Legal costs and fees in judicial review consist of court fees (to be paid when filing a claim or appeal), lawyers’ fees and actual expenses such as expert /translator costs and travel costs of witnesses. Lawyers have to be paid for each individual performance which the lawyer makes in the course of the proceeding. The parties’ own costs, such as internal investigations costs or the costs to prepare the proceedings, are not considered as reimbursable.
There are no administrative review procedures, as complaints against decisions must be addressed to the Administrative Courts. In review proceedings before the administrative Courts each party shall bear all its costs incurred. Unless provided differently, the authority bears the costs incurred for its activities performed in the administrative proceeding ex officio.

For administrative procedures there is a cost category for every motion. The cost categories are stated in the Austrian Official Tax Regulation (Bundesverwaltungsabgabenverordnung 1983 – BwAbG).

The most costly part of filing an administrative appeal is usually the submission of expert opinions. Expert fees are subject to wide fluctuations, depending on every individual case. The expert fees for the evaluation of major projects in different fields (e.g. a project with an amplitude of 10 acres or transport infrastructure of at least 10 km length) without detailed on-site research can range up to EUR 50,000.-. It is also possible that the parties engage “private experts” to provide a report on a topic. However, these reports are only treated as private documentation and prove nothing but the opinion of the author.

There are no statutory provisions avoiding prohibiting costs of expert opinions.

10) Can the court provide an exemption from procedural costs, duties, filing fees, taxation of costs, etc.? Any other national characteristics linked to this topic?

If someone has a low income and is in a precarious financial situation, it is possible to apply for legal aid. Legal aid may be granted if it is covered by Article 6 ECHR or Article 47 ECFR. Part of the legal aid might be as well be temporary exemption from procedural costs. Legal aid must be applied for by the date of filing the complaint at the latest. Part of the legal aid might be temporary exemption from the procedural costs.

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[14]

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?

Implementing provisions to the SEA Directive on Federal and Provincial level currently do not grant members of the public access to review procedures. There is no option to challenge either the substance or procedural issues such as ineffective or missing public participation.

The only option to challenge a plan or programme exists if it was issued as a law[15] or ordinance[16]. This right to review before the Constitutional Court, however, is limited to a small number of persons (see 2.2.2.)

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?

Regarding constitutional rights, Article 144 of the Federal Constitutional Law provides for individuals to make claims before the Constitutional Court (Verfassungsgerichtshof – VfGH) if their fundamental rights are infringed. Its basic requirements are the interference with the individual’s “subjective right”, i.e. that the party can only object to norms that exist to protect an individual on the one hand, and an infringement of an individual’s fundamental right on the other hand. Constitutional rights that can be linked to environmental protection are, for example, the right to justice, the right to life, the right to health, the right to respect for private and family life.

The scope of review if the Constitutional Court includes the conformity of ordinances with constitutional or legal provisions as well as with provision of underlying ordinances – from a procedural as well as a substantive aspect[17]. If the Constitutional Court pronounces an act or ordinance to be unconstitutional or illegal, all courts and administrative authorities are bound by the Constitutional Court’s decision. The law or ordinance continues to apply to the circumstances affected before the ruling. Only the case in point is exempted from this rule.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

For an application to the Constitutional Court, administrative review procedures must be exhausted in case of administrative decisions. However, as pointed out above under 2.2.1, SEA legislation in general does not provide for administrative review of members of the public.

4) In order to have standing before the national courts, is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

As there are no specific regulations on access to justice in the area of SEA, there are no relevant requirements.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There are no rules on injunctive relief in this regard.

If the Constitutional Court pronounces an act or ordinance to be unconstitutional, all courts and administrative authorities are bound by the Constitutional Court’s decision. The law or ordinance continues to apply to the circumstances affected before the ruling. Only the case in point is exempted from this rule.

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 fee for filing an appeal with the Constitutional Court is EUR 240. Legal assistance is required. Legal aid or pro bono legal assistance (Verfahrenshilfe) can be granted in the scope of applicability of Article 6(1) ECHR or Article 47 ECFR.

Apart from the regulated lawyer’s fees according to the Attorney’s Tariff Act (Rechtsanwaltsstarrifgesetz) (see 2.1.9), there are no statutory guarantees that costs are not 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[18]

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?

There are no general provisions granting members of the public access to review procedures according to Article 7 of the Aarhus Convention. There is neither an option to challenge the substance nor procedural issues such as ineffective or missing public participation.

The only option to challenge a plan or programme exists if it was issued as a law[19] or ordinance[20]. This right to review before the Constitutional Court, however, is limited to a small number of persons.

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?

Regarding constitutional rights, Article 144 of the Federal Constitutional Law provides for individuals to make claims before the Constitutional Court (Verfassungsgerichtshof – VfGH) if their fundamental rights are infringed. Its basic requirements are the interference with the individual’s “subjective right”, i.e.
that the party can only object to norms that exist to protect an individual on the one hand, and an infringement of an individual’s fundamental right on the other hand. Constitutional rights that can be linked to environmental protection are, for example, the right to justice, the right to life, the right to health, the right to respect for private and family life.

The scope of review if the Constitutional Court includes the conformity of ordinances with constitutional or legal provisions as well as with provision of underlying ordinances – from a procedural as well as a substantive aspect.[21] If the Constitutional Court pronounces an act or ordinance to be unconstitutional or illegal, all courts and administrative authorities are bound by the Constitutional Court’s decision. The law or ordinance continues to apply to the circumstances affected before the ruling. Only the case in point is exempted from this rule.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? For an application to the Constitutional Court, administrative review procedures must be exhausted. However, as pointed out above under 2.3.1.1, SEA legislation in general does not provide for administrative review of members of the public.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.? As there are no specific regulations on access to justice in the scope of Article 7 Aarhus Convention, there are no relevant requirements.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions? There are no rules on injunctive relief in this regard. If the Constitutional Court pronounces an act or ordinance to be unconstitutional, all courts and administrative authorities are bound by the Constitutional Court’s decision. The law or ordinance continues to apply to the circumstances affected before the ruling. Only the case in point is exempted from this rule.

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 fee for filing an appeal with the Constitutional Court is EUR 240. Legal assistance is required. Legal aid or pro bono legal assistance (Verfahrenshilfe) can be granted in the scope of applicability of Article 6(1) ECHR or Article 47 ECFR. Apart from this option and from the regulated lawyer’s fees according to the Attorney’s Tariff Act (Rechtsanwaltstarifgesetz), there are no statutory guarantees that costs are not prohibitive.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[22]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the content of the plan (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The only regulatory framework currently granting access to justice regarding plans or programmes are the Air Pollution Control Act (Immissionsschutzgesetz – Luft – IG-L) and the Air Emission Act (Emissionsgesetz-Luft 2018 – EG-L 2018). When filing such application, natural persons must demonstrate that they are directly concerned. A person is directly concerned if their health may be endangered as a result of the breach of a limit value. Environmental organisations must apprise information and data supporting their official recognition pursuant to Section 19 EIA Act.[23]

To date, it is not clear how effective access to justice in this area is, as these rights have only been introduced recently and practical experience has still to be gained. However, already existing case law shows that the effectiveness of an appeal crucially depends on its timing as breaches of limit values are either diminishing or subject to meteorological circumstances which lead to years with breaches followed by years where limit values are met. It should be noted that even before the entry into force of the amendments to the IG-L and the EG-L 2018 introducing access to justice, access to justice has been granted by direct application of EU law in conjunction with the Aarhus Convention in the area of air protection.[24] It therefore could be possible that national courts directly apply other EU environmental provisions in conjunction with the Aarhus Convention in a similar way.[25] From the existing case-law it can be assumed that environmental organisations should be recognised according to Section 19 of the EIA Act and individuals should be affected in the subjective publicly granted rights.

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)?

Applications to the Constitutional Court to challenge a plan or programme are only admissible if they are adopted in the form of an act or ordinance.

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? According to the Air Pollution Control Act (Immissionsschutzgesetz – Luft – IG-L) and the Air Emission Act (Emissionsgesetz-Luft 2018 – EG-L) the application or the complaint must be established in a clearly and well-argued fashion explaining why the requirements for the establishment or the revision of an air quality plan or the National Air Pollution Programme are met or why, in their entirety, the measures provided for in the plan or programme are inappropriate to ensure compliance with the relevant limit values or emission reduction commitments.

The Administrative Court may review the plan or programme in terms of its procedural and substantive legality. While the court has to review all facts deemed necessary for a ruling, the scope of judicial review is usually set out by the complaints brought forward.

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Within a period of eight weeks following the announcement of a national air pollution control programme or air quality plan, natural persons directly concerned by the breach of a limit value as well as environmental organisations recognised pursuant to Section 19 EIA Act (UVP-G 2000), within their relevant geographical scope of recognition, must file a reasoned application for examination of the programme or plan with respect to the appropriateness of the measures it sets out in their entirety, to ensure compliance with the emission reduction commitments in due time or limit values as soon as possible, with the Provincial Governor (air quality plan) or the Federal Minister for Climate Action, Environment, Energy, Mobility, Innovation and Technology (national air pollution control programme). The responsible authority must decide on this application by way of official notice. It is also possible to file a reasoned application for the establishment of a plan or programme or, if a plan or programme has already been established, an application for its revision with the Provincial Governor or Federal Minister.

Subsequently, the entitled members of the public may file a complaint against official notices issued in the matters described above at the Provincial Administrative Court (in case of national air pollution control programmes with the Administrative Court of Vienna).

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.? According to the Air Pollution Control Act (Immissionsschutzgesetz – Luft – IG-L) and the Air Emission Act (Emissionsgesetz-Luft 2018 – EG-L 2018) it is not necessary to participate in the public consultation phase in order to have standing to challenge a plan or programme.

6) Are there some grounds/arguments precluded from the judicial review phase?

In order to be admissible, an application or complaint according to the Air Pollution Control Act (Immissionsschutzgesetz – Luft – IG-L) or the Air Emission Act (Emissionsgesetz-Luft 2018 – EG-L 2018) must establish the reasons in a clearly and well-argued fashion of why the requirements for the establishment or the revision of a plan or programme are met or why, in their entirety, the measures provided for in the plan or programme are inappropriate to ensure...
compliance with the relevant limit values or emission reduction commitments. These are the only arguments that can be brought by environmental NGOs. Individuals may only file a complaint on the grounds that they are directly affected by the relevant plan or programme.

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
The right to a fair trial derives from Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), which has constitutional status in Austria. This includes the right to a fair trial in administrative justice. Furthermore, the right to party status derives from the constitutional principle of equality.[26]
Access to justice by the public in environmental trials aims to grant standing to all actors who are perceived as having a substantial interest in the respective case. They have the possibility to make known the elements on which their claim is based and can discuss any claim, evidence or document presented to the judge through an intervention mechanism.

8) How is the notion of “timely” implemented by the national legislation?
The general rules on administrative procedures apply: If a member of the public applies for a review of an air quality plan according to the Air Pollution Control Act (Immissionsschutzgesetz – Luft – IG-L) or a national air pollution control programme according to the Air Emission Act (Emissionsgesetz-Luft 2018 – E-G-L 2018), the Provincial Governor or Federal Minister must react by official notice within 6 months from the date of the application. In case of an appeal to the Administrative Court, the Court must decide within another 6 months.

9) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?
There are no provisions on injunctive relief in this regard.

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 fee for filing an appeal with the Administrative Court is EUR 30. There are no statutory provisions to ensure that costs are not prohibitive. Apart from optional fees for expert opinions or legal assistance, however, there should generally not be any relevant additional costs.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[27]
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?
Executive regulations and/or generally applicable legally binding instruments used to implement EU environmental legislation and related EU regulatory acts may, under certain circumstances, be challenged before the Constitutional Court, if they have the legal form of an act or ordinance.

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?
Regarding constitutional rights, Article 144 of the Federal Constitutional Law provides for individuals to make claims before the Constitutional Court (Verfassungsgerichtshof) if their fundamental rights are infringed. Its basic requirements are the interference with the individual’s “subjective right”, i.e. that the party can only object to norms that exist to protect an individual on the one hand, and an infringement of an individual’s fundamental right on the other hand. Constitutional rights that can be linked to environmental protection are, for example, the right to justice, the right to life, the right to health, the right to respect for private and family life.
The Constitutional Court can also be addressed regarding decisions of an Administrative Court if the complainant claims to have been infringed in his/her constitutionally guaranteed rights by the decision. Furthermore, a person who claims to be infringed in his/her rights directly by an ordinance contrary to law, may address the Constitutional Court if the ordinance has become effective without a judicial decision having been rendered or without a ruling having been rendered.

The scope of review if the Constitutional Court includes the conformity of ordinances with constitutional or legal provisions as well as with provision of underlying ordinances – from a procedural as well as a substantive aspect.[28] In case of administrative decisions, the Constitutional Court has full competency of cognation (volle Kognitionsbefugnis) and may also collect new evidence.[29]
If the Constitutional Court pronounces an administrative decision, an act or ordinance to be unconstitutional or illegal, all courts and administrative authorities are bound by the Constitutional Court’s decision. The law or ordinance continues to apply to the circumstances affected before the ruling. Only the case in point is exempted from this rule.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
For an application to the Constitutional Court, administrative review procedures must be exhausted.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?
As the procedure before the Constitutional Court is of exceptional character, there are no relevant requirements apart from the exhaustion of administrative review.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?
There are no rules on injunctive relief in this regard.
If the Constitutional Court pronounces an act or ordinance to be unconstitutional, all courts and administrative authorities are bound by the Constitutional Court’s decision. The law or ordinance continues to apply to the circumstances affected before the ruling. Only the case in point is excepted from this rule.

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 fee for filing an appeal with the Constitutional Court is EUR 240. Legal assistance is required. Legal aid or pro bono legal assistance (Verfahrenshilfe) can be granted in the scope of applicability of Article 6(1) ECHR or Article 47 ECFR. Apart from this option and from the regulated lawyer’s fees according to the Attorney’s Tariff Act (Rechtsanwaltsanfallgesetz), there are no statutory guarantees that costs are not 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?[30]
Administrative Courts must issue a preliminary request according to Article 267 TFEU if they deem it adequate. The Supreme Administrative Court and the Constitutional Court as final instance are obliged to do so if they have doubts regarding the application or interpretation of EU law. An applicant may suggest a preliminary procedure in the appeal.
The expiry of the decision-making period must be certified. Premature default complaints will be rejected. The defaulting authority then has the

ACC/C/2010/54 for an example of a plan not submitted to SEA but subject to the public participation requirements of Article 7 of

Section 74 General Administrative Procedure Act (AVG).

The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.

Article 271(1) (3) Federal Constitutional Law (B-VG); Section 271a Federal Administrative Procedure Act (VfAL).


if a third party's interest is likely to be harmed. See also the ECLI:EU:C:2017:774 case-law of the Court of Justice of the European

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Other relevant rules on appeals, remedies and access to justice in environmental matters

If the authority violates the legally stipulated time limit to make a decision, a default complaint (Stellungnahmebeschwerde) can be filed by parties to the relevant procedure.[1] The expiry of the decision-making period must be certified. Premature default complaints will be rejected. The defaulting authority then has the option of presenting the matter to the Administrative Court or deciding on the matter themselves within three months. In the first case, the Administrative Court can only make a decision on relevant legal issues regarding the matter and the defaulting authority has up to eight weeks to make a decision based on the legal assessment of the Administrative Court. If the defaulting authority still does not make a decision, the Administrative Court ultimately has to decide on the matter based on the factual and legal situation at the time.

If public organs enforce the law through illegal or culpable behaviour or omission, there is the possibility of suing the Federation, the Provinces, municipalities, or other bodies of public law and the institutions of social insurance. This official liability (Amtshaftung) is the liability of the state (e.g. the federal government, the provinces and the municipalities). According to the Liability of Public Bodies Act (Amtshaftungsrecht – AHG) the legal entities are liable under the provisions of civil law for any damage to any person or any property caused by unlawful acts of persons at fault when implementing the law on behalf of them. The persons implementing the law themselves are not liable vis-à-vis the persons injured. The state can only replace the damage in money. The legal process must be exhausted before an official liability claim can be asserted. The injured party must therefore first try to avert the damage through legal remedies/complaints/revision.

If the official authority deliberately abuses its power (Amtsmissbrauch), the individual may face severe legal consequences under criminal law[2]

Apart from the above-mentioned constellations, there is no general rule on remedies against omissions, e.g. against lack of inspections or lack of appropriate measures to address breach of environmental laws.

If an individual does not comply with a judgement, an execution procedure will be initiated by the court. Even in cases of financial penalties, e.g. an administrative penalty, failed execution attempts can lead to imprisonment.

3. Other relevant rules on appeals, remedies and access to justice in environmental matters

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

Under Polish law, individual decisions concerning the environment may be challenged by:

- natural and legal persons who are considered “parties to the administrative proceedings”,
- entities (such as NGOs, the public prosecutor or the Ombudsman) who participate in the proceedings “with the rights of a party”.

The possibilities to challenge plans or programmes relating to the environment are more limited: certain natural or legal persons may challenge them to some extent (there are no special rights for NGOs to have standing here).

2) Constitution – main (content of + including references) provisions on environment and access to justice in the national constitution (if applicable) including procedural rights

Provisions of the Polish Constitution relating to environment are:

- Article 68 para 4 states that public authorities shall combat epidemic illnesses and prevent the negative health consequences of degradation of the environment.
- Article 303 para 8 states that public authorities shall support the activities of citizens to protect and improve the quality of the environment.
- Article 304 para 1 states that Protection of the environment shall be the duty of public authorities.
- Article 305 para 1 states that Public authorities shall pursue policies ensuring the ecological security of current and future generations.
- Article 306 para 1 states that Public authorities shall combat epidemic illnesses and prevent the negative health consequences of degradation of the environment.

2) Access to justice at Member State level

1. Access to justice at Member State level

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3) Acts, Codes, Decrees, etc. – main provisions on environment and access to justice, national codes, acts

1) The general provisions regarding administrative review are provided for by Administrative Procedure Code of 14 June 1960; codified text J.L. 2020 item 256 as amended (Ustawa z dnia 14 czerwca 1960 r. Kodeks postępowania administracyjnego; tekst jedn. Dz. U. z 2020 r. poz. 256 ze zm.) - APC (available in [Polish].

The APC provides e.g. for basic rules on:

- who shall be regarded as a “party to the proceedings” and hence entitled to challenge an administrative decision, including a decision concerning the environment (these rules may however be modified by specific acts regarding the environment (listed below)),
- filing an administrative appeal against an administrative decision (competent authorities, timeframes etc.),
- NGOs’ rights to participate in the proceedings in which public participation is NOT required and to challenge administrative decisions (see point 1.1.1 above).

2) The general provisions regarding judicial review in administrative cases are provided for by Proceedings before Administrative Courts Law Act of 30 August 2002; codified text J.L. of 2019 item 2325 as amended, (Ustawa z dnia 30 sierpnia 2002 r. Prawo o postępowaniu przed sądami administracyjnymi; tekst jedn. Dz. U. z 2019 r. poz. 2325 ze zm.) - PACLA (available in [Polish].

The PACLA provides e.g. for basic rules on:

- who has standing before administrative court,
- filing a complaint to the administrative court (timeframes, costs etc.),
- certain general aspects of the courts activity are provided also by:


4) Standing regarding plans and programmes adopted by various levels of self-governmental authorities is regulated by:


5) Standing regarding plans and programmes adopted by governmental authorities:


6) The Act of 3 October 2008 on access to environmental information, public participation in environmental protection and on environmental impact assessments; codified text J.L. 2021, item 247 (Ustawa z dnia 3 października 2008 r. o udostępnianiu informacji o środowisku i jego ochronie, udziale społeczeństwa w ochronie środowiska oraz o ocenach oddziaływania na środowisko: tekst jedn.: Dz. U. z 2021 r. poz. 247) - EIA Act (available in [Polish]).

The EIA Act specifies, among other things:

who shall be regarded as a party to the proceedings regarding EIA decisions and hence entitled to challenge these decisions, NGOs' who participate in the proceedings in which public participation is required and to challenge administrative decisions.


The EPLA specifies:

who shall be regarded as a party to the proceedings regarding permits for emissions of gases into the air and permits for waste generation - and hence entitled to challenge these decisions, excludes participation of NGOs in the proceedings regarding permits for emissions into the air and permits for waste generation and challenges against such permits.


The WLA specifies:

who shall be regarded as a party to the proceedings regarding decisions authorizing the use of water (e.g. water permits) and hence entitled to challenge these decisions, excludes participation of NGOs in the proceedings regarding the aforementioned decisions and challenges against such permits.


The GMLA specifies:

who shall be regarded as a party to the proceedings regarding geological concessions and hence entitled to challenge these concessions.


The BLA specifies:

who shall be regarded as a party to the proceedings regarding construction permits and hence entitled to challenge these permits.

Apart from the Building Law Act there are a number of so called "special Acts" regulating the investment process for specific kinds of projects such as roads, railways, flood-control projects etc. These Acts introduce special rules for access to justice regarding permits (development consents) for construction of these projects.

4) Examples of national case-law, role of the Supreme Court in environmental cases

There are a number of verdicts concerning environmental cases, standing etc. The verdicts are however always strictly related to a given case and legal acts covering the situation. Therefore it would be misleading to cite them here, as they have no generally applicable nature.

As explained below, the administrative courts in Poland are divided into two instances - the second (and highest) instance is the Supreme Administrative Court. The Supreme Administrative Court, when annulling the verdict of a voivodship (regional) administrative court, may send the case back to that court (cassation power; Art. 185 PACLA) or may decide on the merits of the case (reformatory power; Art. 188 PACLA). In practice, the cassation verdicts prevail.

The Supreme Administrative Court may adopt resolutions (cassation power; Art. 185 PACLA) or may decide on the merits of the case (reformatory power; Art. 188 PACLA). In practice, the cassation verdicts prevail.

Court judgements in Poland are not recognised as formal sources of law and are used only for interpretation purposes.

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?

One may invoke international agreements directly in judicial and administrative proceedings as according to Article 91 paras 1 and 2 of the Constitution, ratified international agreements, after their promulgation in the Official Journal of Laws, once they become part of the domestic legal order and are applied directly. In the verdict of the Voivodship Administrative Court in Warsaw of 20 March 2020 (IV SA/Wa 1248/19) the Court acknowledged the primacy of the Aarhus Convention over national law which was in non-compliance with the Convention. However, it must be stressed that: (a) the Court justified the supremacy of the Convention by the fact that it forms a part of EU law and (b) at the time of finalizing this study (January 2021) the verdict was not final yet (it is subject to review procedure by the Supreme Administrative Court).

In practice however, it is recommended to invoke not only the international agreement but also the relevant national law, as this gives better chances for the arguments presented to be acknowledged by court.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

According to Article 175 para 1 of the Constitution, the Polish judicial system consists of the following main types of courts:

So-called general (common) courts, further divided into:

a) Civil courts, within which - apart from "general" civil branches - exist i.e. commercial, family and labour branches;

b) Criminal courts;

Administrative courts:

Military courts.
The above courts are divided into levels (instances). Basically there are two instances of common courts, however in certain cases the Supreme Court (Sąd Najwyższy) is competent to examine extraordinary appeals against final judgments of second instance courts (not all the cases may go to the Supreme Court). Moreover, the Supreme Court supervises the activities of common and military courts in the area of adjudication.

The administrative courts are divided into two instances - the second (and highest) instance is the Supreme Administrative Court (Naczelnym Sąd Administracyjny). According to Article 184 of the Constitution, their role is to provide judicial review over activities of public administration.

In practice most cases related to the environment are subject to administrative court jurisdiction (as the environmental issues are usually decided by an administrative decision or other administrative acts).

**Civil courts** examine cases in the private law domain (disputes between two private parties) including cases involving environmental damage to property.

**Criminal courts** examine cases related to environmental offences or petty offences covered by the Criminal Code or environmental legislation.

2) **Rule 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)?**

Polish administrative courts are always competent to examine decisions and other acts or omissions by Polish administrative authorities and are never competent to examine acts or omissions by foreign authorities. Thus, the issue of conflict between different tribunals in different Member States is irrelevant for administrative courts (it may be relevant for private (civil) law).

The territorial jurisdiction of a given regional administrative court depends on where the seat of the authority whose act or omission are subject to a complaint is located. For example, where the second instance authority is located in Warsaw, the Warsaw Regional Administrative Court will be competent.

3) **Specialities as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges**

In Poland the environmental cases are decided by bodies and courts of general competence, there are no special environmental courts or boards. There are no expert judges nor laymen contributing neither.

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.**

The administrative courts of the first instance (voivodship administrative courts) are not bound by the allegations presented in the complaint. They examine the legality of the acts or omissions by the administrative authorities in a given case (Arts. 134 and 135 PACLA). However, as it will be explained under point 1.5, the administrative courts in Poland (unlike civil courts) have no competence to call expert witnesses, so the assessment of merits is based on the documents.

The Supreme Administrative Court, which examines the legality of the first instance court verdict, is in principle bound by the allegations presented in the complaint. However, the Court takes into account certain serious infringements, even if they were not raised by the claimant. These infringements are listed in Art. 183(2) PACLA:

- the court proceedings were inadmissible;
- the party had no judicial or procedural capacity, an authority appointed to represent him or a legal representative, or if the party's representative was not duly authorised;
- the same case is the subject of proceedings previously brought before an administrative court or if the case has already been finally judged;
- the composition of the court adjudicating the case was contrary to the provisions of law or if a judge excluded by law participated in the case;
- the party was deprived of the opportunity to defend its rights;

the voivodship administrative court adjudicated in a case in which the Supreme Administrative Court has jurisdiction.

1.3. Organisation of justice at administrative and judicial level

1) **System of the administrative procedure (ministries and/or specific state authorities)**

Individual administrative decisions, including those regarding the environment, may be issued either by self-governmental authorities or by governmental authorities.

The self-governmental authorities competent to issue individual decisions are:

- mayor of a town or a village / head of the community (wójt, burmistrz, prezydent miasta),
- starost (starosta) - head of a poviat (district, powiat)
- marshal of the voivodship (marszałek województwa) - head of the self-governmental authorities in the voivodship (województwo).

For example, the EIA decisions are issued mainly by the head of the community. Integrated permits and decisions relating to waste management are issued by the starost or a marshal of the voivodship, depending on the type of installation / activity.

The governmental authorities competent to issue individual decisions are e.g.:

- Regional Director for Environmental Protection (regionały dyrektor ochrony środowiska),
- Director of the Regional Board of Water Management (dyrektor regionalnego zarządu gospodarki wodnej Wód Polskich) and other Polish Waters authorities,
- Voivodship Inspector of Environmental Protection (wojewódzki inspektor ochrony środowiska),
- relevant ministers: Minister of Climate and Environment, Minister of Infrastructure.

For example, in the case of certain projects, the EIA decisions are issued by the Regional Director for Environmental Protection; the Director is also competent in the field of environmental liability and nature conservation. The Polish Waters authorities are responsible for water management, including for issuing the water permits. Voivodship Inspectors of Environmental Protection are responsible for compliance control and imposing sanctions for non-compliance with the environmental requirements.

2) **How can one appeal an administrative environmental decision before court? When can one expect the final ruling?**

In order to appeal an administrative environmental decision before the court one has to file an appeal to the administrative authority of the second instance first. The appeal to the administrative court may be filed only after the second instance authority issues its decision (see point 1.3.4) for details).

The second instance authority shall in principle issue its decision within one month or, when the case is particularly complicated, within two months. In practice this stage may take up to three to five months. There are no deadlines for administrative courts. In practice it takes usually about five to nine months before the administrative court of the first instance and about one to one and a half year before the Supreme Administrative Court.

3) **Existence of special environmental courts, main role, competence**

In Poland the environmental cases are decided by bodies and courts of general competence, there are no special environmental courts or boards. There are no specific judicial procedures applicable to environmental matters neither.

4) **Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)**

In the case of administrative decisions (including decisions in environmental cases), the ordinary appeal process consists of three steps:

- filing a complaint to the administrative authority of the second instance (superior over the authority which issued a challenged decision). For example for the self-governmental authorities the second instance authority would be the Self-governmental Appeal Board (Samorządowe Kolegium Odwoławcze), for governmental authorities - a relevant higher instance authority (for the Regional Director for Environmental Protection - the General Director for Environmental Protection; for the Voivodship Inspector of Environmental Protection - the Chief Inspector of Environmental Protection etc.)
when the decision of the second instance authority is not in favour of the claimant, he/she may file a complaint to the administrative court of first instance, i.e. to the voivodship administrative court (wojewódzki sąd administracyjny)

when the court's verdict is not in favour of the claimant, he/she may file a complaint to the administrative court of second instance, i.e. to the Supreme Administrative Court (Naczelný Sąd Administracyjny).

The court has no right to amend the decision by itself. Where the administrative court finds that the complaint against an administrative decision was justified, it annuls the decision, which means that the proceeding goes back to the administrative authority which issued it. Then the authority, in re-examining the case, will be bound by the interpretations provided by the court.

During the court proceedings, the voivodship administrative courts may issue orders, e.g. on interim measures. These orders may be appealed to the Supreme Administrative Court.

5) Extraordinary ways of appeal. Rules in the environmental area. Rules for introducing preliminary references

The extraordinary remedies may be taken in administrative proceedings (i.e. before the administrative authorities) where (both conditions have to be fulfilled): the administrative decision is already final (there is no possibility to challenge it within the ordinary scheme) and the decisions has certain, serious flaw - one of those listed in Articles 145, 145a, 145b or 156 of the APC (Articles 145-145b list grounds for the “reopening of proceedings” and Article 156 for the “invalidation of decision”):

a) Article 145

§ 1. In a case which has been closed with a final decision, proceedings shall be reopened if:
the evidence on the basis of which the relevant facts were established is proved to be false;
the decision was issued as a result of an offence;
the decision was issued by an employee or public administration body which is subject to exclusion pursuant to Articles 24, 25 and 27;
the party did not participate in the proceedings through no fault of its own;
new facts or new evidence relevant to the case or new evidence existing on the date of the decision, unknown to the authority which issued the decision, come to light;
the decision was issued without obtaining the legally required position of another authority;
the preliminary issue has been resolved by a competent authority or a court in another way other than the assessment adopted when issuing the decision (Article 100 § 2);
the decision was issued on the basis of another decision or court ruling, which was subsequently revoked or amended.

b) Article 145a

§ 1. Reopening of proceedings may also be demanded if the Constitutional Tribunal has ruled that a normative act, on the basis of which the decision was made, is inconsistent with the Constitution, an international agreement or a law.

c) Article 145aa

§ 1. A reopening of proceedings may also be demanded in case of a judgment of the Court of Justice of the European Union that affects the substance of the decision taken.

d) Article 145b

§ 1. Reopening of proceedings may also be demanded also in case when a court verdict stating that the principle of equal treatment has been breached has been issued, in accordance with the Act of 3 December 2010 on the implementation of certain provisions of the European Union in the field of equal treatment (Journal of Laws of 2016, item 1219), if the breach of this principle had an impact on the resolution of the case ended with a final decision.

e) Article 156

§ 1. A public administration authority shall annul the decision which:
was issued in violation of the provisions on jurisdiction;
was issued without legal basis or with a gross violation of law;
concerns a case previously resolved by another final decision or a case which has been tacitly resolved;
was addressed to a person who is not a party in the case;
was unenforceable on the date of its delivery and its unenforceability is permanent;
if executed, it would give rise to a criminal offence;
it contains a defect which makes it legally invalid.

Decisions issued by the administrative authorities within the aforementioned extraordinary proceedings may be challenged before the administrative courts on the general rules. There are no extraordinary ways of appeal to be applied directly before courts.

Administrative courts may refer the case to the Court of Justice of the European Union for a preliminary ruling. There are no special regulations for this reference in Polish law - the relevant EU regulations do apply here. Parties may ask the administrative court to request the preliminary ruling from the CJEU, however it is up to the Polish court if it exercises this right. In case the court decides not to refer to the CJEU, no special order denying this request is issued and the parties have no special legal measures to challenge such a negative decision.

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?

The PACLA provides for a “mediation procedure” to be carried out before the administrative court. However, this procedure is hardly used at all and practically never in environmental cases. The reason for that is that the purpose of mediation is to explain and consider the factual and legal circumstances of the case and to adopt arrangements by the parties as to how to settle it within the limits of applicable law (Art. 115 § 2 PACLA). As environmental law consists mostly of provisions which are binding, the scope of possible mediation is extremely small.

Other remark concerns administrative proceeding. The APC allows for mediation, however this may be conducted in the course of the proceedings if the nature of the case allows it (Art. 96a § 1 APC). That means that also in administrative proceeding the scope of possible mediation is very small.

7) How can other actors help (ombudsperson (if applicable), public prosecutor), accessible link to the sites?

According to Article 5 of the Act of 28 January 2016, Law on the public prosecutor's office (codified text: J.L. of 2019, item 740, as amended), the public prosecutor may participate as a party or participant in any proceedings conducted by public authorities and administration bodies, courts and tribunals, unless the acts provide otherwise.

This right is reflected in Arts. 182 - 183 APC, according to which public prosecutors have standing in administrative proceedings: they may either initiate the proceedings or intervene in on-going proceedings, including challenging decisions. It is reflected also in Art. 8 § 1 PACLA which repeats the general rule of the Law on the public prosecutor's office.

The Ombudsman enjoys the same rights under Art. 14 § 6 of the Act of 15 July 1987 on the Ombudsman (codified text: J.L. of 2020 item 627) and under Art. 8 § 1 PACLA.
In the case of EIA decisions (decisions concluding the procedure of environmental impact assessment) and the decisions concluding proceedings where the habitat assessment was carried out, similar rights are granted to the regional director for environmental protection, as well as to the General Director for Environmental Protection (Art. 76 of the EIA Act).

Although the above-mentioned actors act ex officio, they often undertake their action after having received information/complaints from an individual or NGO.

**Ombudsman’s office**

**Prosecutor’s office**

**General Director for Environmental Protection**

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)?

Under Polish law, individual decisions relating to the environment may be challenged by: (a) natural and legal persons who are considered as “parties to the administrative proceedings”, (b) entities (such as NGOs, the public prosecutor or the Ombudsman) who participate in the proceedings “with the rights of a party”.

According to the general rule provided by Article 28 of the Administrative Procedure Act (APC), “parties to the administrative proceedings” are persons having sufficient legal interest in the case. They are entitled to challenge decisions before the second instance authority first and then before the administrative court.

Environmental NGOs are granted specific rights to participate in the proceedings in which public participation is required - and to challenge the decision issued within these proceeding. These proceedings are those regarding: EIA decisions, habitat assessments, integrated permits, permits regarding GMO.

The specific rights are granted by Art. 44 of the EIA Act.

In proceedings not requiring public participation, NGOs may apply to be admitted to the proceedings with the rights of a party (the legal basis for this is Art. 31 of the APC). Such application may be refused by the authority, if it considers that the conditions set by Article 31 of the APC are not met (these conditions are described in detail under question 1.4.2 below). The refusal may be challenged before the authority of the second instance and then before the court.

The possibilities and conditions for such participation are however limited comparing to those granted by Art. 44 of the EIA Act.

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?

Specific provisions, such as those on EIA or integrated permits, provide for rules on who shall be considered as a party in a given case and - automatically - who is entitled to challenge relevant decisions:

According to Article 74(3(a)) of the EIA Act, the status of a party in proceedings concerning EIA decisions is granted to the developer and owners of properties located in the area which will be affected by the proposed project. This area is understood as: (1) the anticipated area on which the project will be carried out and the area located within 100 m of the borders of that area; (2) the plots on which, as a result of implementation, exploitation or use of the project, the environmental quality standards would be exceeded, or (3) plots located within the range of a significant impact of the project, which may introduce restrictions on the development of the real estate.

Article 185(1) EPLA limits the parties in the proceedings regarding integrated permits, permits for emissions of gases into the air and permits for waste generation to the operator of the installation subject to the permit. Only in very exceptional cases - when a so-called “restricted use area” is to be created around the installation – are certain neighbours also regarded as parties to the proceedings.

Article 401(1) WLA specifies that parties to the proceedings regarding decisions authorizing use of water (e.g. water permits) and hence entitled to challenge these decisions are: the project proponent and the persons who will be affected by the intended use of water or the entities within the range of impact of the planned water facilities. Art. 402 WLA excludes the participation of NGOs in these proceedings and their right to challenge the decisions issued.

Article 41 GMLA specifies that parties to proceedings regarding concessions for extraction of mineral resources are only the owners of properties on which the mining activity is to be carried out.

Article 28(2) BLA specifies that parties to proceedings regarding construction permits are only investors and owners, perpetual usufructuaries or managers of properties located in the area of impact of the building object. The term “impact of the building object” is defined by Article 3(20) BLA as “an area designated in the vicinity of a building object on the basis of specific regulations, introducing restrictions on development, including buildings, of that area”.

Article 28(3) BLA excludes the participation of NGOs in these proceedings and their right to challenge the decisions issued (NGOs may participate only in proceedings regarding construction permits within which so-called a repeated EIA (ponowna ocena oddziaływania na środowisko) is carried out (Art. 28(4) BLA).

Apart from the Building Law Act there are a number of so called “special Acts” regulating the investment process for specific kinds of project such as roads, railways, flood-control projects etc. These special Acts introduce special rules for access to justice regarding permits (development consents) for construction of these projects.

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.)

**Administrative proceedings**

As mentioned above, in administrative proceedings regarding individual administrative decisions, standing is granted to “parties” to the proceedings, while a party according to Article 28 of the APC - is a “person whose legal interest or duty is affected by the proceedings or who demands activities of authority because of this legal interest or duty”. The definition of “party to the administrative proceedings” is therefore crucial to understanding who can challenge decisions of the administration.

Therefore, according to the general rules provided by the APC, standing is granted to those individuals (whether natural or legal persons) who have a “legal interest” (which includes also administrative duties). A person has a legal interest in the case when that interest is protected by any provision of (administrative, civil or other) law. For example, when an administrative decision may affect one’s property (e.g. in case of construction of a new object the owners of the adjoining properties may be affected). A person who filed an application for an administrative decision and a person to whom a decision was addressed always have a “legal interest” in the case and thus have standing. Such persons are considered to be “parties” to the administrative procedure.

As indicated above under question 1.4.3, there are a number of legal Acts amending or specifying these general rules with regard to particular administrative decisions.

**Proceedings before administrative courts**

As proceedings before administrative courts in the case of individual administrative decisions are a follow-up to proceedings before the authority of the second instance, the circle of persons entitled to file a complaint to the court of the first instance is determined by the administrative phase of proceedings.[3]

However, a person who did not take part in the administrative proceedings but whose legal interest is affected by the proceedings may also file a complaint to the administrative court (Article 50 § 1 PACLA).

Apart from the right to file a complaint, the right to participate in the court proceedings with the status of a party is granted to the following individuals:
persons who participated in the preceding administrative proceedings (both parties to the administrative proceedings and organisations with the rights of a party) but failed to file a complaint to the administrative court (participation of those persons is granted ex officio, without them having to file any motion - Article 33 § 1 PACLA);

persons whose legal interest is affected by the judicial-administrative proceedings, but who have not taken part in the preceding administrative proceedings (participation of those persons may be granted by the court upon their motion; the courts’ refusal may be challenged before the administrative court of second instance - Article 33 § 2 PACLA); this situation may concern for example a spouse of a person who challenged the tax decision of the administrative authority of the second instance, in case when that decision was originally addressed to both spouses; it rather does not apply to environmental cases.

National NGOs

As indicated above, there are two different legal bases for NGOs’ participation in the proceedings, and for their right to challenge the decision: Article 44 of the EIA Act encompassing certain environmental proceedings (those requiring public participation), or Article 31 of the APC encompassing all other administrative proceedings concluded with an administrative decision.

Article 31 APC

According to the general rule provided by Article 31 APC, social organisations enjoy standing in cases regarding individual administrative decisions where they represent a common interest. The organisation may participate in the proceedings with the rights of a party, which means that it enjoys the same rights as a party to the proceedings, including a right to appeal. In order to be admitted to participate, an organisation must file a relevant motion. In this case an NGO has to prove that:

it is registered in a Court register or in a register maintained by the Starost (head of self-governmental authority in the district), as ad hoc groupings do not have standing;

its participation in the proceedings is justified by the objectives established in the by-laws of the organisation (in other words if the subject matter of the case is in conformity with the organization’s objectives);

its participation in the proceedings is justified by the “public interest”.

The public authority then assesses the motion and decides whether it considers it justified. The assessment is not limited to verification of formal requirements, but concerns also the merit justification (need) for participation by the organisation in a given case (in other words: the authority decides whether it considers it useful, from the point of view of the “public interest”, to allow the organisation to participate). A refusal may be challenged by the organisation to the authority of second instance and then - subsequently - to the administrative court.

The organisation which took part in the preceding administrative proceedings on the basis of Article 31 APC has standing also before the administrative courts. An NGO which has not taken part in the preceding administrative proceedings is not entitled to challenge the decision of the second instance authority, i.e. has no right to file a complaint to the administrative court (Article 50 § 1 PACLA).

However, if the judicial-administrative proceedings, initiated by another party, concern the scope of the NGO’s activity, participation of the organisation may be granted by the court of its own motion; the courts’ refusal may be challenged before the administrative court of second instance (Article 33 § 2 PACLA).

According to case law, the court also has to verify whether the “public interest” speaks for the participation of the NGO.

Article 44 EIA Act

According to the special provisions provided by Article 44 of the EIA Act, environmental NGOs may:

take part in the proceedings with a right of a party and then challenge the decision before the authority of the second instance;

challenge the decision before the authority of the second instance even if it did not take part in the first instance administrative proceedings;

challenge the decision of the second instance authority before the administrative court even if it did not take part in the administrative proceedings.

In this case the NGO has to prove that:

it is registered in a Court register or in a register maintained by the Starost (head of self-governmental authority in the district), as ad hoc groupings do not have standing;

it has been registered for at least 12 months before the proceedings it wants to intervene in were initiated;

its statutory purpose is related to environmental protection.

Contrary to the proceedings carried out on the basis of Article 31 APC, NGOs do not need to prove that “public interest requires their participation”. In other words: in this case the authority only examines whether an environmental organisation fulfils formal requirements but is not entitled to decide whether the participation of such organisation is “needed” and “justified” from the point of view of public interest. This means that an NGO which fulfils the aforementioned requirements and expresses its intention to participate in a given procedure participates in it by virtue of law.

Foreign NGOs enjoy the same rights as Polish NGOs and have to meet the same conditions, including - in the case of the proceedings regulated in Article 31 APC - proving that their participation is justified (that it protects the common interest in a given case).

Ad hoc groupings have no standing. As indicated above, in order to take part in the proceedings, an organisation has to be registered in the Court or in the register maintained by the Starost (head of self-governmental authority in the district).

4) What are the rules for translation and interpretation if foreign parties are involved?

All administrative and judicial proceedings are to be conducted out in Polish.

The proceedings before the authority of the second instance are conducted mainly in writing. The foreign party is then responsible for preparing its appeal, motions etc. in Polish.

In proceedings before the administrative court, the foreign party may ask the court to provide the services of an interpreter (Article 5 § 2 of the Act on the common courts system in conjunction with Article 49 § 1 of the Act of 25 July 2002 on the administrative courts system). If the court grants it, the services of an interpreter are free to the party (the costs are borne by the State).

1.5. Evidence and experts in the procedures

Overview of 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?

Pursuant to Art. 77 § 1 APC, a public administration body is required to collect and consider all possible evidence. According to Art. 75 § 1 of the APC, everything that can help to clarify the case and is not illegal should be considered as evidence. In particular, evidence may include documents, witness statements, expert reports and visual inspections.

The administrative authority of the second instance examines all the aspects of the case. According to Article 136 APC, the second instance authority may take evidence on its own (as well as examining the evidence gathered by the first instance authority). At this stage the parties may submit their evidence too.

The evidence is subject to assessment by the administrative authority of the second instance.

At the stage of court proceedings, the possibility of taking and examining new evidence is strictly limited. The administrative court of the first instance examines in principle the legality of the acts or omissions of the administrative authority. This includes verifying whether the authority has correctly established or assessed the facts (merits) of the case. This means that the parties cannot introduce new evidence at this stage.
The verification by the court consists in examining the proceedings before the administrative authorities (of both instances), including determining whether the authorities had correctly taken into account and assessed the evidence available in the case, including the technical documents.

According to Article 133 § 1 PACLA, the verification by the administrative court shall be based on the documents available in the file on the case; the court has no mandate to take evidence on its own (the main role of administrative courts is not to carry out evidence proceedings, but to check whether evidence proceedings have been properly and exhaustively carried out by the administrative authority). The only exemption from this general rule is provided by Article 106 § 3 PACLA, according to which the court may examine additional documents as evidence, but only when this will not “excessively” prolong the proceedings, which in practice means that there will be no need to adjourn the trial. According to jurisprudence a document admitted as evidence before the regional administrative court on the basis of Article 106 § 3 PACLA may not “have a nature of an experts’ opinion”.

2) Can one introduce new evidence?
As explained above, at the stage of the administrative appeal - yes; at the stage of the administrative court proceedings - in principle no.

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts
The administrative courts, unlike the civil courts, have no competence to call expert witnesses. As explained above, the administrative courts base their judgement on the documents available in the files on the case.

3.1) Is the expert opinion binding on judges, is there a level of discretion?
N/A

3.2) Rules for experts being called upon by the court
N/A

3.3) Rules for experts called upon by the parties
N/A

3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?
N/A

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

Only the cassation complaints addressed to the administrative court of second instance (Supreme Administrative Court) have to be prepared and signed by a lawyer: an advocate (adwokat) or an attorney at law (radca prawny) representing the claimant[4]. There is no such requirement before the administrative authorities and before the administrative court of first instance.

The list of advocates is available on the [Advocates’ Bar webpage](#).

The list of attorneys at law is available on the [Attorneys’ Bar webpage](#).

A list of some lawyers specialising in environmental law has been published by [ClientEarth](#).

Other lawyers specialising in environmental law have to be sought out on a case-by-case basis.

The conditions for co-operation with them (including pro bono assistance) have to be negotiated with them on an individual basis.

1.1 Existence or not of pro bono assistance

There is no systematic form of pro bono assistance consisting in initiation of or representation in court proceedings. Certain lawyers or law firms may offer such assistance on a case-by-case basis.

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.?)

There is a systemic type of pro bono assistance consisting in informing citizens about their rights and obligations, about the law in force and about the possible ways of resolving legal problems (as mentioned above, this does not include court proceedings). This type of assistance is provided for on the basis of the Act of 5 August 2015 on free legal assistance, free citizen counselling and legal education, codified text J.L. of 2020, item 2232, [Ustawa z dnia 5 sierpnia 2015 r. o nieodpłatnej pomocy prawnej, nieodpłatnym poradnictwie obywatelskim oraz edukacji prawnej, i.e. Dz. U. z 2020 r. poz. 2232](#).

The free assistance is available to natural persons who claim that they cannot afford a lawyer.

1.3 Who should be addressed by the applicant for pro bono assistance?

The legal assistance referred to in the Act on free legal assistance is provided by lawyers (advocates or attorneys at law) appointed by self-governmental district (powiat) authorities. The lawyers consult clients in “free assistance offices ” (punkty nieodpłatnej pomocy prawnej).

Further information, including the list of offices, is presented on [this webpage](#).

2) Expert registries or publicly available lists of bars or registries that include the contact details of experts

There are no complex registers of experts; rather, they have to be looked for on a case-by-case basis. However, one may wish to check e.g. the list of experts held by [Polska Izba Ekologii](#) (the Polish Ecology Chamber).

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible

[ClientEarth](#), [Prawnicy dla ziemi](#), [WWF Polska](#), [Greenpeace Polska](#), [Pracownia na rzecz Wszystkich Istot](#), [Fundacja Greenmind](#), [Fundacja Ekorozwoju](#)

4) List of International NGOs, who are active in the Member State

Some international NGOs have their offices (branches) registered in Poland. Formally such a branch is treated as a Polish NGO. These NGOs are:

[ClientEarth](#), [Prawnicy dla ziemi](#), [WWF Polska](#), [Greenpeace Polska](#)

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).

Regular appeal

An appeal against the decision of the authority of the first instance to the authority of the second instance shall be filed within 14 days from the date when the decision of the first instance authority has been delivered to the appealing party.
In some cases (such as EIA decisions where there are more than 10 parties to the proceedings) the decision is not to be delivered to each party by post, as is the normal principle, but by way of public announcement. In such cases it is assumed that delivery occurs on the 14th day after that announcement (Article 49 APC). Then, any party to the proceedings (as well as NGOs having standing) has the next 14 days to lodge an appeal.

**Extraordinary appeal**

In case of extraordinary appeal based on Article 145 APC[5], a party may file a motion to reopen the proceedings within one month from the date when the party became aware of the circumstance constituting the basis for reopening of proceedings.

In case of extraordinary appeal based on Article 145a APC (reopening of proceedings in cases where the Constitutional Tribunal ruled that a normative act, on the basis of which the decision was made, is inconsistent with the Constitution, an international agreement or a law), a party may file a motion to reopen the proceedings within one month from the date of entry into force of the decision of the Constitutional Tribunal.

In case of extraordinary appeal based on Article 145aa APC (reopening of proceedings in case of a judgment of the Court of Justice of the European Union that affects the substance of the decision taken), a party may file a motion to reopen the proceedings within one month from the day when the CJEU judgement has been published.

In the case of extraordinary appeal based on Article 156 § 1 APC[6], a motion to annul a decision may be lodged at any time, however the decision shall not be annulled on the grounds set out in Article 156 §1 items 1, 3, 4 or 7 where ten years have elapsed since its delivery or publication and if the decision has had irreversible legal effects.

2) **Time limit to deliver decision by an administrative organ**

As a rule, the administrative authority of the first instance should deliver its decision within a month or, in a particularly complex case, no later than within two months from the date of initiation of the proceedings (Article 35 § 3 APC). This time limit may be extended if necessary - according to Article 36 APC, any extension of the proceedings shall be reasonably justified and the parties shall be informed; in the case of excessive length of proceedings or administrative inaction, the party may lodge a complaint to the administrative court. The proceedings may also be suspended if specific provisions so require (for example in EIA-related cases, for the period of preparation of the EIA report) or in some cases listed in Articles 97 and 98 APC (e.g. death of one of the parties to the proceedings and pending inheritance case).

The administrative authority of the second instance should deliver its decision within a month after it receives the appeal (Article 35 § 3 APC). The appeal is however to be filed not directly to the authority of the second instance but via the authority of the first instance - which, within 7 days of reception of the appeal, shall transfer it together with the entire documentation of the case to the authority of the second instance (Article 129 § 1 and Article 133 APC). The time limit to deliver the administrative decision is however called “instructional” for the authority which means that in practice this may take longer, although here too the authority has to justify the extension and inform the parties of it (Article 36 APC applies).

3) **Is it possible to challenge the first level administrative decision directly before court?**

As a rule this is not possible.

There is one exception to this rule, namely when the decision has been issued in the first instance by a Minister (or another central authority which has no higher instance over it) or a Self-Governmental Appeal Board (authorities which have no “higher instance” over them). In such cases, a party dissatisfied with the decision may request the authority to reconsider the case (Art. 127 § 3 APC). In such situations, the party may decide not to exercise the right to request reconsideration, but to lodge a complaint directly to the administrative court instead (Art. 52 § 3 PACLA).

4) **Is there a deadline set for the national court to deliver its judgment?**

According to the general rule, there is no deadline set for the administrative court to deliver its judgment. The exception concerns cases regarding access to environmental information: in the case of decisions refusing such information, the court shall issue its judgement within 30 days after receipt of the complaint (Article 20(2) of the EIA Act). The complaint is to be filed not directly to the court but via the administrative authority of the second instance - which, within 15 days of receipt of the appeal, shall transfer it together with the entire documentation of the case to the court (in other cases the second instance authority has 30 days to transfer the documentation).

5) **Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)**

The authorities or courts may summon parties e.g. to submit documents, complete their motions or undertake other activities. The deadlines for those fulfilling these orders are indicated by the authority or the court respectively.

1.7.2. **Interim and precautionary measures, enforcement of judgments**

1) **When does the appeal challenging an administrative decision have suspensive effect?**

Filing an appeal to the administrative authority of the second instance has suspensive effect, which means that the decision cannot be executed. However, the competent authorities sometimes grant “immediate enforceability” (“rygor natychmiastowej wykonalności”) of the decision, which means that it may be executed immediately. Immediate enforceability may be included into the decision itself or issued in the form of a separate order (postanowienie). Immediate enforceability may be challenged before the authority of the second instance and then before the administrative court: either in the appeal against the entire decision or against the order, as the case may be.

Filing a motion within the extraordinary administrative appeal does not have an automatic suspensive effect, however the competent authority may suspend the execution of the decision ex officio or on the motion of a party (Article 152 and Article 159 APC).

2) **Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?**

In a regular administrative appeal procedure there is no need for injunctive relief, as filing an appeal to the administrative authority of the second instance has a suspensive effect.

In an extraordinary administrative appeal, the competent authority may suspend the execution of the decision ex officio or on the motion of a party (Article 152 and Article 159 APC).

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?**

As indicated above, in a regular administrative appeal procedure, there is no need for injunctive relief, as filing an appeal to the administrative authority of the second instance has a suspensive effect. In cases where “immediate enforceability” has been granted, it is possible to challenge its legitimacy. This cannot however be regarded as injunctive relief, as the issue is examined together with the main appeal and not earlier and separately.

In an extraordinary administrative appeal, a party may file a motion for suspension of the execution of the decision (Article 152 and Article 159 APC). The motion shall be filed along with the motion for reopening the proceedings or annulment of the decision, or later, during the extraordinary proceedings.

4) **Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?**
As indicated above, the competent authorities may grant “immediate enforceability” of the decision, which means that it may be executed immediately irrespective of any appeal introduced. The conditions for this are provided for by Article 108 APC: where it is necessary for the protection of human health or life, or to protect national farming from heavy losses, or for any other public interest or an extremely important interest of a party.

5) Is the administrative decision suspended once challenged before court at the judicial phase?
Filing a complaint to the administrative court of first instance does not automatically suspend execution of the administrative decision subject to complaint. However, after the complaint has been filed to the second instance authority (and before it is forwarded to the administrative court), the authority may suspend, ex officio or at the request of the complainant, the execution of the decision (Article 62 § 2(1) PACLA). The administrative court may also suspend the execution of the decision, upon the motion of the claimant, in cases where there is a threat that execution may cause a significant damage or effects hard to reverse. In such cases the claimant has to demonstrate that the threat is plausible.

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?
The administrative court of first instance may suspend execution of the administrative decision subject to complaint - ex officio or on the motion of a party (Article 61 § 2 PACLA). There is a possibility for separate appeal against this order on this injunctive relief (Article 194 § 1 point 2 of the PACLA).

According to the general rules, the injunctive relief is not conditional upon a financial deposit. However, in the case of a motion for injunctive relief regarding a complaint against a construction permit, the court may make it conditional upon a financial deposit (Article 35a BLA). The amount of this deposit is not set by law, however Article 35a(3) BLA states that the deposit shall be used to satisfy the investor's claims, so it may be assumed that it could be high. There is a right of appeal against the court order on financial deposit.

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.

Administrative and court fees:
Filing an appeal with the administrative authority at second instance (and at the same time, the appeal procedure) is free of charge, according to Annex, part I item 53, column 4 to the Stamp Duty Act[7].

As far as the court fees are concerned, it should be noted that in Poland court fees vary according to “the value of the case”, but only in cases where the value of the case at stake can be measured (i.e., if the case concerns a monetary obligation, for example the payment of a fee for the use of the environment or an administrative fine for non-compliance with the environmental requirements).

However, it is recognised that in environmental cases concerning typical administrative decisions (such as environmental permits, EIA decisions etc.) the value of the case at stake cannot be measured. In such cases, the court fee is fixed at PLN 200 (currently about EUR 44) for the court of first instance and PLN 100 (about EUR 22) for the court of second instance.

Attorneys' fees:
Attorneys’ fees depend in practice on the contract between the attorney and his client. Therefore the costs of legal representation may differ depending on the law firm, the experience of the lawyer etc. As a rough guide, they may vary from PLN 150 to 600 (EUR 33 to 135) per hour. The number of hours depends on the complexity of a case, number of appeal instances etc.

Experts' fees:
As indicated above, the administrative courts decide on the basis of the documents that have been collected in the course of the administrative review procedure and may only admit new evidence in exceptional cases, and only in the form “of documents” (Article 106 PACLA). Thus, expert opinions would be commissioned by parties to the proceedings mainly during proceedings before administrative authorities of first or second instance. The average cost of an expert’s report would be around PLN 7,000 (EUR 1,540).

2) Cost of Injunctive relief/in interim measure, is a deposit necessary?
According to the general rules, the injunctive relief is not conditional upon a financial deposit. However, in case of a motion for injunctive relief regarding a complaint against a construction permit, the court may make it conditional upon a financial deposit (Article 35a BLA). The amount of this deposit is not set by law, however Article 35a(3) BLA states that the deposit shall be used to satisfy the investor's claims, so it may be assumed that it could be high. There is a right of appeal against the court order on a financial deposit.

3) Is there legal aid available for natural persons?
Persons (both natural and legal, including NGOs) who are unable to fund the costs of the court or hiring attorney may apply to the administrative court for legal aid, which in Poland is called “right of aid” prawo pomocy (Articles 243 - 263 PACLA). The application must be lodged with the court and accompanied by evidence of the financial status of the applicant. There is no fixed level of income or assets below which the legal aid is provided. It is up to the court’s discretion to determine whether legal aid would be justified or not.

The right to aid encompasses an exemption from payment of the court fees and covers the costs of appointment of an attorney who will represent the claimant in court. The right to aid may be reversed if the grounds for granting the aid cease to apply. There are however no statistics on the frequency of granting or refusal of aid by the courts.

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?
See above.

5) Are there other financial mechanisms available to provide financial assistance?
Environmental NGOs may receive public funding for the projects they carry out. The public funding may also cover the costs connected with legal proceedings (usually the NGOs have to include this type of expense in the project’s budget). Certain NGOs also carry out advocacy for other NGOs or individuals, including assistance in legal proceedings, and may receive public money for this.

6) Does the ‘loser party pays’ principle apply? How is it applied by courts, are there exceptions?
Within the administrative review procedure, each party bears its own costs, which means that the winning party does not recover its costs (the second instance authority does not decide on costs). Filing an appeal before the administrative authority of the second instance is however free of charge. According to Article 200 PACLA, before the administrative court of first instance, if the authorities lose the case, they have to pay the claimant’s costs. This includes:

- the court fees.
- the costs of legal representation, which are however limited to the cap set by specific provisions[8]. In cases in which no financial value is set (and the majority of environmental cases belong to this category[9]) this cap is PLN 480 which is about EUR 107 (normally these are not the real costs which the claimant paid, as these costs are market-based and not regulated by law).
If the authority wins, it is not entitled to claim its costs. Other participants in the court proceedings (persons referred to in Art. 33 PACLA) bear their own costs; the losing party is not obliged to cover them.

Articles 203 and 204 PACLA lay down rules on the distribution of costs in proceedings before the court of second instance. This includes the court fees and also the costs of legal representation but only up to the cap of PLN 480 which is about EUR 107.

Article 203 regulates the situation where the court of second instance allowed the appeal. According to this provision: in cases where the court of first instance dismissed the complaint and the court of second instance annulled the first instance court’s judgement, the authority whose decision was subject to proceedings before the court of first instance has to pay the costs of the person who filed the appeal, in cases where the court of first instance allowed the complaint and the court of second instance annulled the first instance court’s judgement, the claimant in the proceedings before the court of first instance has to pay the costs of the person/authority who filed the appeal.

Article 204 regulates the situation where the court of second instance dismissed the appeal. According to this provision: in cases where the court of first instance dismissed the complaint and the court of second instance sustained the first instance court’s judgement, the person who filed the appeal has to pay the costs of the authority whose decision was subject to proceedings before the court of first instance, in cases where the court of first instance allowed the complaint and the court of second instance sustained the first instance court’s judgement, the person who filed the appeal has to pay the costs of the claimant in the proceedings before the court of first instance.

However, if an appeal was filed by an NGO acting in the public interest, the courts in practice do not order the NGO to reimburse the costs to another party (i.e., they exempt the NGO from payment of costs).

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? As indicated above, a person who is granted the “right of aid” is exempted from payment of the court fees.

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? No official webpages concerning environmental access to justice have been identified.

2) During different environmental procedures how is this information provided? From whom should the applicant request information? Any decision issued during administrative proceedings, including that of the second instance authority, shall include information on possibilities to challenge it. During court hearings, where a party is not represented by a lawyer, the court has to inform the party about the remedies available (Article 140 § 1 PACLA). See also point 4) below.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)? There are no special sectoral rules regarding information for the applicants.

4) Is it obligatory to provide access to justice Information in the administrative decision and in the judgment? It is obligatory to provide access to justice information, in the case of an administrative decision (Article 107 § 1 point 7 APC) and if a judgement (Article 140 § 2 PACLA).

5) Is translation, interpretation provided to foreign participants? What are the rules applicable? Administrative decisions and judgements, including information about available remedies, are delivered in Polish. During the hearing before the foreign party may ask the court to provide the services of an interpreter to translate also the information about remedies provided during the hearing (Article 5 § 2 of the Act on the common courts system in connection with Article 49 § 1 of the Act of 25 July 2002 on the administrative courts system). If the court grants it, the services of an interpreter are free to the party (the costs are borne by the State).

1.8. Special procedural rules


Country-specific EIA rules related to access to justice

1) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned) Under Polish law (the EIA Act[10]), the EIA procedure, or - in case of a negative screening decision - the screening procedure, is concluded by the separate so-called “EIA decision” (Poland established a special “procedure to comply with the aims of the Directive”, as referred to in Article 2(2) of the EIA Directive).

Negative screening In the case of a negative screening decision, the EIA decision states that the EIA procedure is not needed and provides the reasoning for that. Polish law provides for a possibility to challenge the EIA decision (negative screening decision) itself. This possibility is always granted to individuals (parties to the proceedings).

Environmental NGOs however have limited possibilities to challenge the negative screening decision. In such cases they are unable to use the provisions granting them access to justice in the case of EIA decisions concluding the full EIA procedure (Article 44 of the EIA Act). Instead, they may only try to enter into the administrative proceedings - and then to challenge the decision - on the basis of the more general Article 31 APC. As explained above, this Article is however less favourable to organisations than Article 44 of the EIA Act, because Article 31 foresees that the public authority has to assess whether “the interest of society requires” it to allow the organisation to participate - while under Article 44 of the EIA Act the authority only examines whether an environmental organisation fulfils formal requirements (is registered etc.) but does not assess whether the participation of such an organisation is “needed” and “justified” from the point of view of public interest. Depriving organisations of the right to participate in administrative proceedings on the basis of Article 31 APC means that they will not be entitled to participate in appeal proceedings either.

In any case, an EIA decision stating a negative result of screening may be challenged before a second instance authority within 14 days after the date when decision has been delivered to a given party (see point 1.7.1).

Positive screening In the case of positive screening, the competent authority issues a separate order (postanowienie) stating that EIA is necessary and setting the scope of environmental report (which means that this order covers both screening and scoping). This order may be challenged by the parties to the proceedings as well as by NGOs participating in the proceedings. An appeal against the positive screening order shall be challenged within 7 days after the date when it has been delivered to a given party.

2) Rules on standing relating to scoping (conditions, timeframe, public concerned) In the case of projects always requiring a full EIA (under Polish law, these are all projects listed in Annex I to the EIA Directive plus some projects falling under Annex II to the Directive) in principle there is no separate scoping order (postanowienie). For these projects, such an order shall be issued only if the developer requires so, or if the project could have a transboundary impact.

In case of projects subject to individual screening, the order by the competent authority stating that an EIA is required (positive screening order) also sets the scope of environmental report (which means that this order covers both screening and scoping). This order may be challenged by the parties to the proceedings as well as by NGOs participating in the proceedings. An appeal against the positive screening order shall be challenged within 7 days after the date when it has been delivered to a given party.
3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?
As explained above, under Polish law, an EIA decision is a decision concluding the EIA procedure and setting environmental conditions for a decision giving final authorisation of the project (for the development consent). The EIA decision may be challenged by the parties to the proceedings. According to Article 74(3a) of the EIA Act, the status of party to proceedings concerning the EIA decisions is granted to the developer and owners of (and holders of some other rights) to the properties located in the area which will be affected by the proposed project. This area is understood as:
the anticipated area on which the project will be carried out and the area located within 100 m of the borders of that area;
the plots on which, as a result of implementation, exploitation or use of the project, the environmental quality standards would be exceeded, or plots located within the range of a significant impact of the project, which may introduce restrictions on the development of the real estate.
The EIA decision may also be challenged by NGOs which are admitted to participate in the proceedings with rights of a party.
An EIA decision may be challenged before the authority of second instance within 14 days after the date when decision has been delivered to a given party or NGO (see point 1.7.1). The decision of the second instance authority may be challenged before the administrative court within 30 days after the date when the decision has been delivered to a given party or NGO. The verdict of the voivodship administrative court may be challenged before the Supreme Administrative Court within 30 days after the verdict along with its written justification has been delivered to a given party.

4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO?
The right to challenge a final authorisation (decision subsequent to the EIA decision), depends on the specific provisions regulating particular types of final authorisations (construction permits, water permits, concessions for extraction of minerals etc.). These specific provisions may amend the general rules regarding the scope of parties to the proceedings and hence the scope of persons entitled to challenge the decision; they also may limit the rights of NGOs. See answer to question 1.4.2) for details.

5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?
In an appeal lodged with the administrative court, the claimant may raise both procedural and substantive issues.
The administrative court of first instance is not bound by the limits of the appeal which means that it may find other flaws in the challenged decision than those presented by the claimant (so in this sense the court may act on its own motion). The Supreme Administrative Court is in principle bound by the appeal save for certain serious errors of the proceedings listed in Article 183 § 2 PACLA.
However, at the stage of court proceedings, the possibility to take and examine new evidence is strictly limited. The administrative court of first instance examines in principle the legality of the acts or omissions of the administrative authority, which includes verifying whether the authority has correctly established or assessed the facts (merits) of the case. The verification by the court consists in examining the proceedings by the administrative authorities (of both instances), including determining whether the authorities had correctly taken into account and assessed the evidence available in the case, including the technical documents.
According to Article 133 § 1 PACLA, the verification by the administrative court shall be based on the documents available in the file on the case and the court has no mandate to take evidence on its own. The only exception from this general rule is provided by Article 106 § 3 PACLA, according to which the court may examine additional documents as evidence, but only when it will not “excessively” prolong the proceedings, which means that there will be no need to adjourn the trial.
Administrative courts, unlike civil courts, have no competence to call expert witnesses.
Consequently, the assessment of substantive issues raised by the parties is limited by the lack of scientific (technical etc.) knowledge of the judges. In practice, the administrative courts rely on the assessment by the administrative authorities, examining only whether the authorities took into account all evidence available, and whether proved it in the reasoning of the decision.

6) At what stage are decisions, acts or omissions challengeable?
See answers to questions 1.8.1) - 1.8.4) above.

7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
There is a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures.
There is one exception to this rule, namely when the decision has been issued in the first instance by a Minister (or another central authority which has no higher instance over it). In EIA-related cases such an exception concerns only the EIA decision for a nuclear power plant, as this decision is to be issued by the General Director for Environmental Protection. In this case, a party dissatisfied with the decision may request the authority to reconsider the case (Art. 127 § 3 APC). In this situation, the party may decide not to exercise the right to request reconsideration, but to lodge a complaint directly to the administrative court instead (Art. 52 § 3 PACLA).

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 127?
There is no requirement to participate actively in the administrative proceedings.

9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
Although there is no separate provision transposing this requirement, the legal system in its entirety as described in this document, including provisions on legal aid, may be considered to provide for fair and equitable review proceedings.
Moreover, it should be mentioned that neither the authority of the second instance, nor the administrative court of the first instance (the Regional Administrative Court) are bound by the scope of the appeal and arguments presented by the claimant. The Supreme Administrative Court is in principle bound by the appeal save for certain serious errors of the proceedings listed in Article 183 § 2 PACLA. However, the Supreme Administrative Court may act on its own motion if it finds that the parties have not been sufficiently heard.

10) How is the notion of “timely” implemented by the national legislation?
As explained under points 1.7.1) and 1.7.2), the administrative authority of the second instance should deliver its decision within a month after it receives the appeal (Article 35 § 3 APC). The appeal is however to be filed not directly to the authority of the second instance but via the authority of the first instance - which, within 7 days after receipt of the appeal, shall transfer it together with the entire documentation of the case to the authority of the second instance (Article 129 § 1 and Article 133 APC). The time limit to deliver the administrative decision is however called “instructional” for the authority, which means that in practice this may take longer (according to Article 36 APC, any extension of the proceedings shall be reasonably justified and parties shall be informed; in case of excessive length of proceedings or administrative inaction the party may lodge a complaint to the administrative court). There no deadline set for the administrative court to deliver its judgment in EUR-related cases.

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?
In theory, rules on injunctive relief as described under point 1.7.2) apply also to EIA decisions. However, in practice, administrative courts can refuse to suspend the execution of EIA decision, justifying this by the fact that the EIA decision does not give the right yet to commence the development of the project (as the developer needs to obtain another decision(s)) - see verdict of the Supreme Administrative Court.
At the same time, at the stage of certain 'subsequent decisions' both the circle of parties and the possibility for environmental organisations to participate are limited (see remarks above) and thus often there is no one who could challenge a subsequent decision (e.g. a construction permit) and file a motion for suspension of its execution (apart of course from the developer who initiated the proceedings but he is normally not interested in challenging a positive decision he has received).

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

See answers below.

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?

According to the general rules, integrated permits issued on the basis of provisions transposing the IED may be challenged by parties to the proceedings and by environmental NGOs (including foreign ones) enjoying the rights of a party on the basis of Article 44 of the EIA Act (see answers under points 1.4.1) and 1.4.2).

The scope of parties to the proceedings regarding permits is however very limited by Article 185(1) and (1a) of the EPLA. According to Article 185(1), the status of a party is granted only to the operator of the installation subject to the permit and - in very exceptional cases, i.e. when a so-called “restricted use area” is to be created around the installation - to owners of properties included into the restricted use area. The Supreme Administrative Court stated in a verdict of 24 April 2018 (II OSK 2743/17) that this limitation of the circle of parties is in non-compliance with the IED. The Court verdict is however binding with regard to a given case only. According to Article 185(1a), where the integrated permit regulates water taking or discharge of waste water, the following entities also shall be parties to the proceedings: the Polish Waters authorities, - for inland flowing waters and groundwater; the minister responsible for maritime economy, for waters of the territorial sea and internal sea waters.

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

In Poland procedures related to IED are separate from EIAs so there is no screening phase.

4) Rules on standing relating to scoping (conditions, timeframe, public concerned)

In Poland procedures related to IED are separate from EIAs so there is no scoping phase.

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?

The “Decision on environmental project” under the IED is the integrated permit. It may be challenged before the second instance authority within 14 days after it is delivered to a given party. The decision of the second instance authority may be challenged before the administrative court within 30 days after the date when the decision has been delivered to a given party or NGO. The verdict of the regional administrative court may be challenged before the Supreme Administrative Court within 30 days after the verdict along with its written justification has been delivered to a given party.

6) Can the public challenge the final authorisation?

The “final authorisation” here is the integrated permit. It may be challenged according to the rules described under points 1.8.2.2) and 1.8.2.5).

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?

In an appeal lodged with the administrative court the claimant may raise both procedural and substantive issues. The administrative court of first instance is not bound by the limits of the appeal, which means that it may find other flaws in the challenged decision than those presented by the claimant (so in this sense the court may act on its own motion). The Supreme Administrative Court is in principle bound by the appeal save for certain serious errors of the proceedings listed in Article 183 § 2 PACLA.

However, at the stage of court proceedings, the possibility to take and examine new evidence is strictly limited. The administrative court of first instance examines in principle the legality of the acts or omissions of the administrative authority which includes verifying the authority has correctly established or assessed the facts (merits) of the case. The verification by the court consists in examining the proceedings by the administrative authorities (of both instances), including determining whether the authorities had correctly taken into account and assessed the evidence available in the case, including the technical documents.

According to Article 133 § 1 PACLA, the verification by the administrative court shall be based on the documents available in the file on the case and the court has no mandate to take evidence on its own. The only exception from this general rule is provided by Article 106 § 3 PACLA, according to which the court may examine additional documents as evidence, but only when it will not “excessively” prolong the proceedings, which means that there will be no need to adjourn the trial.

Administrative courts, unlike civil courts, have no competence to call expert witnesses. Consequently, the assessment of substantive issues raised by the parties is limited by the lack of scientific (technical etc.) knowledge of the judges. In practice, the administrative courts rely on the assessment by the administrative authorities, examining only whether the authorities took into account all evidence available, and whether proved it in the reasoning of the decision.

8) At what stage are these challengeable?

Permits issued under provisions transposing the IED are challengeable after they have been issued by the competent authority, within 14 days after the permit is delivered to a given party.

9) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? There is a 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? There is no requirement for the parties to participate actively in the administrative proceedings.

11) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

Although there is no separate provision transposing this requirement, the legal system in its entirety as described in this document, including provisions on legal aid, may be considered to provide for fair and equitable review proceedings.

12) How is the notion of “timely” implemented by the national legislation?

As explained under point 1.7.1) and 1.7.2), the administrative authority of the second instance should deliver its decision within a month after it receives the appeal (Article 35 § 3 of APC). The appeal is however to be filed not directly to the authority of the second instance but via the authority of the first instance - which, within 7 days after receipt of the appeal, shall transfer it together with the entire documentation of the case to the authority of the second instance (Article 129 § 1 and Article 133 APC). The time limit to deliver the administrative decision is however called “instructional” for the authority which means that...
in case of excessive length of proceedings or administrative inaction the party may lodge a complaint to the administrative court). There no deadline set for the administrative court to deliver its judgment in IED-related cases.

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?

Rules on injunctive relief as described under point 1.7.2. apply also to permits issued under provisions transposing the IED.

14) Is information on access to justice provided to the public in a structured and accessible manner?

It is obligatory to provide access to justice information, in the case of an administrative decision (Article 107 § 1 point 7 APC) and of a judgement (Article 140 § 2 PACLA).

1.8.3. Environmental liability[12]

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?

Under Polish law, everyone is entitled to a “request for action” as regulated by Article 12 of the ELD and if the authority refuses to take action (considering the request unjustified), every person whose request was denied may challenge this refusal to the authority of the second instance and then to the court (Article 24 of the Act of 13 April 2007 on Prevention and Repair of Environmental Damage[13]). However, where the authority issued a decision on remedial or prevention measures, only the environmental NGO which made the request for action - and not other persons who had made the request - is entitled to challenge this decision. Apart from the NGOs, the addressee of the decision and owner of the land on which the damage occurred and where the measures are to be undertaken are regarded as parties to the proceedings and therefore entitled to challenge the decision.

2) In what deadline does one need to introduce appeals?

The deadline to challenge a decision on remedial / preventive measures before the administrative authority of the second instance is 14 days after the date when the decision has been delivered (this is the normal deadline applicable for all administrative decisions).

The final decision of the second instance authority may be appealed against to the administrative court within 30 days of its delivery to the complainant.

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?

According to Article 24(3) of the Act on Environmental Damage, the request for action shall contain:

- the name of the person reporting an imminent threat of environmental damage or environmental damage and their address;
- information about the place where the environmental damage or threat of environmental damage has occurred - if possible by providing the address or number of the parcel of land;
- information on the time when the damage or threat has occurred - if possible by indicating the date of its occurrence;
- a description of the situation identified indicating the existence of the damage or threat, including, where possible, its nature.

According to Article 24(4) of the Act on Environmental Damage, the notification should, as far as possible, contain documentation confirming the occurrence of the environmental damage or threat of damage and the identity of the responsible person. Moreover, in the case of damage to land, the notification should, as far as possible, include the names of the harmful substances and contamination tests carried out by a certified laboratory.

4) Are there specific requirements regarding 'plausibility' for showing that environmental damage occurred, and if yes, which ones?

There are no specific regulations on how, and to what extent, plausibility must be proven, but the aforementioned Article 24(4) of the Act on Environmental Damage requires proof of the damage or threat “as far as possible”.

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)?

According to the APC, every administrative decision has to be delivered to the parties to the proceedings and to the persons with the status of a party. The APC does not set any deadline for delivery, but the common assumption is that it should happen as soon as possible.

In principle, a decision is to be delivered by post (or – if the parties so wish– electronically). However, in the case of decisions related to environmental liability cases (i.e. issued on the basis of the Act on Environmental Damage), when there are more than 20 parties to the proceedings, the “delivery” of the decision takes the form of a public announcement (Art. 20a of the Act on Environmental Damage and Art. 49-49a APC). The public notice is to be placed on the Internet (in the official Public Information Bulletin from the authority) as well as on noticeboards and in other places commonly used for notices in towns where the parties live. The public notice does not contain the decision itself, but states that the decision has been issued and provides information where the parties can make themselves acquainted with it.

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?

The MS applies an extension of the entitlement to request action by competent authority from damage to the environment in cases of imminent threat of such damage.

7) Which are the competent authorities designated by the MS?

The main authority competent in cases of environmental damage and the threat of environmental damage is the Regional Director of Environmental Protection (governmental authority). There are 16 Regional Directors, one in each region. Only in cases of damage / threat caused by GMOs is, the competent authority the Minister of Climate and Environment.

The General Director of Environmental Protection is the second instance authority for Regional Directors of Environmental Protection and for maintaining the national register of environmental damage and threats of damage.

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?

The MS requires that the administrative review procedure be exhausted prior to recourse to judicial proceedings. There is one exception to this rule, namely when the decision has been issued in the first instance by a Minister. In cases related to environmental liability, this exception may concern only the damage caused by GMOs, as only then is the Minister the authority competent in the first instance. In this case, a party dissatisfied with the decision may request the authority to reconsider the case (Art. 127 § 3 APC). In this situation, the party may decide not to exercise the right to request reconsideration, but to lodge a complaint directly to the administrative court instead (Art. 52 § 3 PACLA).

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?
Where the transboundary procedure is required according to provisions transposing the EIA Directive (and the Espoo Convention) or the IED, other countries are involved in an intergovernmental process. This process is to be carried out within the proceedings concerning EIA decisions or integrated permits respectively. The intergovernmental process itself does not mean granting access to justice to the foreign public, but may help to identify the public concerned in an affected country and to inform the public about the decision issued - as the authorities of the affected country are involved then. The rules for granting standing to foreign persons (individuals and NGOs) will be explained below.

The problem is however that they may not receive proper information about the decision. This problem is relevant in particular for decisions issued on the basis of provisions transposing the ELD. Although there is an obligation to inform the affected country about the environmental damage, there is no “Espoo-like” procedure which might involve the public from the affected country.

2) Notion of public concerned?

Polish law does not use the notion of public concerned in the meaning of persons entitled to express their comments and opinions during the public participation procedure (concerning EIAs or integrated permits), as this possibility is granted to every person.

The scope of the “public concerned having a sufficient interest”, i.e. persons having standing, is described below under questions 3) and 4).

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)?

Administrative review proceedings

The APC does not contain any specific provisions regarding the foreign public (i.e. individuals living abroad in affected countries or legal persons, including NGOs, based in these countries) but does not exclude them either. This means that there are no legal obstacles for them to enjoy the same rights as persons living or based in Poland, provided that they fulfil the same conditions as Polish citizens or NGOs respectively. Consequently, the same limitations will apply to them. As far as NGOs are concerned, it should be assumed that public authorities and courts will check whether they are registered in their own respective countries (i.e. whether they are not ad hoc informal groups). These NGOs should submit proof of registration (inclusion in relevant registers) in their own respective countries.

Court review proceedings

Article 300 PACLA refers to the Civil Procedure Code provisions on participation of foreign persons. According to Article 1117 § 1 and 2 of the Civil Procedure Code, the capacity of foreign persons to take part in civil proceedings (proceedings capacity) shall be assessed according to their domestic law. This means that where an NGOs has a right to participate in its own country, it will also enjoy that right before the Polish courts.

According to Article 299 PACLA, foreign persons participating in the proceedings, living or based abroad and outside the European Union, Switzerland or EFTA countries, are obliged to nominate a person in Poland entitled to pick up correspondence from the court.

Foreign NGOs fulfilling the conditions for standing are entitled to the same procedural assistance as is available to Polish NGOs (there are no legal obstacles to that). However, there is no practice in this regard (no cases of foreign NGOs applying for this kind of assistance were identified), so it is impossible to say how the situation would look in practice.

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)?

The main condition for individual persons to become a party to the proceedings and thereby to acquire the right to challenge a decision would be to have legal interest in a case, for example to be the owner of a property affected by the activity authorised by the decision. The concept of legal interest has been described under question 4.1.3). Also the same limitations of the circle of parties as described 1.4.2) and 1.8 apply to foreign individuals.

The problem with their access to justice is that in Poland there is no practice to identify the public concerned abroad and to inform them (see answer to question 5) below).

Administrative review proceedings

The APC does not contain any specific provisions regarding the foreign public (i.e. individuals living abroad in affected countries) but does not exclude them either. This means that there are no legal obstacles for them to enjoy the same rights as persons living or based in Poland, provided that they fulfil the same conditions as Polish citizens. Consequently, the same limitations will apply to them.

Court review proceedings

Article 300 PACLA refers to the Civil Procedure Code provisions on participation of foreign persons. According to Article 1117 § 1 and 2 of the Civil Procedure Code, the capacity of foreign persons to take part in civil proceedings (proceedings capacity) shall be, in principle, assessed according to their domestic law. This means that where an individual or an NGOs has a right to participate in its own country, it will also enjoy that right before the Polish courts. However, according to Article 1117 § 3 of the Civil Procedure Code, an individual who would not have the capacity to take part in proceedings in his own country but fulfils the requirements to have this capacity under Polish law, would have this capacity before the Polish courts (this rule applies to natural persons, so not to NGOs).

According to Article 299 PACLA, foreign persons participating in the proceedings, living or based abroad and outside the European Union, Switzerland or EFTA countries, are obliged to nominate a person in Poland entitled to pick up correspondence from the court.

Foreign citizens fulfilling the conditions for standing are entitled to the same procedural assistance as available for Polish citizens or NGOs respectively. Consequently, the same limitations will apply to them. As far as NGOs are concerned, it should be assumed that public authorities and courts will check whether they are registered in their own respective countries.

5) At what stage is the information provided to the public concerned (including the above parties)?

In cases when the Espoo-based transboundary procedure is carried out, the competent authorities of the affected country will receive a translated decision issued by the Polish authorities. The decision is always accompanied by information on the remedies available. Usually, the foreign authorities take the responsibility for informing their own public about the decision issued and how to make themselves acquainted with it. Where no Espoo transboundary procedure takes place, the foreign public is neither identified nor informed by Polish authorities.

6) What are the deadlines for public involvement including access to justice?

There are no special regulations on this. It should be assumed that the deadlines for filing an appeal by foreign persons having standing will be counted in the same way as those foreseen for the Polish public.

7) How is information on access to justice provided to the parties?

See answer to question 5) above.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?

All administrative and judicial proceedings are to be conducted out in Polish. The proceedings before the authority of the second instance are conducted out mainly in writing. The foreign party is then responsible for preparing its appeal, motions etc. in Polish. In proceedings before the administrative court, the foreign party may ask the court to provide the services of an interpreter (Article 5 § 2 of the Act on the common courts system in conjunction with Article 49 § 1 Act of 25 July 2002 on the administrative courts system).
9) Any other relevant rules?
There are no other relevant rules.

[1] See data available [here].
[2] There is one exception to the rule that a complaint to the administrative authority of second instance is required, namely when the decision has been issued in the first instance by a Minister or a Self-governmental Appeal Board (authorities which have no “higher instance” over them). In such cases, a party dissatisfied with the decision may request the authority to reconsider the case (Art. 127 § 3 APC). In such situations, the party may decide not to exercise the right to request for the reconsideration, but to lodge a complaint directly to the administrative court instead (Art. 52 § 3 PACLA).
[3] Although the proceedings before the administrative court are separate from the administrative proceedings (formally, it is not the next stage of the administrative proceedings).
[4] There are some exceptions to this rule indicated in Art. 175 § 2, Art. 175 § 2a and Art. 175 § 3 PACLA - the most important of them is the situation where the cassation appeal is lodged by the prosecutor or the Ombudsman.
[5] The evidence on the basis of which the relevant facts were established is proved to be false; the decision was issued as a result of an offence; the decision was issued by an employee or public administration body which is subject to exclusion; the party did not participate in the proceedings through no fault of its own; new facts or new evidence relevant to the case or new evidence existing on the date of the decision, unknown to the authority which issued the decision, come to light; the decision was issued without obtaining the legally required position of another authority; the preliminary issue has been resolved by a competent authority or a court in another way other than the assessment adopted when issuing the decision; the decision was issued on the basis of another decision or court ruling, which was subsequently revoked or amended.
[6] A decision: was issued in violation of the provisions on jurisdiction; was issued without legal basis or in gross breach of the law; concerns a case previously resolved by another final decision or a case which has been tacitly resolved; was addressed to a person who is not a party in the case; was unenforceable on the date of its delivery and its unenforceability is permanent; if executed, it would give rise to a criminal offence; it contains a defect which makes it legally invalid.
[8] Regulation of the Minister of Justice of 22 October 2015 on advocates’ fees (J.L. of 2015, item 1800 as amended) and Regulation of the Minister of Justice of 22 October 2015 on attorneys’ fees (codified text J.L. of 2018 item 265).
[9] For example, complaints against permits for emissions, EIA decisions other decisions allowing for the use of the environment are considered as cases in which no financial value is set. The financial value may be attributed to complaints against decisions imposing environmental fees or fines but in such cases only the company or other entity obliged to pay the fees or fines has standing (citizens or environmental NGOs have no standing here).
[10] The EIA Act Amendment, aimed at changing some rules on access to justice in EIA related cases, is currently being prepared. Currently (January 2021) the final version of the Amendment is not known yet.
[11] So called limited real rights i.e.: usufructs, easements (servitudes), pledges, cooperative ownership rights to premises and mortgages
[12] See also Case C-529/15, EU:C:2017:419.

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it is registered in a Court register or in a register maintained by the Starost (head of self-governmental authority in the district), as ad hoc groupings do not have standing; its participation in the proceedings is justified by the objects established in the by-laws of the organisation (in other words if the subject matter of the case is in conformity with the organization’s objectives); its participation in the proceedings is justified by the “public interest”. The public authority then assesses the motion and decides whether it considers it justified. The assessment is not limited to verification of formal requirements, but concerns also the merit justification (need) for participation by the organisation in a given case (in other words: the authority decides whether it considers it useful, from the point of view of the “public interest”, to allow the organisation to participate). A refusal may be challenged by the organisation to the authority of second instance and then - subsequently - to the administrative court. The organisation which took part in the preceding administrative proceedings on the basis of Article 31 of APC has standing also before the administrative courts. An NGO which has not taken part in the preceding administrative proceedings is not entitled to challenge the decision of the second instance authority, i.e. has no right to file a complaint to the administrative court (Article 50 § 1 PACLA). However, if the judicial-administrative proceedings, initiated by another party, concerns the scope of the NGO’s activity, participation of the organisation may be granted by the court of its own motion; the courts’ refusal may be challenged before the administrative court of second instance (Article 33 § 2 PACLA). According to case law, the court also has to verify whether the “public interest” speaks for the participation of the NGO. The rules described above may be modified by specific provisions regarding particular decisions: Article 185(1) EPLA limits the circle of parties in the proceedings regarding permits for emissions of gases into THE air (i.e. other than integrated permits) to the operator of the installation subject to the permit. Only in very exceptional cases - when a so-called “restricted use area” is to be created around the installation - are certain neighbours also regarded as parties to the proceedings. Article 401(1) WLA specifies that parties to the proceedings regarding decisions authorising the use of water (e.g. water permits) and hence entitled to challenge these decisions are: the project proponent and the persons who will be affected by the intended use of water or the entities within the range of impact of the planned water facilities. Art. 402 WLA excludes the participation of NGOs in these proceedings and their right to challenge the decisions issued. Article 41 GMLA specifies that parties to the proceedings regarding concessions for extraction of mineral resources are only the owners of properties on which the mining activity is to be carried out. Article 28(2) BLA specifies that parties to the proceedings regarding construction permits are only investors and owners, perpetual usufructuaries or managers of properties located in the area of impact of the building object. The term “impact of the building object” is defined by Article 3(20) BLA as “an area designated in the vicinity of a building object on the basis of specific regulations, introducing restrictions on development, including buildings, of that area”. Article 28(3) BLA excludes the participation of NGOs in these proceedings and their right to challenge the decisions issued. Decisions issued on the basis of the WLA, GMLA and BLA may concerns projects subject to EIA or other projects. The above limitations regarding persons having standing in such cases jeopardise the effectiveness of access to justice in these matters, as in practice in some cases only the developer (operator) who initiated the proceedings is entitled to challenge a decision. An appeal against the decision of the authority of the first instance to the authority of the second instance shall be filed within 14 days from the date when the decision of the first instance authority has been delivered to the appealing party. The decision of the second instance authority may be challenged before the administrative court within 30 days after the date when the decision has been delivered to a given party or NGO. The verdict of the regional administrative court may be challenged before the Supreme Administrative Court within 30 days after the verdict along with its written justification has been delivered to a given party.

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? Administrative review In an appeal lodged with the administrative authority of the second instance, the claimant may raise both procedural and substantive issues. The authority shall examine all the allegations but is not bound by the limits of the appeal, which means that it may find other flaws of the challenged decision than those presented by the claimant.

Judicial review In an appeal lodged with the administrative court, the claimant may raise both procedural and substantive issues. The administrative court of first instance is not bound by the limits of the appeal, which means that it may find other flaws in the challenged decision than those presented by the claimant (so in this sense the court may act on its own motion). The Supreme Administrative Court is in principle bound by the appeal save for certain serious errors in the proceedings listed in Article 183 § 2 PACLA. However, at the stage of court proceedings, the possibility to take and examine new evidence is strictly limited. The administrative court of first instance examines in principle the legality of the acts or omissions of the administrative authority which includes verifying whether the authority has correctly established or assessed the facts (merits) of the case. The verification by the court consists in examining the proceedings by the administrative authorities (of both instances), including determining whether the authorities had correctly taken into account and assessed the evidence available in the case, including the technical documents. According to Article 133 § 1 PACLA, the verification by the administrative court shall be based on the documents available in the file on the case and the court has no mandate to take evidence on its own. The only exception from this general rule is provided by Article 108 § 3 PACLA, according to which the court may examine additional documents as evidence, but only when it will not “excessively” prolong the proceedings, which means that there will be no need to adjourn the trial.

Administrative courts, unlike civil courts, have no competence to call expert witnesses. Consequently, the assessment of substantive issues raised by the parties is limited by the lack of scientific (technical etc.) knowledge of the judges. In practice, the administrative courts rely on the assessment by the administrative authorities, examining only whether the authorities took into account all evidence available, and whether they proved it in the reasoning behind the decision.

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 one exception to this rule, namely when the decision has been issued in the first instance by a Minister or a Self-governmental Appeal Board (authorities which have no “higher instance” over them). In such cases, a party dissatisfied with the decision may request the authority to reconsider the case (Art. 127 § 3 APC). In this situations, the party may decide not to exercise the right to request reconsideration, but to lodge a complaint directly to the administrative court instead (Art. 52 § 3 PACLA).

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 requirement to participate actively in the administrative proceedings.
5) Are there some grounds/arguments precluded from the judicial review phase?
There are no grounds/arguments precluded from the judicial review phase. However, at the stage of proceedings before the Supreme Administrative Court only the proceedings before the administrative court of the first instance are subject to examination, so the arguments have to be focused on this phase.

6) Fair, equitable - what meaning is given to equality of arms in the national legislation?
Although there is no separate provision transposing this requirement, the legal system in its entirety as described in this document, including provisions on legal aid, may be considered to provide for fair and equitable review proceedings.

7) How is the notion of "timely" implemented by the national legislation?
As explained under point 1.7.1) and 1.7.2), the administrative authority of the second instance should deliver its decision within a month after it receives the appeal (Article 35 § 3 APC). The appeal is however to be filed not directly to the authority of the second instance but via the authority of the first instance - which, within 7 days after receipt of the appeal, shall transfer it together with the entire documentation of the case to the authority of the second instance (Article 129 § 1 and Article 133 APC). The time limit to deliver the administrative decision is however called "instructional" for the authority which means that in practice this may take longer (according to Article 36 APC, any prolongation of the proceedings shall be reasonably justified and parties shall be informed; in case of excessive length of proceedings or administrative inaction the party may lodge a complaint to the administrative court). There no deadline set for the administrative court.

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?
Rules on injunctive relief as described under point 1.7.2. apply to all administrative decisions.

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?
Within the administrative review procedure, each party bears its own costs, which means that the winning party does not recover its costs (the second instance authority does not decide on costs).
Filing an appeal before the administrative authority of the second instance is however free of charge.
According to Article 200 PACLA, before the administrative court of first instance, if the authorities lose the case, they have to pay the claimant’s costs. This includes:
- the court fees,
- the costs of legal representation which are however limited to the cap set by specific provisions[2]. In cases in which no financial value is set (and the majority of environmental cases belong to this category[3]) this cap is PLN 480 which is about EUR 107 (normally these are not the real costs which the claimant paid).

If the authority wins, it is not entitled to claim its costs. Other participants in the court proceedings (persons referred to in Art. 33 PACLA) bear their own costs; the losing party is not obliged to cover them.
There is no express statutory reference to a requirement that costs should not be prohibitive, however if the authority wins, it is not entitled to claim its costs.
Also, the above court fees are rather modest.

Articles 203 and 204 PACLA provide for rules on the distribution of costs in proceedings before the court of second instance. This includes the court fees and also the costs of legal representation but only up to the cap which in the vast majority of environmental cases brought by citizens or by environmental NGOs is PLN 480 (about EUR 107).

Article 203 regulates the situation when the court of second instance allowed the appeal. According to this provision:
in cases where the court of first instance dismissed the complaint and the court of second instance annulled the first instance court’s judgement, the authority whose decision was subject to proceedings before the court of first instance has to pay the costs of the person who filed the appeal, in cases where the court of first instance allowed the complaint and the court of second instance annulled the first instance court’s judgement, the claimant in the proceedings before the court of first instance has to pay the costs of the person/authority who filed the appeal.

Article 204 regulates the situation where the court of second instance dismissed the appeal. According to this provision:
in cases where the court of first instance dismissed the complaint and the court of second instance sustained the first instance court’s judgement - the person who filed the appeal has to pay the costs of the authority whose decision was subject to proceedings before the court of first instance, in cases where the court of first instance allowed the complaint and the court of second instance sustained the first instance court’s judgement - the person who filed the appeal has to pay the costs of the claimant before the court of first instance.
However, if an appeal was filed by an NGO acting in the public interest, the courts in practice do not order the NGO to reimburse the costs to another party (i.e., they exempt the NGO from the payment of costs).

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?
In Poland, plans, programmes and other strategic documents, including those regarding environment, are to be adopted by:
- self-governmental authorities; there are three levels of self-governmental authorities: community (gmina), district or poviat (powiat) and region (województwo) or governmental authorities: either at the central level (by ministers or other central agencies) or at the regional level.
Specific Acts (ustawy) specify when and by whom a given document shall be adopted.
Certain of these documents have a status of ‘local law’ which means that they are sources of law recognized by the Polish Constitution; others do not have this status but still are important for the management of a given area (they influence the individual decisions, determine activities by the competent authorities, shape the development etc.).
The circle of persons entitled to challenge the plans and programmes is determined by the Acts providing the general basis for adoption of these plans and programmes (which are in this regard lex specialis in relation to the general rules provided by PACLA). These are:
- For plans and programmes to be adopted by various levels of self-governmental authorities:
The Act of 5 June 1998 on Poviat Self-Government – Art. 87(1),
For plans and programmes to be adopted by governmental authorities:


Standing of individual persons

The Act on Communal Self-Government and the Act on Poviats Self-Government stipulate that a strategic document adopted by the administration may be challenged by persons whose legal interest or right has been infringed by that document: these persons may file a claim to the administrative court (Article 101(1) of the Act on Communal Self-Government; Art. 87(1) of the Act on Poviats Self-Government).

The Act on Regional Self-Government allows people to challenge only the plans and programmes with the status of “local law” and grants the right to challenge them to persons whose legal interest or right has been infringed by the provision of the local law (Art. 90(1) of the Act on Regional Self-Government).

Also Article 63(1) of the Act on the Voivod and the Governmental Administration in the Voivodship allows for challenging the plans and programmes with the status of “local law” and grants the right to challenge these plans to persons whose legal interest or right has been infringed by the provision of the local law (thus the circle of persons entitled is exactly the same as in the above cited Acts on self-governmental authorities).

As explained above, the “legal interest” is understood in Poland as an interest protected by any provision of (administrative, civil or other) law - the classic example of such interest is ownership of property (which could be affected e.g. by a construction of a new project).

The above cited four Acts (on self-government authorities and on governmental authorities) grant access to justice to persons whose legal interest is “involved” in the case, and who can prove that their legal interest or right has been infringed (the mere threat or possibility of infringement is insufficient).

This means that the group of persons entitled to challenge a plan or programme is very narrow - narrower than in case of individual decisions, where it is sufficient to demonstrate the mere existence of a legal interest in the case and not its violation (this view was confirmed by the Supreme Administrative Court e.g. in the verdict of 22 February 2017 (II OSK 1497/15), in the verdict of 20 November 2014 r. (I OSK 1747/14) and in the decision of 8 October 2013 (II OZ 787/13).

In a number of verdicts, the administrative courts confirmed the above, narrow, understanding of standing to challenge plans or programmes and presented a narrow interpretation of the infringement of the legal interest or right.

For example, in the verdict of 17 October 2017, the Supreme Administrative Court held that the right to challenge the local spatial plan is granted to the person whose legal interest has been infringed by the contested plan, while the infringement must be direct, individual, objective and real, and the complainant must demonstrate a link between the contested resolution and its individual legal position (II OSK 2559/16).

In the verdict of 14 April 2011, the Supreme Administrative Court interpreted Article 87(1) of the Act on Poviats Self-Government and held that this Article should be interpreted narrowly and not in a broad way by deriving a breach of a legal interest from general values or principles of law (I OSK 5/11).

In the verdict of 30 March 2017, the Supreme Administrative Court, in interpreting Art. 101(1) of the Act on Communal Self-Government, held that in order to appeal against a resolution of the Commune Council, a person has to prove that their legal interest has been violated and only that they “have” a legal interest in the case (II OSK 1941/15).

Similar views have been expressed in other verdicts and decisions of the Supreme Administrative Court, e.g.: verdict of 14 November 2017 (II OSK 457/16), verdict of 20 June 2017 (II OSK 2648/15), verdict of 31 May 2017 (II OSK 2298/15), verdict of 20 April 2017 (II GSK 1912/15), verdict of 7 March 2017 (II OSK 1587/15), verdict of 10 February 2017 (II OSK 1344/15), verdict of 5 November 2014 (II OSK 977/13), verdict of 25 March 2014 (II OSK 355/14), verdict of 28 June 2007 (II OSK 1596/06).

Following the interpretations of the Supreme Administrative Court, the Regional Administrative Courts apply the same approach.

An appeal to the court is to be submitted at any time, there is no deadline (Art. 53.2a PACLA).

Standing of NGOs

As far as NGOs are concerned, it should be stressed that there is no provision in Polish law allowing them to challenge a plan or programme (unless they had their own legal interest or right infringed, which means they would act as private entities and not in the common interest).

The lack of standing for NGOs in cases concerning of strategic documents is confirmed by the jurisprudence of the Supreme Administrative Court (see verdict of 15 February 2017, II OSK 1277/15; verdict of 21 March 2017, II OSK 2865/15 and order of 23 January 2018, II OSK 3218/17).

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?

Persons having standing may raise all aspects (regarding both procedural and substantive legality). However, according to jurisprudence the court examines the case only within the limits of the claimant’s legal interest. This means that for example in the case of a local spatial plan the court - although it examines the entire procedure regarding the plan - may annul it only with regard to the property of the claimant, as the claimant’s legal interest concerns only this piece of land (verdict of the Supreme Administrative Court of 5 June 2014, II OSK 117/13; verdict of the Supreme Administrative Court of 25 November 2008, II OSK 978/08).

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

In the case of strategic documents (plans and programmes) the exhaustion of administrative review procedures prior to recourse to judicial review is not required.

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 requirement to participate actively in the public consultation phase of the administrative procedure in order to have standing.

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 administrative court of the first instance may suspend execution of the administrative decision subject to complaint - ex officio or on the motion of a party (Article 61 § 3 PACLA).

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 cases concerning plans or programmes, the court fee is fixed at PLN 300 (currently about EUR 66) for the court of first instance and PLN 150 (about EUR 33) for the court of second instance.

According to Article 200 PACLA, before the administrative court of first instance, if the authorities lose the case they have to pay the claimant’s costs. This includes the court fees and also the costs of legal representation but only up to the cap of PLN 480 (about EUR 107) - normally these are not the real costs which the claimant paid.

In case the authority wins, it is not entitled to claim its costs.

Articles 203 and 204 PACLA lay down rules on the distribution of costs in proceedings before the court of second instance. This includes the court fees and also the costs of legal representation but only up to the cap of PLN 480 (about EUR 107).
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 \[5\]

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 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?
All rules, as well as the assessment of the effectiveness of the level of access to national courts as described under point 2.2, apply here.

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?
All rules described under point 2.2 apply here.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
All rules described under point 2.2 apply here.

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.?
All rules described under point 2.2 apply here.

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?
All rules described under point 2.2 apply here.

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?
All rules described under point 2.2 apply here.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation \[6\]

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 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?
All rules described under point 2.2 apply here.

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)?
Plans or programmes adopted in the form of a Regulation (rozporządzenie) by the Council of Ministers or a Minister are not subject to access to justice as described under point 2.2. For them the rules described under point 2.5 do apply.

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?
All rules described under point 2.2 apply here.

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
All rules described under point 2.2 apply here.

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.?
All rules described under point 2.2 apply here.

6) Are there some grounds/arguments precluded from the judicial review phase?
All rules described under point 2.2 apply here.

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
Although there is no separate provision transposing this requirement, the legal system in its entirety as described in this document, including provisions on legal aid, may be considered to provide for fair and equitable review proceedings.

8) How is the notion of “timely” implemented by the national legislation?
There is no deadline set for the administrative court to deliver its judgment, so it is not implemented.

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?
All rules described under point 2.2 apply here.

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?
All rules described under point 2.2 apply here.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts \[7\]
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?

There is no direct access to the court to challenge a normative instrument. Such an instrument may be subject to a "constitutional complaint" to be lodged with the Constitutional Tribunal, but only with regard to its compliance with the Constitution. According to Article 79 para 1 of the Constitution, "everyone whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a statute or another normative act upon which basis a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations specified in the Constitution".

This means that the conditions to lodge a constitutional complaint are:

- one has to obtain a final verdict or a final administrative decision deciding on this person’s constitutional rights or freedoms, the verdict or decision has to be based on a normative act subject to complaint;
- the constitutional complaint shall concern the compliance of that normative act with the Constitution.

In Poland only the water management plans (of those relating to the environment) have to be adopted by way of a normative act: a regulation by the minister in charge of water management. These plans are: river basin management plans, flood risk management plans (as required by Chapter IV of the Directive on the assessment and management of flood risks) and drought management plans. Although these plans may influence the individual administrative decisions, it seems unlikely that a decision could be regarded as "issued on the basis" of a given plan.

Moreover, bearing in mind the nature of the water management plans, it seems rather unlikely that they could be in non-compliance with the Constitution. Therefore the constitutional complaint is not applicable to these plans.

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 review by the Constitutional Tribunal encompasses conformity with the Constitution only.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Not applicable to the constitutional complaint (see answer to question 2.5.1).

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.?

Not applicable to the constitutional complaint.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There is no injunctive relief.

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court?

What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

According to Article 54 of the Act of 30 November 2016 on the organisation and procedure of proceedings before the Constitutional Tribunal, the costs of the proceedings before the Tribunal shall be borne by the State Treasury. In the judgment accepting a constitutional complaint, the Tribunal shall award to the claimant the reimbursement of the costs of proceedings from the body which issued the normative act which is the subject of the constitutional complaint. In justified cases, the Tribunal may also award reimbursement of the costs if it has not accepted the constitutional complaint. The Tribunal may determine the amount of the costs of representation of a constitutional complaint by an advocate or legal adviser, depending on the nature of the case and the contribution of the representative in contributing to its clarification and resolution.

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?[8]

There is no such procedure.

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[2] Regulation of the Minister of Justice of 22 October 2015 on advocates’ fees (J.O. of 2015, item 1800 as amended) and Regulation of the Minister of Justice of 22 October 2015 on attorneys’ fees (codified text J.O. of 2018 item 265).

[3] For example complaints against permits for emissions, EIA decisions or other decisions allowing the use of the environment are considered as cases in which no financial value is set. The financial value may be attributed to complaints against decisions imposing environmental fees or fines, but in such cases only the company or other entity obliged to pay the fees or fines has standing (citizens or environmental NGOs have no standing here).


[5] See findings under Commission Notice C/2010/64 for an example of a plan not submitted to SEA but subject to the public participation requirements of Article 7 of the Aarhus Convention.

[6] 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-237/07, Janeczek (EU:C:2008:447) and cases such as Buxus and Solvay C-128/09 - C-131/09 and C-182/10 (EU:C:2011:667), as referred to under Commission Notice C/2017/2616 on access to justice in environmental matters.

[7] 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, EU:C:2017:774.

[8] For an example of such a preliminary reference, see Case C-281/16, Vereniging Hoekschewaards Landschap, EU:C:2017:774.
Silence of administration
In cases where the authority fails to deliver the decision in time or to inform the parties about reasons for the delay (inaction of the authority), parties to the proceedings may file a reminder (ponaglenie) to the administrative authority of the second instance. The reminder is to be lodged via the authority which failed to act (Article 37 APC). If the reminder is ineffective, the party may lodge a complaint with the administrative court (Article 3 § 2 point 8 PACLA). The reminder, and then the court complaints, may also be lodged in cases where the proceedings are too lengthy (przewlekłość postępowania), i.e. when the extension of the deadline by the authority seems to be unjustified. The authority of second instance, and then the administrative court, orders the first instance authority to fix the case (to issue a decision).

Penalties to be imposed on public administration for failing to provide effective access to justice
There is no procedure for imposing such penalties.

Penalties for cases when the administration does not comply with a judgment (quasi contempt of the court)
The possibility to apply such penalties depends on the content and the nature of the judgement. In cases where the court finds inaction by authority or excessively lengthy proceedings, it may impose on the administrative authority a fine of up to ten times the average monthly salary in the previous year. Moreover, the court may grant a sum of money from the authority to the applicant up to half the aforementioned amount (Article 154 PACLA).

In certain cases, the court in its verdict may oblige the authority to issue a decision within a specified period of time, indicating the manner of resolving the case. In this case the competent authority shall notify the court of the decision within seven days of its issuance. If the court is not notified, it may decide to impose on the authority a fine of up to ten times the average monthly salary in the previous year. Moreover, the court may grant a sum of money from the authority to the applicant up to half the aforementioned amount (Article 145a PACLA).

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Access to justice in environmental matters - Portugal
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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
Portugal is governed by a civil legal system (as opposed to common law) and the 1976 Constitution of the Republic (CRP) is the main source of law[1]. Together with international and European Union (EU) law, ordinary laws, which include laws enacted by Parliament (Laws of the Assembly of the Republic), decree-laws (DL) issued by the Government and regional legislative decrees adopted by the Legislative Assemblies of the Autonomous Regions of the Azores and Madeira, constitute the main sources of statutory law.
These sources are complemented by regulations, or legal instruments with a lower legal status than laws, whose purpose is to supplement the laws, decrees and regional legislative decrees and fill out the details in order to allow their effective implementation and enforcement. These include regulatory decrees, regulations, decrees, regional regulatory decrees, decisions, rules, ministerial orders, executive rulings and police regulations[2]. Another source of law are the acts approving international conventions, multilateral or bilateral treaties or agreements with an effect equivalent to that of laws.
There is no environmental code in Portugal. In 1987 the Environmental Framework Law was approved - Law no. 11/87 of 7 of April -, which guarantees that all citizens have the right to a human and ecologically balanced environment[3]. It was revoked in 2014 by Law no. 19/2014 of 14 April. The new Environmental Framework Law ensures the right to the environment and quality of life[4], which is supported by the provisions of the CRP[5] under Articles 9 (on fundamental tasks of the state) and 66 (on environment and quality of life). The Environmental Framework Law states that the right to the environment comprises the following rights: defend against any aggression to the constitutional and international protected sphere of every citizen; and power to demand from the public entities the fulfilment of the environmental rights and obligations to which those entities are legally and internationally bound.
According to the State Liability Regime (noncontractual civil liability of the State and of public legal persons) approved by Law no. 67/2007 of 31 December 2007, as last amended by Law no. 31/2008 of 17 July 2008[6], the State is liable for damages caused by legislative, administrative or judicial bodies with or without fault[7], which, as pointed out by Prof. Aragão, is “objective liability in case of especially dangerous activities”. Law no. 67/2007 safeguards the special regimes of civil liability for damages arising from the administrative function (Article 2), such as the legal regime on environmental liability for environmental damage[8], approved by Decree-Law no. 147/2008 of 29 July 2008 (see question 1.8.3 below).
Environmental associations have been regulated since 1987 by Law no. 10/87 of 4 April, which provides the legal framework for their intervention and support. This Law has been revoked by Law no. 35/98[9], as amended by Law no. 82-D/2014, which currently defines the legal regime of environmental non-government organisations (ENGOs).
Court judgments and academic opinions are not a formal source of law but are used as a source of interpretation and for that purpose only. Case-law, i.e. the set of principles emerging from judgments and decisions handed down by the courts, has significance in revealing the meaning of legal provisions by providing solutions to problems of interpretation that may be followed in other instances according to the logical and technical arguments on which they are based.

2) Constitution – main (content of + including references) provisions on environment and access to justice in the national constitution (if applicable) including procedural rights
The core tasks of the State defined in Article 9 of the CRP[10] include: giving effect to the environment rights (indent d), defending nature and the environment, and safeguarding natural resources and ensuring proper land-use planning (indent e)].
The environment and quality of life are enshrined as both a civic right and a civic duty[11] in Article 66 under the chapter on economic, social and cultural rights and duties[12]. Article 52 of the CRP ensures the constitutional right to popular action (actio popularis)[13]; the right of people to take action in the cases and under the terms laid down in the law, including the right to apply for corresponding compensation due to injured party, is conferred on everyone, personally or through associations acting in protection of the interests concerned, in particular: (a) to promote the prevention, cessation or prosecution of infringements of public health, consumer rights, quality of life and the preservation of the environment and cultural heritage; (b) to ensure the protection of the assets of the State, autonomous regions and local authorities.

3) Acts, Codes, Decrees, etc. - main provisions on environment and access to justice, national codes, acts

Portugal provides a robust legal framework that grants legal standing to individuals and ENGOs if they wish to pursue court action against infringements by public authorities[14]. However, such framework “is not so robust regarding timelines or costs”, as pointed out by Prof. Aragão.

List of relevant legislation providing legal standing to individuals

Law no. 83/95 of 31 August 1995 approving the Popular Action Law (APL), as last amended by Decree-Law no. 214-G/2015 of 2 October[15], is the only Law that supports a robust legal framework that grants legal standing to individuals. It is anchored in Article 52 of the CRP[16] on public participation and actio popularis – APL states in Article 2 that any citizen and civil organisations that defend environmental interests (i.e. organisations that have in their statutes the defence of environmental interests according to Article 3, b)) have procedural rights of popular action, regardless of having or not having direct interest in the claim[17]. According to Article 12, popular action can take the form of an administrative action, in which case the rules of the Code of Procedure on the Administrative Courts (see next paragraphs of this question below) apply, or the form of a civil action, in which case the rules of the Code of Civil Procedure (Código de Processo Civil – CPC)[18] apply. According to Article 20, the right of popular action does not imply paying procedural costs in advance, and if the action is partially upheld the plaintiff is exempted from payment of full procedural costs. If the action is not fully upheld, the plaintiff shall pay only up to half of the procedural costs[19]. Procedural costs are costs that must be paid in order to bring any kind of process to the court, covering the judicial fee, the charges and the parties’ costs (see question 1.7.3, 1 below).

Law no. 19/2014 of 14 April[20] approving the Environmental Framework Law ensures in Article 7 environmental procedural rights, granting the right to full and effective review of the legally protected environmental rights and interests, which include in particular: the right to action in defence of subjective rights and legally protected interests and the right to popular action (Actio popularis); the right to promote the prevention, cessation and reparation of violations of environmental assets and values in the fastest possible way; and the right to request immediate cessation of activities causing threat or damage to the environment, to return to the situation prior to such threat or damage and to the payment of compensation. For instance, the following legal acts provide legally protected environmental rights and interests:

Law no. 50/2006 of 29 August 2006, as last amended by Law no. 25/2019 of 26 March 2019, approves the Environmental Administrative Offence Law[21] (Law 50/2006). Although not a distinctive feature of environmental offences, it is important to highlight, regarding access to justice, the rule of the time limit of prescription (meaning the statute of limitations) of environmental offences: after a certain time lapse, the right to punish is extinct, which is the general rule for every administrative offence (Article 40 of Law 50/2006 combined with Article 27 of the General Regime of Administrative Offences[22]). In fact, according to Professor Alexandra Aragão “the existence of a time limit for sanctioning shows that the system is not so “robust””. In Law 50/2006, the statute of limitations is 5 years for very serious and serious environmental offences and 3 years for light environmental offences. The criteria of classification of administrative offences in light, serious and very serious offences determine the applicable fine and take into account the relevance of the rights and interests infringed (Article 21). For each type of offence, the fines are graduated taking into account whether the offender is a legal or natural person and according to the degree of guilt. For instance: failure to comply with lawful written orders of the administrative authority is a light offence; building landfills in violation of city land-use planning is a serious offence; installation of waste facilities in violation of city land-use planning is a very serious offence.

Penal Code (Código Penal – CP)[23] provides for criminal responsibility of legal persons with regard to the environmental crimes of forest fire (Article 274), damage to nature (Article 278), pollution (Article 279), activities dangerous to environment (Article 279-A), pollution with common danger (Article 280) and aggravation by result (Article 285), Articles 278, 279, 279-A and 280 of CP (designated as eco-crimes) set as unlawful certain conducts when committed in violation of legal or regulatory provisions or of obligations imposed by the competent authority in compliance with those provisions.[24]

The Code of Procedure on the Administrative Courts (Código de Processo nos Tribunais Administrativos – CPTA), approved by Decree-Law no. 214-G/2015[25] of 2 October, as last amended by Law no. 118/2019 of 17 September 2019, provides in Article 9 par. 2[26] standing to any person and to civil organisations that defend environmental interests, the local authorities and the Public Prosecutor (which is the constitutional body responsible for bringing criminal prosecutions and representing the State, among other responsibilities set out in Article 219 par. 1 of the CRP)[27], regardless of having or not having personal interest in the claim. These persons and bodies have legal standing to propose and to intervene in the main process and in provisional procedures that are aimed at defending the constitutionally protected values and assets as well as to promote the execution of the court decisions. The environment is included in the list of such assets, as are public health, urban law, territorial planning, quality of life, cultural heritage and public assets. It is worth highlighting that these interests can be invoked in support of environmental claims when health risks are at stake or when environmental damage is caused by breaches to laws on urban development.

The exercise of the right of citizens to be informed by the Public Administration on the progress of processes where they have direct interest and to know the final decisions of such processes[28] is governed by the Administrative Procedures Code (Código de Procedimento Administrativo – CPA), approved by Decree-Law no. 4/2015 of 7 January[29]. CPA establishes the legal regime of access to administrative complaints procedures. Article 65 states that natural and private legal persons have legal standing in the administrative proceedings for the protection of diffuse interests (which include the environment). Article 68 states that citizens, civil organisations that defend environmental rights and local authorities have legal standing for protection of diffuse interests regarding acts or omissions of the Public Administration that cause relevant damage in fundamental assets such as the environment and other interests including: public health, housing, education, urban law, territorial planning, quality of life, cultural heritage, public assets and consumption of goods and services[30].

Law no. 35/98 of 18 July 1998, as amended by Law no. 82-D/2014 of 31 December 2014[31], defines the statute of environmental non-government organisations (ENGOs) (Estatuto das organizações não governamentais de ambiente), providing rules regarding legal standing of ENGOs. Under this Law, ENGOs have the right to access administrative information related to the environment (Article 5 of Law 35/98). Order no. 478/99 of 29 June[32] approves the Regulation of National ENGO Registration (Regulamento do Registo Nacional das Organizações não Governamentais de Ambiente (ONGA) e Equiparadas).


4) Examples of national case-law, role of the Supreme Court in environmental cases
The Supreme Administrative Court (Supremo Tribunal Administrativo – STA – see question 1.2, 1) below) judges appeals of judgments from the central administrative courts, conflicts of jurisdiction between administrative tribunals and appeals to standardise case-law. There is direct access to the STA in administrative matters relating to actions or omissions of the President, the Assembly of the Republic and its President, the Council of Ministers and the Prime Minister, among others. There is also direct access to the STA in cases of requests for adoption of interim measures relating to processes within its competence, requests regarding implementation of its decisions, as well as applications for early production of evidence, formulated in pending proceedings [33].

Regardless of the broad standing and special conditions of access to justice, the number of environmental proceedings is relatively limited[34]. The following tables include examples of case-law from the STA and from the Supreme Court of Justice (Supremo Tribunal de Justiça - STJ/[35]) on environmental issues, namely ten case-law judgments from STA and eight case-law judgments from STJ.

### Case-law from STA

<table>
<thead>
<tr>
<th>Reference number and date</th>
<th>Environmental/procedural issues addressed</th>
</tr>
</thead>
<tbody>
<tr>
<td>STA 01362/12[36] 28 January 2016</td>
<td>Litigious appeal, environmental protection, articles 2, 3, 7 and 10 of APL, article 66 of the CRP, actio popularis (popular action), legal standing of ENGOs, expert proof</td>
</tr>
<tr>
<td>STA 0848/08[37] 7 January 2009</td>
<td>Summons to provide information, environmental protection, community law</td>
</tr>
<tr>
<td>STA no. 01456/03[38] 5 April 2005</td>
<td>Wind farm, environmental protection law, environmental impact assessment, environmental impact declaration, protected area</td>
</tr>
<tr>
<td>STA no. 045296[39] 17 June 2004</td>
<td>Environmental law, National Ecological Reserve, environmental impact assessment</td>
</tr>
<tr>
<td>STA 030275[40] 18 April 2002</td>
<td>Environmental law, legal presumption, waste management and treatment</td>
</tr>
<tr>
<td>STA 047807[41] 1 August 2001</td>
<td>Requirements for suspension of the effects of administrative acts, damage difficult to repair, serious damage of public interest, environmental law, burden of proof, incineration and co-incineration of hazardous waste</td>
</tr>
<tr>
<td>STA 46273A[42] 6 July 2000</td>
<td>Serious damage of public interest, environmental law, environmental protection</td>
</tr>
<tr>
<td>STA 000347[43] 6 April 2000</td>
<td>Environmental protection, actio popularis (popular action), jurisdiction of administrative courts</td>
</tr>
<tr>
<td>STA 044553[44] 16 June 1999</td>
<td>Legal standing, diffuse interests and environmental law</td>
</tr>
</tbody>
</table>

### Case-law from STJ

<table>
<thead>
<tr>
<th>Reference number and date</th>
<th>Environmental/procedural issues addressed</th>
</tr>
</thead>
<tbody>
<tr>
<td>STJ 1853/11.2TBVFR.P2.S[47] 5 April 2018</td>
<td>Emission of fumes, car paint shop, significant harm, right to environment and quality of life</td>
</tr>
<tr>
<td>STJ 1491/06.1TBLSB.P2.S[48] 3 December 2015</td>
<td>Environment, personality rights, highway, right to quality of life, compensation, judicial presumption</td>
</tr>
<tr>
<td>STJ 990/10.5T20BR.C3-A-S1[49] 9 July 2015</td>
<td>Opposition of judgments, administrative offence, environment, fine</td>
</tr>
<tr>
<td>STJ 11109.7TBMRA.E1.S[50] 8 September 2011</td>
<td>Extra contractual liability, personality rights, environment, property right, administrative act, material jurisdiction</td>
</tr>
<tr>
<td>STJ 07A134[51] 29 May 2007</td>
<td>Extra contractual liability, right to quality of life, local authority, environment, natural reconstitution, obligation to compensate, causal link, prescription</td>
</tr>
<tr>
<td>STJ 05B368[52] 26 January 2006</td>
<td>Landfill, administrative act, environment, pollution, generic risk, community directive</td>
</tr>
<tr>
<td>STJ 98B109[53] 14 April 1999</td>
<td>Environment, diffuse interests, actio popularis (popular action), provisional procedures</td>
</tr>
</tbody>
</table>

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?

The CRP establishes in its Article 8 that the rules and principles of general or common international law shall form an integral part of Portuguese law. In addition, the following also apply in national law: international conventions that have been duly ratified or approved, following their publication in the official journal[54], so long as they remain internationally binding with respect to the Portuguese State; rules made by the competent organs of international organisations to which Portugal belongs to the extent that their respective constitutive treaties provide; the provisions of the treaties that govern the EU and the rules issued by its institutions in the exercise of their respective responsibilities in accordance with EU law and with respect for the fundamental principles of a democratic State based on the rule of law. In conclusion, the parties to the administrative procedure can directly rely on international environmental agreements.

### 1.2. Jurisdiction of the courts

1) **Number of levels in the court system**

The following categories of court exist in the Portuguese judicial system: the judicial courts include the first instance judicial courts (as a rule, the district courts), the "second instance judicial courts (as a rule, the courts of appeal) and the STJ; the Constitutional Court (Tribunal Constitucional - TC) "assesses the constitutionality or legality of law and rules, as well as the constitutionality of a failure to legislate" and decides on the constitutionality of decisions from the judicial courts when there is a constitutional appeal of such decisions[55] (see this question 1.2, 1) below).
In accordance with the **Statute of Administrative and Fiscal Courts** (Estatuto dos Tribunais Administrativos e Fiscais - ETAF)[66] the administrative courts are the sovereign judicial bodies competent to deal with conflicts emerging from administrative legal relations (Article 212 of the CRP and Articles 1(1), 11(1) and (2) and 12(2) of ETAF)[67] and are organised in Circle Courts (Tribunais de Círculo) and Central Courts, from which appeals are possible to the Supreme Administrative Court (STA), which is the superior body of the hierarchy of the administrative and fiscal courts without prejudice to the competence of the TC.

There are two second instance Administrative Courts: one for the North and another for the South. There are also administrative and tax courts (three levels)[58], the Court of Auditors and the justices of the peace.

The judicial Courts are divided into civil, criminal and social chambers and are organised in three instances:

(i) Courts of first instance (Tribunais de Comarca), which can judge civil cases concerning amounts up to EUR 5,000 (no limitation is established for criminal matters);
(ii) Courts of second instance (Tribunais da Relação - Courts of Appeal), which can judge civil cases concerning amounts up to EUR 30,000 (no limitation is established for criminal matters); and
(iii) The STJ (Supreme Court of Justice / Supremo Tribunal de Justiça -STJ). The STJ has civil, criminal and social divisions. The STJ, except in the case of legally enshrined exceptions, only deals with matters of law. This means that the facts of the case are definitely decided by the lower courts and there is no possibility of appeal except in very limited cases, as pointed out by Prof. Aragão.

The rules on material and territorial jurisdiction are established by the Law of Organisation and Functioning of Judicial Courts (LOFTJ)[59]. In brief, the courts have territorial competence and there are specialised courts; some appeals depend on the economic value of the case, which is a common feature of the judicial system and not distinctive in relation to access to justice in environmental matters[60].

The decisions from the first instance courts may be brought to the second instance courts, which are the Courts of Appeal with jurisdiction in the Portuguese territory, and secondly to the Supreme Courts of Justice. The system of the Courts of Appeal includes the following:

The Civil Courts of Appeal (Tribunais da Relação), which have territorial jurisdiction under five judicial districts (Article 19 of LOFTJ): Lisboa Court of Appeal, Porto Court of Appeal, Coimbra Court of Appeal, Évora Court of Appeal and Guimarães Court of Appeal. An appeal shall be brought before the Court of Appeal of the district where the first instance courts belong.

The two Administrative Courts South and North (Tribunais Centrais Administrativos Sul e Norte - Lisboa and Porto)[61];

The two Administrative and Tax Sections of the Supreme Administrative Court (STF and STA)[62]; and

The last instance of appeal Constitutional Court (TC), which decides on questions regarding constitutionality of law which have been raised before the common courts.

There are three levels in the administrative jurisdiction: sixteen first instance (circle) administrative courts; two central administrative courts; one STA. Their competences are set out in ETAF. The first instance administrative courts have general competence for all the processes within the administrative jurisdiction. The central administrative courts judge appeals from decisions of first instance administrative courts and appeals of decisions rendered by arbitral tribunal on administrative matters. The STA judges appeals of judgments from the central administrative courts, conflicts of jurisdiction between administrative tribunals and appeals to standardise jurisprudence. See information on direct access to the STA in question 1.1, 1 above. For more information on how the courts work and their competences, see the data available in the e-Justice Portal for Portugal.

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)?**

Rules of jurisdiction are provided in Articles 59, 62, 63 and 94 of the CPC. Portuguese courts have international jurisdiction in two cases:

(1) When the following elements of connection occur:

(i) when the action may be brought in a Portuguese court under the rules of jurisdiction laid down in Portuguese law;
(ii) when the fact that serves as cause of action, or some of the facts belonging to it, derive from Portuguese territory;
(iii) when the claimed right cannot become effective except through action filed in Portuguese territory or when the claimant has considerable difficulty in filing the action abroad, subject to the existence of a personal or real connecting factor between the object of the dispute and the Portuguese legal system.
(iv) in the area of real property and rental property located in Portuguese territory; however, in relation to property lease agreements concluded for temporary private use for a maximum period of six consecutive months, courts of the EU Member State in which the defendant is domiciled are equally competent, provided that the tenant is a natural person and the owner and the tenant are domiciled in the same Member State;
(v) as regards the validity of the constitution or the dissolution of companies or other legal persons having their headquarters in Portugal, as well as concerning the validity of decisions of their organs; to determine that seat, the Portuguese court shall apply its rules of private international law;
(vi) as regards the validity of entries in public records held in Portugal;
(vii) in respect of executions on real estate located in Portuguese territory;
(viii) insolvency or revitalisation of persons resident in Portugal or legal persons or companies whose headquarters are located in Portuguese territory.

(2) Or when the parties have agreed that Portuguese courts have jurisdiction to resolve a particular dispute or disputes which may arise from a particular legal relationship in accordance with the rules of Article 94 of the CPC[63].

In short, under the above conditions, and sometimes with certain restrictions, the grounds for accepting jurisdiction can be:

domicile;
place of business, residence or office;
assets located within jurisdiction;
an act complained of within jurisdiction;
contract governed by local law;
conventions;
clause attributing jurisdiction;
others: place of proceedings of bankruptcy of a company, incorporation of associations, public registries, immovable goods, civil liability, procedural incidents, subsidiary international competence of Portuguese courts; counterclaim and third-party proceedings.

Conflicts of jurisdiction are governed by Articles 109 to 114 of the CPC. There is a conflict of jurisdiction when two or more authorities belonging to different activities of the State, or two or more courts integrated in different jurisdictional orders, claim (positive conflict) or decline (negative conflict) the right to decide on the same matter. This only happens when the decisions of such courts on jurisdiction are not subject to appeal.
The appeal courts hear conflicts of jurisdiction between courts of first instance, complaints against orders handed down in the first instance, and the review of foreign court judgments in civil and commercial matters. The STJ (see question 1.2.1 above) hears cases involving conflicts of jurisdiction between courts of appeal and extraordinary appeals for the unification of case-law[64]. The matrix of the regime of the dispute resolution process regulated by Articles 109 to 114 of the CPC includes two access routes to the Court of Conflicts: the appeal of the decisions of the Courts of Appeal of both the judicial and administrative jurisdictions in cases of pre-conflict, and the request for resolution in the event of an effective conflict. Additionally, there is a new Law 91/2019 of 4 September regulating jurisdiction conflicts between judicial courts and administrative and tax courts, and regulating the competence, functioning and process of the Court of Conflicts. This new Law creates a third access route (Articles 15 to 17), allowing any court to address consultations to the Court of Conflicts on matters of jurisdiction which are intended to avoid as much as possible the proceedings concerning discussions on the competent jurisdiction. These consultations are subject to an immediate binding pronunciation by the Court of Conflicts.

For detailed information on jurisdiction of civil courts, including details on territorial jurisdiction, see Jurisdiction - Portugal.

3) Specialties as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges

In Portugal, there are no specialities regarding court rules in the environmental sector. There are no environmental expert judges, but some judges of the administrative courts have some experience in environmental issues. Judges are given the opportunity by the State to build capacity on environmental issues [65]. Although there are no specialised courts, there are special rules regarding the protection of so-called “diffuse interests” (which comprise the environment as well as public health, urban law, territorial planning, quality of life, cultural heritage and public assets). As pointed out by Prof. Aragão, “the main differences are: broader standing rules, lower court fees, possibility of evidence collection ordered by the judge, possibility to suspend the execution of the administrative act, stronger powers of the Public Prosecutors”.

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.

In an actio popularis judgment, the powers of the judge are quite far reaching, namely in collecting evidence and in suspending the effects of the refuted act. Firstly, the judge is not bound by the evidence presented by the parties but can collect further evidence on their own initiative (Article 17 of APL). Secondly, even when the law does not grant suspensive effects to the appeal, the judge himself can do so, suspending the act or the decision under judgment (Article 18 of APL).

Also anchored in APL are the discretionary powers of the judge to arbitrate the amount of court fees to be paid by the authors of a popular action in the event that they lose the case, between 1/10 and 1/50 of the normal legal costs to be paid in similar cases (Article 20 par. 3 of APL).

In administrative appeals and application for judicial review, the judges have large discretion since there are no clear criteria defined in the legislation or case-law. The judge has to balance the public and private conflicting interests. There is a general requirement in the general system for administrative and judicial procedure that court procedures should be timely. There is no specific environmental requirement that the administrative/judicial procedures should be effective. As stated in question 1.7.1.4 below, there is a general requirement in Article 20 of the CRP regarding “access to law and effective judicial protection”[66]. There are no specific safeguards to ensure that frivolous applications are not considered[67].

Within the powers of the administrative courts set out in Article 3 of the CPTA, in order to ensure the effectiveness of the judicial protection (see question 1.7.1.3), the administrative court may, on its own motion (ex officio), set a time limit for the Public Administration to comply with the obligations established by the court, including, when necessary, imposing periodic penalty payments upon the Administration (Article 3 par. 2 of the CPTA).

1.3. Organisation of justice at administrative and judicial level

1) System of the administrative procedure (ministries and/or specific state authorities)

The Public Administration acts in the public interest with respect to citizens’ legally protected rights and interests pursuant to Article 266 of the CRP. The Public Administration is decentralised (Article 6 of the CRP) and the highest hierarchical body is the Government (Article 182 of the CRP). The Direct Administration includes the Ministers with competence in the different fields of the administration (Articles 2 and 4 of Law no. 4/2004 of 15 January establishing the principles and rules of the Direct Administration of the State[68]). The indirect administration includes the services and public institutes (Articles 1 and 2 of Law no. 3/2004 of 15 January establishing the legal framework of public institutes[69]), which are under the supervision of the Government through the relevant Ministry.

The Portuguese administration has the following structure: direct, indirect and autonomous administration. Direct administration bodies act as subordinate arms of central government. Depending on the geographical scope of intervention of direct administration bodies, these can either be considered central or peripheral (e.g. while a Directorate General is a central direct administration body – a subordinate government body within Portuguese borders – a Regional Directorate is a peripheral direct administration body – a subordinate central government body with geographical limitations to its intervention). Indirect administration bodies are identified by the fact that they have autonomous legal personality in relation to the Portuguese state, such as the Institute for Nature Conservation and Forests (Instituto da Conservação da Natureza e das Florestas - ICNF). In brief, they enjoy a moderate degree of independence: the government has oversight and tutelage over an indirect administration body, but not complete directorship. Autonomous administration is composed of municipalities and autonomous regions (Azores and Madeira archipelagos). In conclusion, Portugal has five administrative tiers[70].

The Ministry for Environment and Energy Transition (Ministério do Ambiente e Transição Energética – MATE) is presently the government body in charge of carrying out and enforcing environmental policies towards sustainable development in accordance with Article 26 par. 1 of Decree-Law no. 251-A/2015 of 17 December, which approves the organisation and functioning of the XXI Constitutional Government of Portugal[71]. It comprises the services, bodies and entities identified under its organic law, which has not yet been approved. MATE performs its tasks, namely through services integrated in the direct and indirect administration of the State supervising several departments, cabinets and institutes, including the Portuguese Environment Agency (Agência Portuguesa do Ambiente – APA), which is one of the main environment regulatory authorities, besides the Water and Waste Regulatory Authority (Entidade Reguladora dos Serviços de Águas e Resíduos – ERSAR), the General Inspection of Environment, Spatial Planning, Agriculture and Sea (Inspeção-Geral da Agricultura, do Mar, do Ambiente e do Ordenamento do Território – IGAMAOT), the ICNF and the Regional Spatial Planning Commissions (Comissões de Coordenação e Desenvolvimento Regional – CCDDR)[72].

For more detailed information, see “System for decision making” of Prof. Aragão[73].

2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?

The administrative courts have jurisdiction in disputes relating to prevention, cessation and reparation of violations to constitutionally protected assets in matters related to the environment when committed by public entities (or private entities acting for the public interest and on behalf of the state, namely companies providing essential services), except if concerning criminal offences. For such offences, only the judicial courts have jurisdiction (Article 4 par. 1 and 3 of EATAF). The administrative courts also have jurisdiction to protect rights granted by ordinary laws and legitimate interests of citizens.

The time period to challenge an administrative act is one year for the Public Prosecutor and three months for every other party, starting from the notification, publication or knowledge about the act or its implementation.
The administrative appeal must be submitted to the administrative court that is geographically competent (Articles 16 to 22 of the CPC). In practice, the final ruling of the court can be expected within several months, since there are no mandatory deadlines set in the law for the total length of the court procedures. However, the judge is required to make sure that the court proceedings progress quickly and without unnecessary delays, and has the power to dismiss any request or act of the party that is considered purely dilatory (Article 7-A of the CPC).

The administrative and tax courts are in charge of settling disputes arising out of administrative and tax relations (see question 1.2, 1) above). They include the STA, the central administrative courts, the Circle administrative courts and the tax courts. If there is an appeal, the final decision is taken by the STA, or the TC (see question 1.2, 1) above) in the event of an appeal of the decision of the STA to the TC.

Rules on claim preclusion (res judicata) state that the time limits that must be complied with by the Administration to execute a judicial decision from administrative courts begin to count when the decision cannot be appealed to a higher court (Article 160 of the CPTA); a judicial decision is considered to be res judicata when it is not susceptible of ordinary appeal or reclamation (Article 628 of the CPC).

3) Existence of special environmental courts, main role, competence

There are no special environmental courts in Portugal. All judicial courts may decide on environmental matters. For extensive information on the jurisdiction of specialised courts in Portugal, as opposed to general competence courts (i.e. the judicial courts), see Jurisdiction - Portugal.

4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)

When the body taking the decision is not at the top of the administrative hierarchy, administrative appeal is always admitted, but if, considering the nature of the act, it is possible to go to court, the administrative appeal is merely voluntary. The administrative appeal does not suspend the efficacy, i.e. does not prevent the application of the contested decision. The decisions of the bodies directly dependent on the central government can be challenged through administrative appeal to the Ministry for Environment and Energy Transition (Ministro do Ambiente e Transição Energética). That is the case of decisions taken by APA and by the various General Directorate of the different sectors of the Ministry. There are independent institutions of appeal: the Commission for Access to Administrative Documents (CADA) and the Ombudsman. Each has the power to issue opinions which are not legally binding but have an important de facto power, since they are usually followed.

As summarised by Prof. Aragão, “all courts can hear environmental cases: the constitutional court, because the subjective right to a healthy and balanced environment is a fundamental right laid down in the constitution; criminal courts, because the criminal code has recently been changed to transpose the directives on environmental crimes and it is quite frequent to have very severe violations of environmental norms which amount to environmental crimes; general courts, because civil claims for damages are to be raised before general courts; the administrative courts, either because the environmental harm is caused by a direct action or omission of the State, or because, at the end of the day, most violations of environmental rights have an administrative norm or a licensing act behind them.”

Prof. Aragão also clarifies that “very often Court decisions are not substantive judgments on the merits of the case but rather formal decisions on the non-admissibility of the trial based on merely formal arguments” which are due to “the obsession with formal requirements” contributing along with other barriers to “low litigation rates in Portugal.”

Broadly, both individuals and ENGOs can contest, for instance, an administrative decision which might have an impact on the environment in an administrative court by invoking popular action and relying on legal aid to afford the lawyer, if needed. However, in practice some obstacles might arise later in the process, such as the Portuguese judges focusing too much on formalities and, as such, dismissing cases on procedural grounds rather than having their underlying arguments assessed, particularly in cases where environmental issues are at stake. The cause of these ruling trends “may lie in judges being unfamiliar with environmental issues.” In Portugal “the courts are said to limit their review to formal requirements, despite clear requirements in the law for a fuller scope of trial.”

The administrative complaint does not suspend the time limit for challenging the act in the administrative courts, except if such appeals are mandatory. The optional administrative complaint and administrative appeal against administrative acts suspend the time limit for bringing actions to the administrative courts. However, such suspension does not prevent the interested party from bringing actions to the administrative courts when the administrative appeal is already in course (Article 190 of the CPA).

The difference between administrative complaint and administrative appeal is that the former is brought before the administrative body instance and the latter before the administrative court.

Please see information on levels of the administrative court system (i.e. when administrative procedures are underway) above in point 1) of question 1.2. Decisions of the first instance judicial courts can be appealed to the second instance judicial courts (the courts of appeal), to the STJ or to the TC (see question 1.2, 1) above) if there is an issue regarding constitutionality of decisions of the judicial courts.


There are no special rules that apply to appeals in the environmental area.

In both civil and administrative actions, there is a possibility of extraordinary appeal to the STJ or to the STA when there is a contradiction between two different court decisions (Article 627 of the CPC and Article 152 of the CPTA).

In addition, there is the extraordinary revision appeal (Article 627 par. 2 and Article 696 of the CPC), which is an appeal where there is revision of a court decision that has already passed the deadline for ordinary appeal. There are eight conditions for a final decision to be revised. For example: when the decision under revision is based on false documents or false judicial acts, false deposition or false expert declarations; for presenting new documentary evidence that the party did not know about before or could not use before, assuming such new documentary evidence can by itself change the final decision in a more favourable way for the losing party; when it can give rise to the civil liability of the State for damages based on the exercise of the judicial function (Article 696 sub pars b, c) and h) of the CPC). Ipsi verbi for the criminal actions as established under Article 449 of the Code of Criminal Procedure - Código de Processo Penal – CPP.[83]

With regard to the interpretation or validity of EU law, the Public Prosecutor or the defendant can request a preliminary ruling before the court where a certain case is at trial aiming at interpreting EU law by the Court of Justice of the European Union (CJEU).[84] However, this is not an appeal to be brought before the national court, merely a request that the parties may ask the court.[85]

The request for a preliminary ruling before the CJEU is voluntary for first instance courts where an interpretation question is at stake. It is mandatory for:

i) courts whose decisions cannot be appealed against if one of the parties requests it (including the defendant in a criminal procedure);
ii) where a question of invalidity of a European act is at stake;
iii) where questions on validity and interpretation of framework decisions are at stake and of decisions on interpretation of conventions established under areas of police and judicial cooperation in criminal matters and on validity and interpretation of its implementing measures.[87]

The Judicial Training Centre (Centro de Estudos Judiciários) makes available a practical guide on preliminary rulings with extensive information on national practices concerning this mechanism.[88] The request for preliminary ruling is mandatory for the high courts, namely the STJ and the STA (see question 1.2, 1) above) when the interpretation of EU law is required to decide a question brought before the national courts. There is not a pre-defined way to...
formulate the question referred for a preliminary ruling. The structure of the question should be identical to a procedural issue. In order to comply with the timing of referral and the staying of national proceedings, whether the preliminary ruling is optional or mandatory, the judge should send the question to the CJEU in the phase of the national process when the facts are already set down, that is when the court already knows which facts will be the basis for the judicial decision. The procedure to send the request for preliminary ruling is that the judge should stay the proceedings and issue an order of preliminary ruling. This order should contain a summary of the case and the questions that the CJEU is requested to analyse.

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?

There are no special rules for the environmental area. The alternative means of solving conflicts, outside courts, are mediation, arbitration and actio popularis. There is a government online platform (Portal do Cidadão – Citizen Portal) for filing environmental claims. There are no special rules for the environmental area. The alternative means of solving conflicts in the environmental area are mediation and arbitration.

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Private mediation can be used in any field, including the environment. The use of mediation is admissible in various areas, but there are no specific measures adopted in Portugal to promote the use of mediation in environmental issues.

Arbitration is only for rights of a patrimonial nature.

7) How can other actors help (ombudsman (if applicable), public prosecutor), accessible link to the sites?

In Portugal there have been dedicated environmental units in the Public Prosecution services since 8 January 2020 when the ‘Central Department of State Electricity, Collective and Dispute Interests’ was created in the General Prosecutor of the Republic (Departamento Central de Contencioso do Estado e Interesses Coletivos e Difusos) of the Procuradoria-Geral da Republica - PGR, which is a coordinating body that represents the State before the Courts, is competent for civil, administrative and fiscal matters, is governed by the EMP (see question 1.1, 3) above and replaces the former Cabinet for Diffuse Interests (Gabinete de Interesses Difusos).

Also, measures have been in place since 2015 to ensure that there is adequate capacity in the prosecution services to address environmental issues in the form of several protocols that have been established between the prosecution services and environmental authorities.

The Portuguese Ombudsman has competences for the protection of fundamental rights, such as the right to a safe and balanced environment (Law no. 9/91 of 9 of April 1991, as last amended by Law no. 17/2013 of 18 February 2013). Its Statute is available in English (CRP and law of the ombudsman) as well as its website. The Website of the Public Prosecutor is also available in English.

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)?

Portugal allows both individuals and environmental associations to bring legal actions on environmental matters, namely under Article 7 of the Law on Access to Justice (Law no. 34/2004 of 29 July, as amended by Law no. 47/2007 of 28 August). Law no. 34/2004 covers information related to both the right to access to justice and potential protection from prohibitive costs (be it as an individual or association). ENGOs have legal standing to promote the use of mediation in environmental issues.

The law grants legal standing to NGOs for intervening in judicial and administrative procedures, regardless of any direct interest in the case. There are no additional legal requirements for recognising legal standing of NGOs, such as time of constitution, effective activity or number of associates. NGOs may intervene in administrative proceedings (Article 68 par. 2 of the CPA) and in judicial proceedings (Article 31 of the CPC) provided that they have an environmental scope in their statutory regulations.

Legal standing is granted on the grounds of their qualification as an environmental NGO; they do not need to claim ‘sufficient interest’ or any ‘rights capable of being impaired’. In addition, NGOs also have the right of actio popularis, which is a constitutional right regulated by the Popular Action Law (Law no. 63/95), as stated above. The courts consistently interpret the concept of interest in a broad manner, and environmental NGOs have legal standing irrespective of whether or not they have an interest in the case. Although any citizen or civil organisations that defend environmental interests can challenge environmental decisions through actio popularis, where citizens or NGOs have had some interest in a case, the courts have refused to accept the case as an actio popularis case, which means, for instance, that the applicant must pay the court fees in full, as stressed by Prof. Aragão (further information on court fees can be found in question 1.2, 4) above.

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/EED, etc.)?

No. There are no different or special rules applicable in sectoral legislation, since the general rules stated above apply to all sectoral legislation.

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.)

The claimant has legal standing when they have a direct interest in the claim, meaning the utility derived from winning the action (Article 30 of the CPC). Insofar as concerns the protection of diffuse interests, namely the environment, any citizen has legal standing to promote and intervene in injunction proceedings, as well as associations and foundations that defend such interests (namely ENGOs, local authorities and the Public Prosecutor (Article 31 of the CPC).

As such, any person who claims to be a party in the material relationship at stake has standing to sue (Article 9 par. 1 of the CPTA), but also anyone who claims to hold a direct and personal interest, in particular those who have been harmed in their rights or legally protected interests by the challenged act (omission) has standing, as well as any public or private person in respect of their statutory rights and interests (Articles 55 and 68 of the CPTA).

Environmental harm can be caused by (illegal) activities/omissions. In administrative courts, as well as in civil courts, actio popularis extends the standing to any person, association or foundation for protection of the interests at stake, and local authorities and Prosecutors are also entitled to start lawsuits, regardless of personal interest in the demand. In criminal process, the author of an actio popularis can also participate as assistant, in spite of not being the victim of the environmental crime (Article 109 par. 1 of the CPTA).

Legal standing in environmental issues may always be granted to either individuals or ENGOs pursuant to Article 52 of the CRP, which, as mentioned above in question 1.1, 2), ensures the constitutional right to popular action.

The following aspects should be highlighted:

In particular, the exercise of the right of access to justice in actio popularis is not exclusive to Portuguese citizens, but also to all foreign persons who, in Portugal (or outside Portuguese territory due to the phenomenon of cross-border pollution), detect a threat to natural environmental assets. This is because the requirement of residence in Article 15 par. 3 of the APL does not apply to popular standing concerning diffuse interests (for example the environment).

The popular actions promoted by associations and foundations are subject to having an environmental scope in their statutory regulations (Article 3 of the APL), interpreted in light of the broad concept of "environment" under Article 66 of the CRP. 
Petitions based on _actio popularis_ can be presented both before administrative and civil (judicial) courts. All forms of administrative action and appeal on the grounds of illegality, as well as all forms of civil claims, are admitted (Article 12 of APL). In _actio popularis_, the author represents, on his own initiative, all the other holders of rights and interests (Article 14 of APL), as long as they did not exercise their right to exclude themselves. This means that no mandate is needed and that the claim preclusion ( _res judicata_ ) effects of the decision are applicable, beyond the authors, to other holders of rights and interests at stake (Article 19 of APL).[105]

The idea that ENGOs have legal standing is reinforced by the Law on ENGO (Law no. 35/98), which establishes that ENGOs can legitimately go to court in protection of environmental rights, regardless of whether or not they have a direct interest in the claim (Article 10), recognising the right to propose legal actions necessary for the prevention, correction, suspension and termination of acts or omissions of public or private entities that are or could be a factor in environmental degradation; to initiate, under the law, legal actions to enforce civil liability relating to acts or omissions mentioned; to appeal administrative acts and regulations that violate laws that protect the environment; to present complaints and reports, as well as assist criminal proceedings for crimes against the environment and follow the administrative offence process; to present memorials, technical advice, suggestions for examinations or other measures of proof until the process is ready for final decision[106].

Within _actio popularis_ the Public Prosecutor has legal standing to represent natural and legal persons and ENGOs, namely in the event that the plaintiff withdraws from the process (Article 16 of APL). The Public Prosecutor also has legal standing regarding the environmental crimes foreseen in Articles 278 et seq. of CP which are public crimes (meaning they do not require a complaint from the offended, from others, or participation of an authority), in which case the Public Prosecutor shall only act at their request (Article 48 of the CPP). Environmental crimes are included in the Chapter of the CP concerning crimes of common danger (Articles 272 et seq.), which are characterised by their public nature, meaning that the initiative of the judiciary or police authorities, as well as voluntary denunciation by any person, is sufficient to initiate the criminal procedure. There is an obligation of denunciation upon the police authorities and upon civil servants in the exercise of their functions (Article 242, par. 1 of the CPP).

4) What are the rules for translation and interpretation if foreign parties are involved?

Although not expressly guaranteed in the CRP, the right to interpretation and translation can be regarded as a corollary of the following constitutional principles and rights: the principle of equality (Article 13); the right to a fair trial (Article 20 par. 4); the right of defence (Article 32 par. 1); and the guarantee of an accusatory structure and the right to ["material confrontation"] (Article 32 par. 5).

Interpretation (oral): a court interpreter is a “language mediator” whose presence allows a person who does not speak or understand Portuguese to meaningfully participate in the proceedings. [Translation (written):] a translator converts a written document or audiotape recording from the source language into a written document in the target language.

The rules on translation and interpretation if foreign parties are involved in a _civil lawsuit_ (in the judicial courts) are set out in Articles 133 and 134 of the CPC. The language in the process is Portuguese, with the following exceptions (Art. 133, paras 2 and 3 of the CPC): where foreign nationals who cannot speak Portuguese have to give evidence in the Portuguese courts, an interpreter shall be appointed for them, when necessary, in order to facilitate communication, under oath. The intervention of an interpreter as set out above shall be limited to that which is strictly required. Article 135 of the CPC regulates the intervention of an interpreter when a deaf-mute person is to give a statement to the court and whenever the judge finds necessary. The judge, on its own motion ( _ex officio_ ), or by request of the parties, orders that the party shall present the translation of documents that are originally written in one or more foreign languages, or, if there are doubts about the reliability of the translation(s) presented by the party, the judge orders that the party shall present additional translations authorised by a notary or authenticated by a diplomatic or consular officer of the country of the respective foreign language. The judge may determine that the document is to be translated by an expert designated by the court where the previous options are not possible (Article 134 of the CPC).[107]

In an _administrative lawsuit_, since neither the CPTA or the CPA have specific rules on the necessity of intervention of an interpreter or the translation of documents when there is a foreign party that does not understand the Portuguese language, the above-mentioned rules of the CPC are subsidiary (Article 23 of the CPTA).

The procedural expenses for interpretation and translation in courts are to be paid by the interested party within 10 days from the order of the judge regarding the need for such procedural intervention. If the interested party does not have sufficient economic means, the expenses are paid in advance by the Institute of Financial Management and Infrastructures of Justice ( _Instituto de Gestão Financeira e Equipamentos da Justiça_ – IGFEJ) (Article 20 of Regulation of Procedural Costs - _Regulamento das Custas Processuais_ - RCP[108]).

In a _criminal process_, Article 92 of the CPP provides the right to interpretation and translation safeguards the procedural rights of the defendant set in Article 61 par. 1 of the CPP[109]. Regarding who is entitled to the right to interpretation: any procedural participant whose primary language is not Portuguese and who has a limited ability to read, speak, write or understand Portuguese (“limited Portuguese proficient” or “LPP” individuals), procedural participants with hearing or speech impairments, irrespective of their position in the procedure (Art. 93). Regarding how to assess the necessity of an _interpreter_, judicial authorities decide, upon informed discretion, whether to appoint an interpreter. Decision on its own motion ( _ex officio_ ) or upon request of the defence lawyer, prosecutor, etc., whom is recognised the right to challenge the decision in appeal. The criminal procedure law recognises the defendant’s right to benefit, without any costs, from the services of another interpreter of his choice to mediate the communication between him and his counsel, subject to “professional and procedural secrecy”, and the evidence obtained through the violation of secrecy obligations is rendered inadmissible in court (Art. 92 paras 3, 4 and 5 of the CPP). Concerning the interpreter as an expert witness, interpreters are subjected to the expert’s activity rules (Art. 92 par. 8 of the CPP). They must “swear” (commit) to make a faithful, accurate and impartial interpretation (Art. 91 par. 2 of the CPP). The CPP is unclear as to which qualifications a court interpreter must possess and how those qualifications should be obtained (formal educational training, life experience, etc.). The right to translation: Article 92 par. 6 of the CPP refers solely to the necessity to convey into Portuguese documents which are written in a foreign language and not officially translated. The CPP establishes no legal standard by which judges can properly assess the necessity of interpretation; there is neither an official certification or registration for interpreters nor a mechanism to easily assess the quality of the interpreter’s performance. It is not clear the extent of the right to translation of documents and the consequences of the lack of a written translation as to the exercise of procedural rights[110].

Regarding the costs of interpretation and translation in criminal procedures: where the right to interpretation applies, it must be provided without costs to the person involved, even when the person is the accused and he/she is convicted at the end of the proceedings (Art. 92, paras 2 and 3 of the CPP). The defendant has the right to benefit, without any costs, from the services of another interpreter of his/her choice to mediate the communication with the appointed counsel (Art. 92 par. 3 of the CPP).

In addition, for acts of the _Public Administration_, Article 88 par. 5 of the CPA provides that the deadline for notifying a foreign interested party of an administrative act shall always be deferred for 30 days if the act is not translated into the language of the foreign person or into a language that the said person may understand. In such case, the RCP is not applicable because the notification of a foreign party of an administrative act by the Public Administration is not a court procedure, so the costs of translation are an expense of the interested party.

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?

Rules on evidence are provided in Articles 410 to 526 of the CPC. Without prejudice to the rules on burden of proof, the law allows evidence to be obtained on the initiative of the judge, which means that the judge shall carry out or order, even if on their own motion (ex officio), all the necessary proceedings required for establishing the truth and for the due process of law.

The judge may, at any stage in the proceedings, call for the parties to appear in person to give evidence regarding the facts which are of relevance for the decision in question. It is the judge’s responsibility to carry out or order, including on their own motion (ex officio), all the actions necessary to determine the truth and true nature of the dispute with regard to the facts that should be known. This responsibility includes requesting information, technical opinions, plans, photographs, drawings, objects or other documents necessary for clarifying the truth. Such requests can be made to official bodies, the parties disputing the case or third parties. However, this legal possibility is not used often.

The investigation of things and people made by the court, whenever it considers it appropriate to do so, on its own initiative or at the request of either of the parties, shall be done in such a way as to safeguard the intimacy of private and family life and human dignity, and should be solely aimed at clarifying any fact which is relevant for the decision in question. For instance, the court can carry out an on-the-spot visit or order a reconstruction of events to be undertaken, if it believes this to be necessary.

The judge may, on their own motion (ex officio), order evidence to be given by experts (Article 467 of the CPC). When, in the course of a court case, there are reasons to presume that a person who has not been called as a witness has knowledge of facts which are important for making a correct decision in the case, the judge should order that that person be summoned to give evidence in court (Article 526 of the CPC).

Regarding the evaluation of evidence, the following limits apply. Where evidence presented by a party has not been obtained legally by such party, such evidence cannot be taken into account (i.e. evaluated) by the court. The parties may, until the start of oral pleadings in the first instance, request permission to provide statements regarding facts in which they have personally been involved or of which they have direct knowledge. The court freely considers the statements of the parties, except where they involve a confession.

In an actio popularis judgment, the powers of the judge are very far reaching, namely with regard to collecting evidence and suspending the effects of the refuted act. The judge is not bound by the evidence presented by the parties but can collect further evidence on their own initiative (Article 17 of the APL).

Foreign court decisions regarding private rights may serve as elements of proof before a Portuguese court. The judge will have discretionary power to decide on the value of such proof (Article 978 of the CPC). However, the decision must fulfill the objective criteria set out in Article 980 of the CPC, and in particular there shall not be any doubt as to the authenticity of the document that contains the court decision; it must have been decided in accordance with the law of the country in which it has been pronounced; it must have been decided by a foreign court whose competence is legally established in accordance with the law of that country and should not be of the exclusive competence of the Portuguese courts, etc.[111].

2) Can one introduce new evidence?

One can introduce new evidence, there is no preclusion. A final decision can be subject to an extraordinary appeal of revision on the grounds of new documentary evidence being presented that the party did not know about before, or could not use before, as long as such new documentary evidence can by it itself change the final decision in a way more favourable to the losing party (Article 696 subpar. c) of the CPC).[112]

New evidence not presented in the administrative procedures can be presented in the court procedures.

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts.

The experts (in civil process) can be called upon by the parties or by own motion of the judge. In general, the same procedural rules apply whether the expert is called upon by the party or by the court (the judge). There is one important difference in respect of the responsibility (onus) of bringing the expert to court when the expert comes from outside the jurisdiction district of the court. In such a case, the onus is on the party that has called upon the expert, which must ensure that the expert appears in court. If the expert has been called upon by the judge, the court pays all the travel expenses in advance (Article 467 par. 1 and Article 473 paras 1 and 2 of the CPC). In the criminal process, experts can also be called upon by the parties or by own motion of the judge (Article 154 of the CPP).

Article 9 par. 2 of Law no. 35/98 states that ENGOs may ask public laboratories to carry out tests (analysis) on any environmental component. This legal provision specifies that such request shall be duly reasoned and it is not expressly stated whether the request or the test carried out by the public laboratory should be free of charge.

In Portugal, the only publicly available list of experts concerns those with expertise in value of assets within the framework of the procedures for the declaration of public utility and administrative possession of expropriation procedures prescribed by the Expropriations Code (Law nr. 168/99 of 18 September).

3.1) Is the expert opinion binding on judges, is there a level of discretion?

Expert opinions are freely appraised by the judge (Article 489 of the CPC), which means that there is total discretion in the appraisal of such opinions which are not binding for the court.

As regards to criminal actions, the general rule for assessing the various kinds of proofs is free appraisal by the judge (Article 127 of the CPP). Nevertheless, regarding experts’ opinions, as a general rule that kind of proof is binding on the judge (Article 163 par. 1 of the CPP). Whenever the conviction of the judge differs from the expert opinion, the judge must state the reasons for the divergence (Article 163 par. 2 of CPP).

3.2) Rules for experts being called upon by the court

The court requests an expert opinion from an expert establishment, laboratory or official entity, or appoints an expert. The parties can give their opinion on the appointment of the expert and reach an agreement (Article 467 par.1 of the CPC). The expert opinion is provided by a collegial set of three experts if the case is complex, or by a single expert if the case is deemed to be simpler (Article 467 and Article 468 par.1 subpar. a) of the CPC). As with civil actions, in criminal actions where the expert opinion involved proves to be of special complexity or requires knowledge of distinct subjects, it may be requested from several experts working in a collegial or interdisciplinary manner (Article 152 par. 2 of the CPP). In court actions where the value of the action is below 30,000 Euros[113], the judge always requests a single expert (Article 468 par. 5 of the CPC).

The court may call upon an expert for translation of documents provided in a foreign language where the translation is not provided by the parties (Art. 134, par. 2 of the CPP).

3.3) Rules for experts called upon by the parties

The same rules apply in general as for experts called upon by the court. The parties may agree to call upon a collegial set of experts even if the judge did not determine that the case is complex (Article 468 par. 1 subpar. b) of the CPC).

3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?

Under Portuguese law, individuals and associations can be exempted from the payment of procedural fees. The first mechanism for partial or full exemption from fees relies on legal aid, which is available to people and non-profit organisations that would otherwise lack sufficient financial means. The second is the option of bringing actio popularis (a class action lawsuit). In general, if a lawsuit is filed with the intent to serve the public interest (which is the case for
environmental matters), the law exempts institutions and individuals from judicial costs if they win the case. If they lose, on the other hand, the costs are declared – at the judge’s discretion – as a fraction of the usual value\textsuperscript{114}. Normally the party has to pay experts’ fees. If the party has benefited from legal aid, experts’ fees are paid by the IGFEJ. Special court fees have to be paid if the process includes expert opinions and “it is commonly accepted that expert fees are often too expensive to cover the real costs of good experts. In that case, either the appellant pays the difference or chooses another expert”\textsuperscript{115}.

With regard to the administrative offences process, Article 58 par.1 subpar. c) and g) of Law 50/2006 provides that the costs of the process include the costs of experts and any examinations or expert reports. The costs are met by the defendant if there is a final decision imposing a fine or any other sanction. If the defendant does not lose the process, the costs are met by the State (Article 58 pars. 2 and 3).

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

As stated above (question 1.4, 1)), as a general rule it is mandatory to be represented in court by a lawyer. There is a list of designated pro bono lawyers or trainees available in the Portuguese Bar Association (Ordem dos Advogados Portugueses – OA\textsuperscript{116}) within the System of Access to Justice and to the Courts. Portuguese lawyers may be certified by the OA as specialist lawyers, including in the environmental field according to the Regulation of Specialized Lawyers [117].

The OA has a public search engine which allows access to information concerning the professional data (names, addresses and registry numbers) of all lawyers and trainee lawyers in the country, but this engine does not allow searching by specialised field.

1.1 Existence or not of pro bono assistance

There is pro bono assistance in the event of insufficient economic means.

There is, however, no system in place providing for free assistance to those who would not otherwise be left without legal assistance.

In the civil process (also applying in this instance to administrative process), as a general rule it is mandatory to be represented in court by a lawyer. A person cannot stand before court without being represented by a lawyer (Articles 40 and 58 of the CPC), namely in court actions in which the final decision can be appealed and in actions proposed in the superior courts (Art. 40, par. 1, subpar. a), b) and c) of the CPC). In these cases, if the person does not designate a lawyer, the court designates a lawyer (from the lists provided by the OA for such effect – see this question 1.6, 1) above), but the lawyer’s fees are to be paid by the person at the end of the process. A party in a lawsuit can be represented by his/herself or by a trainee lawyer or by a legal agent in cases where the final decision cannot be appealed (Art. 40 and 42 of the CPC). That means a party can be by itself in court if the value of the action is lower than 5,000 Euros\textsuperscript{118}.

As regards criminal process, it is mandatory for the defendant to be represented by a lawyer (Article 64 of the CPP). Moreover, it is also mandatory for the ‘injured party’ to be represented by a lawyer (Article 70 of the CPP). Finally, civil parties (when a claim for damages has been deducted in a criminal case) may be represented by a lawyer and it is only mandatory to be represented by one when, due to the value of the claim, if deducted separately from the criminal action, the representation by a lawyer would be mandatory in accordance with the law of civil procedure.

In the criminal process, when a person cannot stand before court without being represented by a lawyer, namely when a defendant is hold to be interrogated by a judge or when the defendant participates in a court hearing. In such cases, if the defendant is absolved, he/she does not need to pay the lawyer’s fees. If the person is convicted, he/she must pay all court expenses, including the lawyer’s fees at the end of the process.

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.)?

The Portuguese government provides a practical online Guide with Q&A on the following: what is included in the legal aid (which judicial fees or costs can be exempted and which judicial fees or costs can be paid in instalments); who can apply for legal aid (natural persons and non-profit organisations), including access to the online simulator on the Government’s Social Security webpage; how to apply, including detailed steps; where to apply.

The Portuguese Bar Association (Ordem dos Advogados) also provides detailed practical online information on legal aid (information on list of pro bono lawyers in question 1.6, 1) above).

1.3 Who should be addressed by the applicant for pro bono assistance?

The Portuguese Bar Association.

2) Register or publicly available websites of bars or registries that include the contact details of experts

As in the above response to Question 1.1.5, 3), in Portugal the only publicly available list of experts concerns those with expertise in value of assets within the framework of expropriation procedures. In Portugal, there is not a public database of legal translators or interpreters. There is a private entity, the Portuguese Association of Translators, which provides an online search engine for translators.

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible

The List of NGOs which are active is in Order no. 2226/2020 of 10 February 2020, List of NGOs and equivalent active in the National Registry up to 31 December 2019\textsuperscript{119}.

ENGOs with national status: QUERCUS - Associação Nacional de Conservação da Natureza; LPN - Liga para a Proteção da Natureza; GEOTA - Grupo de Estudos de Ordenamento do Território e Ambiente; Federação Portuguesa de Cicloturismo e Utilizadores de Bicicleta; AGROBIO - Associação Portuguesa de Agricultura Biológica; Liga Portuguesa dos Direitos do Animal; Liga de Amigos de Conimbriga; ABAE - Associação Bandeira Azul da Europa; CPADA - Confederação Portuguesa das Associações de Defesa do Ambiente; FAPAS - Fundo para a Proteção dos Animais Selvagens; Associação Portuguesa dos Amigos dos Castelos; SOS Animal - Associação Portuguesa de Socorro Animal de Portugal.

ENGOs with regional status: Associação P/Estudo e Defesa Património Natural e Cultural do Concelho de Mértola; Associação de Estudos e Defesa do Património Histórico e Cultural de Castelo de Paiva; Associação Cultural - Amigos da Serra da Estrela; Associação de Defesa do Património da Região de Leiria; Associação de Defesa do Património de Sintra; Aventura; ONGA - TEJO - Organização Não-Governamental do Ambiente; URZE - Associação Florestal da Encosta da Serra da Estrela; AEPGA - Associação para o Estudo e Proteção do Gado Asinino; GRUPO FLAMINGO - Associação de Defesa do Ambiente.

ENGOs with local status: ACAB - Associação Cultural Azurara da Beira; Núcleo de Defesa do Meio Ambiente de Lordelo do Ouro - Grupo Ecológico; Associação de Defesa do Paio de Tornada – PATO; Associação de Defesa do Património Arouqueço; Associação de Defesa do Património de Sintra; ONGaia - Associação de Defesa do Ambiente; Centro de Arqueologia de Almada; Núcleo Cicloturista de Sesimbra - Associação de Defesa do Ambiente; Associação dos Amigos do Parque Ecológico do Funchal; ALAMBI - Associação para o Estudo e Defesa do Ambiente do Concelho de Alenquer; Liga dos Amigos de Setúbal e Azeitão; Associação de Defesa do Ambiente de Cacia e Esugeira (ADACE); APASADO - Associação de Proteção Ambiental do Sado; Linha de Defesa - Associação de Defesa do Ambiente; Alto Relevo - Clube de Montanhismo; A. V. E. - Associação Vimaranesa para a Ecologia; GPS -
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).

General rules on challenging an administrative decision (not judicial) by an administrative body are provided in Articles 184 to 199 of the CPA[122]. There are two types of challenging administrative decisions: administrative complaints (Articles 192 and 193 of the CPA[123]) and administrative appeal (Article 191 of the CPA[124]). The latter can be in the form of a hierarchical appeal (Article 193 to 198 of the CPA[125]) or a special administrative appeal (Article 199 of the CPA). The following time limits apply[127]: for both administrative complaints and administrative appeals against an unlawful omission of an administrative act, the time limit is one year starting from the date of the infringement of the obligation to issue a decision by the administrative body; when a notification of the administrative act is the interested party is required, the time limit is 15 days starting from the date of the notification; for any other interested parties of the acts not subject to compulsory publication, the time limit is also 15 days starting from when one of the following occurs: notification, publication, knowledge of the act or execution of the act. The time limit for requesting a mandatory hierarchical appeal is 30 days calculated from notification that the administrative act has been committed or such act becoming known. The time limit for requesting an optional hierarchical appeal is the same as the time limit for judicially challenging the act at stake (Article 193 par. 2 of the CPA). These same rules also apply to the time limit for a special administrative appeal (Article 199 par. 5 of the CPA).

2) Time limit to deliver decision by an administrative organ.

The general deadline set for delivery of acts by the Public Administration is 10 days[129] (Article 86 of the CPA). There are also rules regarding tacit acts (implied decisions) in Article 130 of the CPA concerning the mechanism of tacit approval, which only occurs in cases expressly provided by law or regulation when there is no notification of the final decision regarding a request made to the competent body within the legal time limit. Article 130 par. 2 of the CPA states that there is tacit approval if the notification of the act is not dispatched until the first working day starting from the time limit for issuing the decision. Instead of the above-mentioned means for challenging administrative acts, the following rules apply (Articles 192, 195 and 198 of the CPA): The time limit for the competent administrative body to deliver a decision on an administrative complaint is 30 days (which can be a decision to revoke, annul, modify or replace the complained act, or to carry out the act unlawfully omitted). The time limit for delivering a decision on a hierarchical appeal by the body which has committed or omitted the act is 15 days. This time limit is 30 days if there are opponents. As a rule, the superior administrative body shall deliver a decision concerning the hierarchical appeal within 30 days starting from the date of referral of the process to the body responsible for deciding upon it, or within maximum 90 days if new or additional evidence is necessary. The time limit for delivering a decision on a request to suspend an administrative act during the process of challenging an administrative act is 8 days[130] (Article 189 par. 3 of the CPA).

3) Is it possible to challenge the first level administrative decision directly before court?

It is possible to challenge the first level administrative decision directly before court. As a result of the constitutional principle of access to justice, the fundamental right of effective judicial protection of the legally protected rights or interests of the administered[131] is guaranteed, including: the recognition of such rights or interests; the challenging of any administrative acts harming such rights or interests, regardless of the form of the act; the obligation to deliver...
administrative acts legally due; and the adoption of injunctive measures. Citizens also have the right to challenge administrative rules with external effectiveness harming their legally protected rights or interests (Articles 20 par. 2 and 268 pars. 4 and 5 of the CRP).

According to Article 163 par. 2 of the CPA, annulable administrative acts may be challenged before the competent administrative court within the time limits legally set out.

Any administrative act can be challenged directly before court depending on two conditions: the challenged administrative act must have external effectiveness and produce immediate legal effects (Articles 51 and 54 par. 1 of the CPTA). The so-called condition of "external effectiveness of administrative acts" means susceptible to changing the situation of third parties, i.e. entities that are external in relation to the author of the act.

The second condition means that the administrative acts can only be challenged starting from the moment when they become effective.

The challenging of acts before the administrative courts includes both the request for judicial annulment (Article 37 par. 1 subpar. (a) of the CPTA) and the request for conviction to deliver the due administrative act (Articles 37 par. 1, subpar. (b), 51 par. 4, 66 par. 3 and 67 par. 4 subpar. (b) of the CPTA). Administrative action can be used to obtain a condemnation of the competent body to deliver, in a given deadline, the administrative act that was unlawfully omitted or denied (Article 66 of the CPTA).

4) Is there a deadline set for the national court to deliver its judgment?

There is no deadline for the court to adopt the final decision, but there are intermediate deadlines. According to the CPTA (Article 29), intermediate court orders are to be issued within the general deadline of 10 days. The same deadline is valid for public prosecutors.

Both the CRP and the CPTA refer to "reasonable time". The courts are subject to the constitutional principle of effective judicial protection, which guarantees that every party intervening in a procedure has the right to obtain a decision in reasonable time and through a fair trial (Article 20 par. 4 of the CRP). This principle, as mentioned above, is a result of the fundamental right of access to justice provided in Article 20 par. 2 of the CRP and is implemented by Article 2 of the CPTA. For each legally protected right or interest there is a corresponding adequate protection before the administrative courts (Article 2 par. 2 of the CPTA).

However, as pointed out by Prof. Aragão, "practice has proven to be quite far from reality", which is reflected in the EU justice scoreboard showing "the bad Portuguese scorings regarding timeliness".

Additionally, the administrative courts must ensure that it is possible to obtain, through urgent and necessary declarative means, the adequate protection in situations of temporal constraint, as well as the precautionary measures required to safeguard the utility of the judgments in the declarative process. The administrative courts must also ensure the execution of their judgment, namely the judgment against the Administration, be it by issuing a judgment that produces the effect of the due administrative act when the delivery and content of such act are strictly bound or by providing that it becomes materialised (Article 3 paras. 3 and 4 of the CPTA).

5) Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)

The general principle is that the administrative action can be brought to the court at any time (Article 41 CPTA) without prejudice to specific time limits regulated in special provisions concerning the matter of each claim.

In a judicial challenge of an administrative act, there is no time limit for the challenge. For challenging annulable acts, the following time limits apply: one year for the public prosecutor, 3 months for any other party (Article 58 of the CPTA). These time limits start from the moment that the knowledge of the administrative act has been issued. In a process to condemn the Administration to deliver a due act, the right to bring action to court expires within one year starting from the legal deadline that the administration was due to comply with to deliver such act; in the event of rejection, refusal to appraise a request or a claim aimed at replacing an act of positive content, the deadlines of one year for the public prosecutor and 3 months for any other party are applicable (Article 69 of the CPTA). In a process aimed at declaring the unlawfulness of rules issued under administrative provisions, the declaration of such unlawfulness may be requested at any time (Articles 72 and 74 of the CPTA). Rules issued under administrative provisions fall under the concept of administrative regulation, including general and abstract legal rules which aim at producing legal external effects within the exercise of administrative legal powers (Articles 135 of the CPA). A request aimed at obtaining invalidity of contracts that may be subject to an administrative act may be brought to the court within the same time limits provided for in the act with the same subject and identical regulation of the concrete situation (Article 77-B of the CPTA).

Insofar as concerns the stages of the proceedings of every administrative process, the supplementary procedural time limit for the parties is 10 days. For judges, members of the Public Prosecution and court clerks, the deadlines in the administrative process are the same as in civil procedures. The deadline for judicial orders (i.e. orders issued by the judge within administrative court procedure) and for requests of the Public Prosecution is 10 days, except when the law sets special deadlines, or 2 days for urgent or expedient matters. If a judge does not comply with a legal deadline within 3 months, the judge shall state in writing the reason for such delay. The court clerks send every month to the president of the court a list of cases where such 3-months delay occurs and the president of the court sends such information within 10 days to the body that has disciplinary competence (Article 29 of the CPTA).

In the early stages of the process, if the court verifies that the claim of the author is grounded but there are obstacles that make it impossible to satisfy such claim, the deadline for the parties to reach an agreement concerning economic compensation is 30 days with a possibility of an extension up to 60 days. If the parties do not reach an agreement, the author has a time limit of 30 days to request that the economic compensation be fixed by the court (Article 45 par. 1 subpar. d) and par. 2 of the CPTA).

When presenting the initial application to the court, the parties shall: present the evidence (list of witnesses and/or documents); request other evidence if the reply concerns a new request of the response (Article 85-A par. 3 of the CPTA). If the reply concerns the pleas of the response or any other party are at any time. The decision on such request shall be decided within 5 days and take into account the evidence showing that there is a serious likelihood of veracity of the alleged facts and, if such likelihood exists, the suspension of immediate execution shall be ordered. The cumulative legal criteria for deciding on the suspension of the challenged administrative act are the following: that the immediate execution of the challenged administrative act would cause
irreparable damage or damage difficult to repair by the addressee of the act; and that the suspension of the challenged administrative act does not cause higher damage to the public interest. However, this last criterion is rarely present: court decisions have reportedly been essentially pro-development, considering that suspension of public or private projects, activities or construction works is always likely to cause higher damage to the public (economic) interest than continuing with implementing the legal act and executing the initial project.

Also, the author of the administrative act itself, or the body competent to decide on the appeal, may, *ex officio*, suspend the act using those cumulative criteria. These rules do not prejudice the right to request the suspension of an administrative act before the administrative courts (Article 189 of the CPA).

Additionally, in judicial administrative appeals the following suspensive effects should be taken into account:

For pre-contractual litigation, there is automatic suspensive effect of the challenged act or of the execution of the contract (Article 103-A of the CPTA).

The suspension of the effectiveness of an administrative act or of an administrative rule can be requested as an injunction (precautionary measure) (Article 112 par. 2 of the CPTA). In this case, the administrative body and the beneficiaries of the act are forbidden, after the notification, to initiate or continue the execution. Exception occurs when they recognise that acceptance of the deferral[149] of execution of the said act would be seriously damaging to the public interest upon referral of a grounded resolution to the court pending the injunction measure (Article 128 par. 1 of the CPTA). If said act is already executed, such execution is an obstacle to suspension of the effectiveness of said administrative act. If the suspension can raise relevant utility concerning the facts that the act still may produce or will produce for the applicant or for the interests that the applicant is defending or could defend in the main process (Article 129 of the CPTA).

Article 143 of the CPTA concerning judicial remedy against judgments of the administrative courts (that is, from judgments of lower-level administrative courts to higher-level administrative courts) sets out that the ordinary appeal[151] has suspensive effect on the appealed judgment; the other kinds of appeal do not suspend the appealed judgment[152].

Finally, if there is a requirement to initiate arbitral administrative judgment, all the time limits applicable to judicial administrative procedures are suspended (Article 183 of the CPTA).

2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?

There is a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority. At any stage of the administrative proceedings, the body responsible for the final decision is also competent, *ex officio* or upon request of the interested party, to order the necessary provisional measures.

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?

In actions of contractual pre-litigation where automatic effective suspension cannot take place (see question 1.7.2, 1)), the author may request to the judge the adoption of interim measures aimed at safeguarding against the risk of having a situation of *fait accompli* when the time comes to issue the judgment. The interim measures will be refused if the damages resulting from adopting such measures are deemed to be higher than those resulting from not adopting said measures, if such damage cannot be avoided or mitigated by adopting different measures (Article 103-B pars 1 and 3 of the CPTA).

In administrative proceedings, provisional measures shall be deemed necessary when there is a reasonable fear that, without such measures, a situation of *fait accompli* could occur or that damages of difficult reparation for public or private interests could occur, provided that, once Those interests are weighted, it is predictable that the damages resulting from said measures are not higher than the damages that said measure aims to avoid. The reasoned decision to order or amend any provisional measure does not require a previous hearing, and the validity deadline shall be freely fixed in the decision. The revocation of provisional measures shall be reasoned. All administrative acts ordering provisional measures are liable to be challenged in administrative courts (Article 89 of the CPA).

In addition, in the event of a conflict of competences between administrative bodies, if serious damage may result from the inaction of the bodies in conflict, the judge designates the authority that should exercise interim competence on anything deemed urgent (Article 138 of the CPTA).

In a popular action process, even where the law does not grant suspensive effects to the appeal, the judge can do so, suspending the act or the decision under judgment (Article 18 of the APL).

4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?

There is immediate execution of an administrative decision irrespective of the appeal introduced. The general rule for all optional challenging of administrative acts (i.e. actions of challenging administrative acts that are deemed non-mandatory) is non-suspensive effects, which means that the administrative act is immediately executed irrespective of the appeal introduced. This general rule has two exceptions, as per the response to Question 1.7.2, 1) above: where the law expressly states suspensive effect; 2) where the author of the act, or the body responsible for deciding on the appeal, *ex officio* or upon request by the interested party, considers that immediate execution of the act would cause irreparable damage or damage difficult to repair by the addressee of the act, and that suspension of the challenged administrative act does not cause higher damage to the public interest (Article 189 par. 2 of the CPA).

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 at the judicial phase, unless the party requests an injunction measure of suspension of the effectiveness of the administrative act in the judicial phase.

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?

An interim order of an injunction measure is possible. The applicant can make such request at an early stage[154] of the injunction measure process. The injunction process is the court process to request for injunctive relief. The judge shall decide on such request, issuing the interim order within the maximum time limit of 48 hours. The judge may decide, *ex officio* (that is, even if the applicant did not make a request), to issue an interim order for the injunction measure (including the concrete injunction measure requested by the applicant or another injunction measure that the judge finds more adequate) (Article 114 par. 4, Article 116 pars. 1 and 5, and Article 131 par. 1 of the CPTA). In the subsequent phases of the injunction process[155], during pendency of the process there is also the possibility for an interim order of the injunction measure on the grounds of a supervenient modification of the factual or legal circumstances. The interim order cannot be challenged and is immediately notified to the persons and bodies that must comply with it. Where such persons or bodies do not comply with the interim order, the applicant can use the above-mentioned possibility of declaration of ineffectiveness of the wrongful execution acts. During pendency of the injunction process, the defendants may request the dismissal or amendment of the interim order. In this case, the judge shall hear the applicant and accept evidence within 5 days. The decision to dismiss the interim order can be challenged (Article 131 par. 2 to 7 of the CPTA). Injunction measures may consist of the following: suspension of effectiveness of an administrative act or rule; interim permission for the interested party to initiate or continue a certain activity or behaviour; request for interim regulation of a legal situation, namely through the imposition on the Administration of the payment of a certain amount as interim reparation; or summons to adopt or refrain from a certain behaviour by the Administration or by a private person for alleged infringement or founded fear of infringement of national administrative law or Community law[156] (Article 112 par. 2 subpar. a), d), e), g), i) of the CPTA).
Where an injunction measure is not possible, there is an additional possibility for bringing another kind of rapid judicial action called a summons, which can take two forms: the summons to provide information, consult on processes or issue a certificate; the summons to protect rights, freedoms and guarantees. In both types of summons, if the Administration, private person or competent body (as applicable) does not comply with the summons, the judge shall order the payment of a penalty (Articles 108 par. 2 and 111 par. 4 of the CPTA).

Finally, there is a possibility to convert the action of summons to protect rights, freedoms and guarantees into an injunction process if the injunction measure is not sufficient to address the situation at stake (Article 110º-A of the CPTA).

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.

The Regulation of Procedural Costs (RCP – see question 1.4, 4 above) provides for the calculation of the costs to initiate a procedure. It contains the quantitative and procedural rules about all costs in any kind of process, regardless of its judicial, administrative or fiscal nature, and tables of values of judicial fees.

It is not possible to know beforehand the overall costs of litigation, given that the costs depend on multiple factors (some of which are not regulated, as in the cases of expert fees or producing evidence such as buying satellite images). But it is possible to estimate, based on worst case scenario calculations, the maximum amount of costs.

The procedural costs cover: (i) the judicial fee; (ii) the charges; and (iii) the parties’ costs.

The judicial fee corresponds to the amount due for the introduction of the process by the interested party and is calculated based on the value of the action (Table 1 of the RCP). The first or only instalment of the judicial fee shall be paid within the time limit for practicing the corresponding act. The second instalment shall be paid within 10 days after notification of the final hearing (Articles 3 par. 1, 6 par. 1, 11, 14 paras 1 and 2, and 14-A of the RCP).

The charges covered by procedural costs are referred to in Article 16 of the RCP and may include:

- reimbursement of expenses paid in advance, for example by the IGFEJ for interpreters, translators or experts, and of all the costs regarding legal aid, including the lawyer’s fees;
- payment to external entities for services or documents provided;
- compensation to witnesses; or
- payment of travel expenses for acts made outside the court, for example inspection of certain facilities.

These procedural costs shall be paid by the applicant or by the interested party immediately or within 10 days starting from notification of the order of the corresponding procedural step (Article 20 of the RCP).

The parties’ costs include the costs that each party has incurred in the process and for which such party is entitled to be compensated due to condemnation of the counter-party (Article 447 par. 4 of the CPC). The final sum of costs is elaborated by the clerks of the first instance court within 10 days starting from the moment when the final judgment is considered res judicata (Article 29 of the RCP). If the value of the sum to pay is 306 Euros or more (3 Units of Account - UC), the person responsible for the payment may require payment by instalments (Article 33 of the RCP).

In brief, the costs of access to justice in Portugal can be classified as follows: (1) judicial fees, which can be minimised; (2) costs of an attorney, which are mandatory for court actions - even when access to a lawyer is granted by legal aid, representation is assigned by the OA, (3) costs for further substantiation of the case with opinions from relevant sources (technical or legal), which are at the expense of the plaintiff.

2) Cost of injunctive relief/interim measure, is a deposit necessary?

There are special judicial fees due for the procedural and injunction processes established under Table II of the RCP. When the judge finds that the issue or proceedings are especially complex, the judge may determine the payment, at the end of the process, of a higher value, always within the limits established in Table II of the RCP (Article 7 pars. 4 and 7 of the RCP). There are other special cases, with limit values for judicial fees established in Table I-B of the RCP, which include: the processes for judicial challenge of the decision regarding legal aid; summons to provide information, consult on processes or issue a certificate (Article 12 of the RCP).

The values to pay depend on the value and complexity of the process and are in the following ranges: 1 UC to 20 UC, which is currently 102 Euros to 2040 Euros (Table II of the RCP); 0.5 UC to 8 UC, which is currently 51 Euros to 816 Euros (Table I-B of the RCP). A deposit is not required, but the applicant must pay the judicial fee in advance. At the end of the process, if the value of the process is over 275,000 Euros, an addition judicial fee of 1.5 UC (which is 153 Euros) shall be paid for each additional fraction of 25,000 Euros of process value.

3) Is there legal aid available for natural persons?

The general principle is that no one should be obstructed or prevented from accessing justice in defence of his/her rights for social, cultural or economic reasons. The State has the duty to inform citizens regarding the Law through publications and other means of communication in order to allow for a better exercise of the rights and respect of duties.

According to the Law on Access to Justice (Article 161) (transposing Directive 2003/8/CE on access to justice in cases involving other Member States), the following natural persons are entitled to legal aid as long as they prove to be in a situation of economic insufficiency: Portuguese and Community citizens; foreign citizens and stateless persons with a residence permit valid in a Member State of the EU; foreign citizens without a residence permit valid in a Member State of the EU – if the laws of their countries of origin have reciprocal rights; persons with usual domicile or residence in a Member State of the EU different from the Member State where the process will run (cross-border disputes).

Economic insufficiency depends on assessment of the income, assets and permanent expenditure of the household. Legal aid is possible not only in court procedures but also in administrative procedures.

Legal aid covers the following categories:

- Exemption of judicial fee and other process charges of the process: no need to pay any judicial fee or other expenses regarding the process;
- Phased payment of the judicial fee and other charges of the process: payment of the judicial fee and other expenses regarding the process in instalments;
- Appointment and payment of compensation of advocate: the OA appoints a lawyer, paid by the Ministry of Justice (MJ), when there are no means to pay for one;
- Appointment and phased payment of compensation of advocate: the OA appoints a lawyer and the legal fees are paid in instalments;
- Payment of compensation of the pro bono lawyer: the lawyer defending in a criminal process (criminal court) or in an administrative offence process is appointed by the Court, the Public Prosecutor or the bodies of criminal police and is paid by the MJ.
- Phased payment compensation of the pro bono lawyer: the lawyer defending in a criminal process when the natural person is a criminal defendant (criminal court) is appointed by the OA, through said court. The defendant shall pay the compensation of this lawyer to the MJ in instalments.
- Appointment of an execution agent: a clerk from the court is appointed to take care of proceedings regarding the execution of a judgment (for example, a seizure).
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?

Non-profit legal persons have the right to the following categories of legal aid: exemption of judicial fee and other charges of the process, appointment and payment of compensation of advocate, payment of compensation of the pro bono lawyer and appointment of an execution agent.

Article 7 par. 3 of the Law on Access to Justice stating that legal persons which are profit organisations (like companies) do not have right to legal aid was declared unconstitutional by two cases from the TC[164]. This means that legal persons with profitable scope are also entitled to legal aid as long as they can prove to be economically insufficient to bear the costs themselves. Economic insufficiency depends on assessment of the income, assets and permanent expenditure of the legal person.

Legal aid is possible not only in court procedures but also in administrative procedures[165]. Detailed information on legal aid is available online. To apply for legal aid, it is necessary to complete a form available on the Social Security website, to be delivered personally to any service of the Social Security or sent by electronic mail and accompanied by all the necessary documents, including an identification document (Citizen Card or Passport) and tax declaration. Other documents may be requested in particular situations, which are clearly listed on the website.

The Portuguese Government makes available online a practical guide concerning all the mechanisms of legal protection, including how to request legal aid. There is also a simulator to calculate who has the right to legal protection.

5) Are there other financial mechanisms available to provide financial assistance?

There are other financial mechanisms available to provide financial assistance. The legal protection also includes, besides legal aid, the mechanism of legal interests or rights are harmed or threaten to be harmed. However, this does not apply to non-profit organisations.

6) Does the 'loser pays' principle apply? How is it applied by courts, are there exceptions?

The general rule on costs is that the losing party shall bear the procedural costs incurred by the successful party during the course of the proceedings, including a limited amount for recovery of lawyers' fees. However, if a party is deemed to have litigated in bad faith, it may be ordered to compensate the other party for its expenses, including lawyers' fees. In the case of class actions, such as actio popularis, claimants are exempted from the payment of judicial costs in the event of partial granting of the claim[166] (Article 20 of the APL). The consequence of losing an actio popularis is to pay only half of the judicial costs instead of the total judicial costs, as is customary in any other kind of court process. Insofar as concerns ENGOs, “the losing party pays principle” applies when the ENGO totally loses the action, i.e. when the ENGO loses all the requests that were brought before the court. In the event that some of the requests are accepted, the loser pays principle does not apply.

7) Can the court provide an exemption from procedural costs, duties, filling fees, taxation of costs, etc.? Any other national characteristics linked to this topic?

The following exceptions apply to the obligation to pay the second instalment of the judicial fee (see question 1.7.3, 1 above): in administrative actions where the process does not need a final hearing; administrative actions that were suspended within the possibility to select priority processes, except if the author requests the continuation of their own process (Article 14-A of the RCP)[167].

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?

National rules on environmental access to justice are provided by Law no. 26/2016 of 22 August 2016 approving the regime of access to administrative and environmental information and of re-use of administrative documents, which transposed Directive 2003/4/EC of the European Parliament and of the Council of 28 January 2003 on public access to environmental information and repealing Council Directive 90/313/EEC and Directive 2003/98/EC of the European Parliament and of the Council of 17 November 2003 on the re-use of public sector information.[168] The main source of information is the APA website (see question 1.3. 1 above), which provides structured information relating to: information systems on water, air, EIA, SEA; waste, dams, fluorinated gases; and dissemination of general information on national laws and European legislative acts, taxes, chemicals, bathing water, international cooperation, etc.

More structured dissemination is available on the website of the Lisbon Office of the Attorney General, which includes notes regarding legal amendments and cross-references to other legislation.

Additionally, the University of Porto has structured information explaining the content of the Law[169] and cross-references to other legislation.

2) During different environmental procedures how is this information provided? From whom should the applicant request information?

Information on access to justice shall be ensured in accordance with the principles of administrative activity, namely: equality, proportionality, justice, impartiality and cooperation with private citizens[168]. Article 2 of Law 26/2016 regulates the principle of open administration (established in Article 17 of the CPA). However, neither this principle nor the rights to access administrative documents and to request environmental information from the administrative bodies (Article 4 par. 4 of Law 26/2016) ensure the provision of information related to access to justice during administrative procedures.

The website [170] has information regarding the system of justice (namely criminal and juvenile justice), bodies and entities, services, legislation, case-law, registers and alternative means of solving conflicts.

However, this website does not have information on how to challenge decisions or from whom applicants should request such information.

The judicial action of summons to provide information, consult on processes or issue a certificate (Articles 104 et seq of the CPTA) can be introduced if the public administration does not give full satisfaction to requests made within the exercise of the right to procedural information or the right of access to administrative archives and registries. The regime of summons constitutes a special autonomous procedure for verifying the reasons for the rejection of requests made by private parties to public authorities in this context. According to Articles 104 to 108 of the CPTA, such procedure, created to respond precisely to these situations, is characterised by its speed and effectiveness: the procedural deadlines are reduced, the decision period is shortened — tending to be less than one month (Article 107 of the CPTA) — and the court may order the imposition of a penalty payment in the case of conviction of the requested party for each day of delay in complying with the decision issued — Article 108 par. 2 of the CPTA).

Moreover, established as an “urgent procedure” under Article 36 par. 1 subpar. (d) of the CPTA, it benefits from a special procedure for ensuring prompt and timely access to the data and/or documents sought: once the application has been filed, the judge orders the administrative entity to respond within 10 days and, in the event of a positive decision, the judge determines the period within which the request must be fulfilled, which cannot exceed 10 days. In the event of non-compliance with the summons without acceptable justification in the timeframe indicated, there is possible cause for the imposition of penalty payments and the establishment of civil, disciplinary and criminal liability (Articles 107 and 108 of the CPTA).

In relation to costs — bearing in mind that this was also an issue raised in the draft report — we must take into account the catalogue of guarantees mentioned above, as there is significant variation depending on the means used by individuals to respond to the refusal of access to the information sought.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?

The sectoral rules in place (EIA/ IPPC[169] and plans and programmes) provide the following with regard to access to information and access to justice in environmental matters[170]: Article 37 of the EIA Law provides information on access to justice (administrative complaints and appeal to the courts). Annex
IV.2. § of the Industrial Emissions/IPPC Law provides that information on administrative complaint and administrative appeal must be disclosed to the public during public participation.

4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment?

There are no express rules on access to justice information per se to be provided in the administrative decision and in the judgment[171].

5) Is translation, interpretation provided to foreign participants? What are the rules applicable?

Since neither the CPA nor the CPTA provide any rules regarding translators/interpreters in procedural acts[172], the rules of the CPC are subsidiary (Articles 1 and 23 of the CPTA)[173], which means that when the CPTA does not regulate a certain matter, the rules of the CPC on such matter apply. Article 80 par. 1 subpar. e) of the CPTA states that the court clerks should refuse the initial application if it is not written in Portuguese. The following exceptions apply (Art. 133, paras 2 and 3 of the CPC): where foreign nationals who cannot speak Portuguese have to give evidence in the Portuguese courts, an interpreter should be appointed for them, if necessary, in order to facilitate communication, under oath.

The judge, on their own motion (ex officio), or by request of the parties, orders that the party should present a translation of documents that are originally written in one or more foreign languages, or, if there are doubts about the quality of the translation(s) presented by the party, the judge orders that the party should present an additional translation certified by a notary or authenticated by a diplomatic or consular officer of the country of the respective foreign language. The judge may determine that the document should be translated by an expert designated by the court if the previous options are not possible (Article 134 of the CPC)[174].

The court’s procedural expenses for interpretation and translation are to be paid by the interested party within 10 days from the order of the judge regarding the need for such procedural intervention. If the interested party does not have sufficient economic means, the expenses are paid in advance by the Institute of Financial Management and Infrastructures of Justice (Instituto de Gestão Financeira e Equipamentos da Justiça – IGFEJ) (Article 20 of the RCP).

In addition, for acts of the Public Administration, Article 88 par. 5 of the CPA provides that the deadline for notifying a foreign interested party of an administrative act shall always be deferred for 30 days if the act is not translated into the language of the foreign person or into a language that the said person understands. Such translation shall be at the expense of the interested party.

1.8. Special procedural rules


In Portugal, specific EIA rules are set out in DL Decree-Law 151-B/2013 of 31 October 2013, which establishes the legal regime of the environmental impact assessment (EIA) of public and private projects likely to have significant environmental effects, as last amended by Decree-Law 152-B/2017 of 11 December (DL 151-B/2013).

1) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

The main challenge regarding access to justice is not standing but rather the time it takes (years) to get a final decision and the cost of lawyers’ fees, especially after the 2008 crisis, when it became even harder to find any pro bono lawyer. Expert fees and the cost of gathering evidence can be deterrent factors as well. Nevertheless, the following should be noted with regard to screening in the Portuguese legal framework:

- The projects listed under Annex II of DL 151-B/2013 (transposing Annex II of the EIA Directive) shall be subject to EIA if they are considered likely to have significant effects on the environment on the basis of their location, dimension or nature according to screening criteria fixed under Annex III by decision of one of the following competent authorities:
  - The EIA authority[176] (Article 1 par. 3 subpar (b)(iii));
  - The licensing authority (Article 1 par. 3 subpar (b)(iii));
  - A member of the Government (Article 1 par. 3 subpar (c)).

In addition, the licensing authority may examine projects on a case-by-case basis according to screening criteria fixed under Annex III (Article 3 par 1 and par 11 subpar(a)).

Any interested party may challenge any decision, act or omission that is against the rules of DL 151-B/2013 (including the above-mentioned decisions) either by means of administrative review (through administrative complaint or administrative appeal) or by means of judicial administrative review (Article 37 of DL 191-B/2013)[177].

Both individuals and ENGOs have standing to pursue court actions against infringements by public authorities, namely as established under the Environmental Framework Law, including to right to full and effective review of the legally protected environmental rights and interests and the right to popular action. The above-mentioned decisions can be challenged by means of judicial challenge of administrative decisions given that they are administrative decisions (administrative acts), namely by requesting their judicial annulment (Article 37 par. 1 subpar. (a) of the CPTA) (see questions 1.1, 1, 1.4, 1 and 1.7.1 above).

Public participation is an essential procedural aspect of the EIA process for ensuring the involvement of the public in the decision-making process and includes public consultation (Article 2 subparas r) and m)). Public concerned means the holders of subjective rights or of legally protected interests with regard to decisions taken in the administrative proceedings of EIA, as well as the public affected or likely to be affected by such decisions, namely the ENGOs (Article 2 subpar. s)). The public concerned has the right to participate in the public consultation (Article 29 par. 2). Formal public participation is not mandatory in order to have standing for challenging the decisions issued under DL 191-B/2013.

2) Rules on standing relating to scoping (conditions, timeframe, public concerned)

Prior to the beginning of the EIA process, the proponents[178] may introduce to the EIA authority[179] the Proposal for Definition of the Scope of the EIA (Proposta de definição de âmbito do estudo de impacte ambiental - PDA). The PDA is the document prepared by the proponent in the phase of definition of scope of the environmental impact study[180] containing a summary description of the type, characteristics and location of the project and the identification, analysis and selection of the significant environmental aspects that may be affected and that must be addressed by the environmental impact study. The PDA shall have a declaration of intent to start the project. The EIA authority shall promote the constitution of the Evaluation Commission (Comissão de avaliação - CA). The PDA may be subject to a public consultation stage, on the initiative of the proponent or upon a decision of the EIA authority. A public consultation stage means public participation to collect comments, suggestions and other inputs of the concerned public. The definition of the scope of the environmental impact study is binding for two years on the proponent, the EIA authority and the external entities whose opinions were taken into account, except if during those two years changes of circumstances occur (Article 12 and Article 2 subparas e) and q)).

Any interested party (that is any individual or any ENGO) may challenge any decision, act or omission issued against the rules of DL 151-B/2013 either by means of administrative review (through administrative complaint or administrative appeal) or by means of judicial administrative review (Article 37 of DL 191-B/2013).
Access to justice is possible, but the courts consider that it is up to the Administration to decide which impacts to consider. The discretionary technical powers of the Administration can only be controlled by the Courts in cases of “manifest error”. A real-life example is not considering the impacts on cetaceans when authorising an oil drilling project for oil prospection near the coast. The courts refused to control this decision and the ENGOs that filed the injunction process were held responsible to pay all the court fees[181].

3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?

The decision on conformity of the environmental impact study by the EIA authority may be challenged either by means of administrative review (through administrative complaint or administrative appeal) or by means of judicial administrative review. All challengeable decisions, acts or omissions must be disseminated, namely via a website, by the EIA authority, the CCDR and the local authorities (Article 37 and Article 31 par. 2 of DL 191-B/2013). The time period for challenging an administrative act is one year for the Public Prosecutor in the first three months and for every other party, starting from the notification, publication or knowledge about the act or about its implementation. In some cases, the three months can be postponed, namely “given the ambiguity of the regulatory framework applicable” or the difficulties in the identification of the appealed act, or its categorisation as an act or as a norm (Article 58 of the CPTA).

In the judicial impugnation of administrative norms there is no time limit (Article 74 of the CPTA). Those who are being harmed — or fear being harmed in the near future — by a norm whose application was refused by the courts in three cases can ask the court for a general declaration of illegality. This request is mandatory for the Public Prosecutor (Article 73 of the CPTA). The judicial decision has erga omnes binding force, retroactive effects (ex nunc) and leads to the revalidation of all repealed norms. Rarely, for reasons of legal security, fairness, or public interest of exceptional importance, the judge can declare the illegality with ex nunc effects.

An appeal against failure to adopt regulations necessary for the implementation of laws is also possible. In this case, the court will set a period no shorter than six months for the administrative authorities to adopt the rules (Article 77 of the CPTA).

4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO?

The administrative act of licensing or authorising projects under DL 151-B/2013 may be challenged either by means of administrative review (through administrative complaint or administrative appeal) or by means of judicial administrative review. All challengeable decisions, acts or omissions must be disseminated, namely via a website, by the EIA authority, the CCDR and the local authorities (Articles 22, 31 par. 2 and 37 of DL 191-B/2013).

During the post-evaluation proceedings, the concerned public have the right to communicate in writing to the EIA authority any information or relevant data on the environmental impacts caused by the project (Article 26 par. 7).

All the reports and documents related to EIA, including the reports on the public consultation, must be made available in the electronic one-stop-shop[182] (Article 30).

Both individuals and NGOs can challenge the final authorisation, given that it is an administrative decision (administrative act) that can be challenged through the means of challenge of administrative decisions described above (see questions 1.4 and 1.7.1).

Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?

The administrative court cannot act on its motion. The judicial review is dependent on the challenge by the interested party. In an actio popularis judgment, the powers of the judge are quite far reaching, namely in collecting evidence and suspending the effects of the refuted act. The judge is not bound by the evidence presented by the parties but can collect further evidence on their own initiative (Article 17 of APL).

The scope of the trials before administrative courts is not mere legality control. Every legally protected right or interest must have adequate protection from the administrative courts[184] (Article 2 par. 2 of the CPTA).

All administrative acts with external effects are subject to appeal, regardless of their legal form, mainly where they are likely to affect the rights or interests protected. The appeal should not aim solely at declaring the act void on the basis of its illegality, but should also aim at the condemnation of the administration to practise the due act (Article 51 of the CPTA). In the final ruling, the court gives the administration a deadline to issue the act which was illegally omitted or denied, and may in some cases also impose in the same final ruling of condemnation the payment of a progressive fine designed to prevent any delay in enforcement of the final ruling (Article 66 of the CPTA).

The applicant may request the declaration of nullity or of illegal omission of an administrative act due simultaneously with a second request for condemnation of the Administration to adopt the acts and operations needed to reconstruct the situation that would have existed if the contested measure had not been practiced. If the due act that the administration is deemed to adopt involves the formulation of pure administrative opinions or typically administrative judgments, then the court cannot determine the precise content of the action to be taken but must clarify the guidelines and the obligations to be observed by the administration (Article 95 par. 5 of the CPTA).

Failure to exercise the right to challenge a measure contained in a statute or regulation does not preclude the right of appeal of its implementing acts or application. Failure to exercise the right to challenge a measure not individually identifying its addressees does not prevent appeal against implementing acts or application acts whose recipients are individually identified (Article 52 of the CPTA). Even confirmative acts can be challenged, as long as the former act has not been contested or notified (even if it has been published) (Article 53 of the CPTA).

At what stage are decisions, acts or omissions challengeable?

DL 151-B/2013 does not set out specific rules on this issue. Decisions, acts or omissions are challengeable at any stage, provided they meet the above-mentioned requirements set out in the CPA and the CPTA concerning the means of challenge. Omissions can be challenged after the date when they were due (90 days or one year depending on weather the omission was a regulation or an administrative act). Any administrative act (or omission) can be challenged directly before the court depending on the following conditions: the challenged administrative act or omission must be susceptible to changing the situation of third parties and produce immediate legal effects (Articles 51 and 54 par. 1 of the CPTA). The challenging of acts or omissions before the administrative courts includes both the request for judicial annulment (Article 37 par. 1 subpar. (a) of the CPTA) and the request for conviction to deliver the due administrative act (Articles 37 par. 1, subpar (b), 51 par. 4, 66 par. 3 and 67 par. 4 subpar. (b) of the CPTA). Administrative action can be used to obtain a condemnation of the competent body to deliver, within a given deadline, the administrative act that was unlawfully omitted or denied (Article 66 of the CPTA) (see question 1.7.1. 3) above).

Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

DL 151-B/2013 does not set out such a requirement.

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?
Any interested party may challenge any decision, act or omission either by means of administrative review or by means of judicial administrative review (Article 37 of DL 191-B/2013) and it is not necessary to participate in the public consultation phase of the administrative procedure in order to have standing before the national court.

9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction? The constitutional right is implemented through the principle of effective judicial protection, which includes the right to a fair trial (Article 2 of the CPTA). The principle of equality must also be observed in the relations of the Public Administration with individuals (Article 6 of the CPA).

10) How is the notion of "timely" implemented by the national legislation? DL 151-B/2013 does not set out a specific rule on timely judicial procedure[185]. The constitutional principle of effective judicial protection, implemented by Article 2 of the CPTA, applies, including the right to obtain a judicial decision within a reasonable time (see question 1.7.1, 4) above). There is no deadline for the court to adopt the final decision, but there are intermediate deadlines. According to the CPTA (Article 29), intermediate court orders are to be issued within the general deadline of 10 days. The same deadline is valid for Public Prosecutors.

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? The only injunctive relief provided for in DL 151-B/2013 is the injunction seizure (precautionary) available to the body responsible for the application of fines for environmental offences provided in Article 39 (Article 40). There are no special rules applicable to this sector apart from the general national provisions.

At any stage of the administrative proceedings, the body responsible for the final decision is competent, ex officio or upon request of the interested party, to order the provisional measures deemed necessary if there is a reasonable fear that, without such measures, a situation of fact accompli could occur or that damages of difficult reparation for public or private interests could occur. Also, it is possible to request injunction measures before the administrative court, and in the early stage of the court procedure of an injunction process (that is, where a judge decides on a request for an injunction measure) the applicant can also request that the judge issue an interim order (see question 1.7.2 above).

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

Portugal-specific IPPC/IED rules are set out in Decree-Law no. 127/2013 of 30 August 2013, which establishes the legal regime of industrial emissions applicable to integrated pollution prevention and control, and also the rules intended to avoid or reduce emissions to air, water and soil and the generation of waste, transposing Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control)[187].

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? The stages of challenging decisions are the stages corresponding to delivery of final decisions by APA: Exploration Licence, a final decision concerning licensing of the exploration of a waste incineration and co-incineration installation (Article 3 subpar. d)); Final decision on the Environmental Licence (EL) request. Such final decision is delivered within 80 days from receipt of the request or 50 days in the case of installation with projects subject to prior EIA proceedings (Article 40 paras. 1 and 2). Final decision issued concerning the request of the operator for licensing of the waste incineration and co-incineration activity (Article 61 par. 1). Final integrated decision issued concerning the licensing request, duly reasoned and preceded by the various opinions of the consulted entities (Article 74 par. 1)[188]. This final decision shall be issued by APA within 10 days starting from the inspection carried out by the Coordinating Authority[189] (Article 85 par. 2).

All final decisions are challengeable through all means (judicial and non-judicial) of challenge of administrative acts above-mentioned. There are no special rules applicable to NGOs or citizens. All the administrative rules mentioned above apply.

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

Portugal-specific IPPC/IED rules do not provide for an early stage of permit procedures (i.e. the screening stage).

4) Rules on standing relating to scoping (conditions, timeframe, public concerned)

Portugal-specific IPPC/IED rules do not provide for a scoping stage.

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions? Prior to the final decision on the EL proceedings, the Coordinating Authority may issue a decision regarding the request for authorisation of an industrial installation. Industrial installations may cover the following activities: activities listed in Annex I, which includes industries in the energy sector, the waste management and other activities and installations for the production and processing of metals sector, the mineral industry sector and the chemical sector; activities using organic solvents with consumption thresholds higher than the thresholds provided for in Annex VII. Such decision of the Coordinating Authority on the request for installation authorisation is challengeable (Articles 2 par. 1 and 34 par. 3).

6) Can the public challenge the final authorisation? The public can challenge the final authorisation through administrative complaint or optional hierarchical appeal, and through judicial challenge (paragraph 2, subpar. I of Annex IV). Judicial challenge includes by means of actio popularis.

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?

DL 127/2013 does not provide specific rules on this. The administrative court cannot act on its motion. The judicial review is dependent on the challenge by the interested party.

In an actio popularis judgment, the judge has the power to collect evidence and suspend the effects of the refuted act (Article 17 of the APL). The scope of trials before administrative courts is not mere legality control. Every legally protected right or interest must have adequate protection from the administrative courts[190] (Article 2 par. 2 of the CPTA).

All administrative acts with external effects are subject to appeal, mainly when they are likely to affect the rights or interests protected. The appeal does not aim solely at declaring the act void on the basis of its illegality, but should also aim at condemnation of the administration to practise the due act (Article 51 of the CPTA). The court may impose on the Administration the payment of a progressive fine designed to prevent any delay in enforcement of the final ruling (Article 66 of the CPTA). The court cannot determine the precise content of the due act to be taken by the Administration, but must clarify the guidelines and obligations to be observed by the administration (Article 95 par. 5 of the CPTA).

8) Is it possible to challenge any decisions, acts or omissions through administrative challenge (administrative complaint or administrative appeal) and through administrative judicial challenge. At what stage are these challengeable?

DL 127/2013 does not provide specific rules on this. Any administrative act can be challenged directly before court depending on two conditions: the challenged administrative act must be susceptible to changing the situation of third parties and produce immediate legal effects (Articles 51 and 54 par. 1 of
The constitutional principle of effective judicial protection, implemented by administrative challenge (administrative complaint or APA website). Imminent threat of damage to the environment is included in the scope of DL 147/2008 (Article 2). All interested parties are entitled to submit to the respective practical instructions natural or legal persons, including ENGOs. If the request for action has been submitted by electronic means, the communication shall also be by electronic means. The only injunctive relief provided for in DL 127/2013 is the injunction seizure available to the body responsible for the application of fines for environmental offences (Article 113). There are no special rules applicable to this sector apart from the general national provisions. At any stage of the administrative proceedings, the body responsible for the final decision is competent, ex officio or upon request of the interested party, to order the provisional measures deemed necessary if there is a reasonable fear that, without such measures, a situation of fait accompli could occur or that damages of difficult reparation for public or private interests could occur. Also, it is possible to request injunction measures before the administrative court, and in the early stage of the court procedure of an injunction process (that is, where a judge decides on a request for an injunction measure) the applicant can also request that the judge issue an interim order (see question 1.7.2).

14) 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?

It is mandatory to inform the following in the dissemination of licensing requests: namely, in the process of public consultation: possibility of challenging decisions, acts or omissions regarding the rules of Chapter II of DL 127/2013(193) through administrative challenge (administrative complaint or administrative appeal) and through administrative judicial challenge (Annex IV par. 1 and par. 2 subpar. f) of DL 127/2013).

1.8.3. Environmental liability

Country-specific legal rules relating to the application of the Environmental Liability Directive 2004/35/EC, Articles 12 and 13. In Portugal, specific rules relating to the application of Article 12 (Request for action) of Directive 2004/35/EC are set out in Article 18 of Decree-Law no. 147/2008 of 29 July 2008 establishing the legal regime concerning environmental liability for environmental damage, as last amended by Decree-Law no. 13/2016 of 9 March 2016 (DL 147/2008), and the rules relating to the application of Article 13 (Review procedures) in the CPA and the CPTA.

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?

The only requirements set out in DL 147/2008 regarding Article 13(1) of the ELD are that the interested persons shall be natural or legal persons: (a) affected or likely to be affected by the environmental damage or (b) having sufficient interest in the environmental decision-making relating to the damage or to the imminent threat to such damage, or alternatively (c) alleging the impairment of a right or a legitimate protected interest as required by administrative procedural law (Article 68 of the CPA - see question 1.4, 1) and 1.7.1, 4) above). DL 147/2008 does not set out specific rules on requirements needing 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. Rules of the CPTA regarding judicial administrative appeals are applicable (see questions 1.7 above).

2) In what deadline does one need to introduce appeals?

The only deadline set in DL 147/2008 is the statute of limitation of 30 years (Article 33). Appeals must be introduced within the general time limits of judicial administrative appeals (see question 1.7.1, 5) above).

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?

The competent authority may request that the request for action be accompanied by the relevant information and data supporting the observations submitted in relation to the environmental damage in question, whenever the original elements raise doubts (Article 18 par. 3).

4) Are there specific requirements regarding “plausibility” for showing that environmental damage occurred, and if yes, which ones?

There are no specific requirements. However, the competent authority assesses the feasibility of the request for action on a case-by-case basis, namely by determining if there is damage to the environment and if the applicant of the request for action has legal standing (Article 18 par. 4).

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)?

There is no certain manner required and/or time limits set. The law only requires notification and does not specify the means: the decision taken on environmental remediation by the competent authority reviewed by a court. Rules of the CPTA regarding judicial administrative appeals are applicable, including the right to obtain a judicial decision within a reasonable time (see questions 1.3, 1) and 1.7.1, 4) above).

11) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

The constitutional right is implemented through the principle of effective judicial protection, which includes the right to a fair trial (Article 2 of the CPTA).

Articles 3 par. 2 and 4 of the CPC (which also apply to administrative court procedures) establish the adversarial principle (principle that both parties have the right to be heard) and the statute of substantial equality of parties before the courts, which are implemented in Articles 7 A par. 3, 58 par. 3 and 87 par. 4 of the CPTA regarding, respectively, the duty of procedural management, the deadlines for challenging null administrative acts before court, and the right of the parties to clarify or correct the facts presented in the initial stage of administrative court procedures. The principle of equality must also be observed in the relations of the Public Administration with individuals (Article 6 of the CPA) as well.

12) How is the notion of “timely” implemented by the national legislation?

DL 127/2013 does not set out a specific rule on timely judicial procedure(191). The constitutional principle of effective judicial protection, implemented by Article 2 of the CPTA, applies, including the right to obtain a judicial decision within a reasonable time (see questions 1.3, 1) and 1.7.1, 4) above).

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 to such damage, or alternatively (c) alleging the impairment of a right or a legitimate protected interest as required by administrative procedural law (see question 1.7.2)?

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?

It is not necessary to participate in the public consultation phase of the administrative procedure in order to have standing before national court.

The only requirements set out in DL 147/2008 regarding Article 13(1) of the ELD are that the interested persons shall be natural or legal persons: (a) affected or likely to be affected by the environmental damage or (b) having sufficient interest in the environmental decision-making relating to the damage or to the imminent threat to such damage, or alternatively (c) alleging the impairment of a right or a legitimate protected interest as required by administrative procedural law (Article 68 of the CPA - see question 1.4, 1) and 3) above).

1.8.3. Environmental liability

Country-specific legal rules relating to the application of the Environmental Liability Directive 2004/35/EC, Articles 12 and 13. In Portugal, specific rules relating to the application of Article 12 (Request for action) of Directive 2004/35/EC are set out in Article 18 of Decree-Law no. 147/2008 of 29 July 2008 establishing the legal regime concerning environmental liability for environmental damage, as last amended by Decree-Law no. 13/2016 of 9 March 2016 (DL 147/2008), and the rules relating to the application of Article 13 (Review procedures) in the CPA and the CPTA.

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?

The only requirements set out in DL 147/2008 regarding Article 13(1) of the ELD are that the interested persons shall be natural or legal persons: (a) affected or likely to be affected by the environmental damage or (b) having sufficient interest in the environmental decision-making relating to the damage or to the imminent threat to such damage, or alternatively (c) alleging the impairment of a right or a legitimate protected interest as required by administrative procedural law (Article 68 of the CPA - see question 1.4, 1) and 3) above).

DL 147/2008 does not set out specific rules on requirements needing 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. Rules of the CPTA regarding judicial administrative appeals are applicable (see questions 1.7 above).

2) In what deadline does one need to introduce appeals?

The only deadline set in DL 147/2008 is the statute of limitation of 30 years (Article 33). Appeals must be introduced within the general time limits of judicial administrative appeals (see question 1.7.1, 5) above).

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?

The competent authority may request that the request for action be accompanied by the relevant information and data supporting the observations submitted in relation to the environmental damage in question, whenever the original elements raise doubts (Article 18 par. 3).

4) Are there specific requirements regarding “plausibility” for showing that environmental damage occurred, and if yes, which ones?

There are no specific requirements. However, the competent authority assesses the feasibility of the request for action on a case-by-case basis, namely by determining if there is damage to the environment and if the applicant of the request for action has legal standing (Article 18 par. 4).

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)?

There is no certain manner required and/or time limits set. The law only requires notification and does not specify the means: the decision of approval or rejection of the request for action is notified through communication to the interested parties within 20 days (Article 18 par. 4). Interested parties means natural or legal persons, including ENGOs. If the request for action has been submitted by electronic means, the communication shall also be by electronic means (Article 21 par. 3). The national competent authority (APA) provides on its website the online form for submitting requests for action and the respective practical instructions (195). The annual report of environmental damages occurred is also available on the APA website. 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 to such damage?

Imminent threat of damage to the environment is included in the scope of DL 147/2008 (Article 2). All interested parties are entitled to submit to the competent authority any observations relating to instances of imminent threat of damage to the environment of which they are aware and shall be entitled to ask the competent authority to take action under DL 147/2008 (Article 18 par. 1).
Imminent damage means sufficient probability of occurrence of damage to the environment in the near future (Article 11 par 1 subpar. b). Additionally, imminent threat caused by an operator due to the exercise of their activities initiates objective liability (i.e. liability regardless of guilt) and subjective liability (Articles 12 par. 1 and 13 par. 1). In case of imminent threat of damage to the environment, the operator shall adopt the necessary preventive measures and shall inform the competent authority about such measures. The competent authority may at any moment demand that the operator supply information and adopt the preventive measures in case of imminent threat. The competent authority may execute the necessary preventive measures at the expense of the operator. If the imminent threat may affect the public health, the competent authority shall inform the national and regional health authorities (Article 14 pars. 1, 4, 5 and 6).

7) Which are the competent authorities designated by the MS?
The competent authority is the APA (Article 29 of DL 147/2008).

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. As stated above in 1.7.1, 3), it is possible to challenge a first level administrative decision directly before court.

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?
Portugal has, since 6 April 2000[196], been a Party to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention), which is an integral part of Portuguese law under Article 8 of the CRP (see question 1.1, 5)).

Insofar as concerns sectoral rules, the following apply:

**EIA consultations**: The Portuguese State shall enter into consultations with States potentially affected regarding the environmental effects of a project in their territories and regarding the measures envisaged in order to avoid, minimise or remedy such effects. Whenever a project is likely to have significant effects on the environment in another Member State, or if a Member State so requests, the APA sends a description of the project, together with any available information on its possible transboundary impact and on the nature of the decision which may be taken, to the authorities of the potentially affected State, at the latest by the time limit for publicising the EIA proceedings. When the consultation proceedings are concluded, the APA sends the DIA and final decision on the licensing or authorisation of the project (Articles 32, 33 and 34 of DL 151-B/2013). Such final decisions are challengeable either by means of administrative review (through administrative complaint or administrative appeal) or by means of judicial administrative review. Failure to send information or to send such final decision on the licensing or authorisation of the project to the Member State concerned is challengeable either by means of administrative appeal against illegal omission or by means of judicial administrative appeal against omission of due act.

**SEA consultations**: When a plan or programme being prepared is likely to have significant effects on the environment in another Member State, or where a Member State likely to be significantly affected so requests, the competent authority shall send such plan or programme to the authorities of such Member State. In the event that the Member State wants to have consultations regarding such effects or measures, a timeframe shall be agreed as well as the rules ensuring that the consultations are held and the public is informed within a reasonable timeframe (Article 8 of Decree-Law no. 232/2007 of 15 June 2007[197] , [198]). Failure to send the plan and to allow for a consultation timeframe is challengeable either by means of administrative appeal against illegal omission or by means of judicial administrative appeal against omission of due act.

The CPC provides rules (also applicable to administrative judicial procedures) on translation and interpretation to foreign persons participating in judicial processes. The judge has the power to order presentation of translated documents, and an interpreter shall be appointed by the court when foreign nationals who cannot speak Portuguese have to give evidence in the Portuguese courts (Articles 133 and 134 of the CPC).

2) Notion of public concerned?
The notion of public concerned set out in Article 2 par. (s) of DL 151-B/2013 is in line with Directive 2011/92/EU and Article 55 of the CPTA: ‘public concerned’ means holders of subjective rights or legally protected rights in respect of decisions taken in the EIA administrative procedure, and also the public affected or likely to be affected by such decisions, including environmental non-governmental organisations.

DL 232/2007 on SEA does not include a notion of public concerned.

Some authors argue[199] that the right of access to justice is not exclusive to Portuguese citizens, but also citizens "outside Portuguese territory due to phenomenon of cross-border pollution".

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 of the affected country can have standing as long as they declare in court that they have a direct and personal interest, namely by having been harmed in their rights or legally protected rights by the challenged act (Article 55 of the CPTA).

Appeals shall be submitted to the administrative court geographically competent (Articles 16 to 22 of the CPTA) and within the deadline for submitting judicial administrative reviews. The time period for challenging an administrative act is three months starting from the notification, publication or knowledge about the act or about its implementation.

Insofar as concerns the legal regime of ENGOs (Law 35/98), it is not clear whether it is also applicable to NGOs from another Member State, namely insofar as concerns the standing of ENGOs to request judicial summoning of the public authorities to allow consultation on documents and processes and to issue the due certificates (Article 5 par. 3) or to promote before the competent authorities the administrative means of environmental protection and to initiate and be involved in the administrative proceedings (Article 9 par. 1). In fact, Article 7 par. 3 classifies ENGOs into three types, not including ENGOs from other Member States: national ENGOs, regional ENGOs and local ENGOs. This means that only these ENGO have standing in the means of judicial challenge referred to in Article 10 of Law 35/98. In short, Law 35/98 does not have express rules that can be applicable to the standing of ENGOs from other countries, including other Member States.

However, insofar as concerns legal aid, it is explicitly stated that foreign citizens from other Member States are eligible for legal protection (see question 1.7.3, 3) above). The following individuals are entitled to legal aid: foreign citizens and stateless persons with a residence permit valid in a Member State of the EU, foreign citizens without a residence permit valid in a Member State of the EU (if the laws of their countries of origin have reciprocal rights); and persons with usual domicile or residence in a Member State of the EU different from the Member State where the process will run (cross-border disputes).

Foreign individuals are not strictly excluded from requesting injunctive relief or interim measures.

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 can have standing as long as they declare in court that they have a direct and personal interest, namely by having been harmed in their rights or legally protected rights by the challenged act (Article 55 of the CPTA).

The CPC, which is subsidiary to the CPTA[200], provides several rules applicable where the defendant is a foreign individual (that is, the legal standing to be demanded in court). But there are no rules applicable to the legal standing of the author of a judicial action for foreign persons or individuals. The only rule concerning the possibility of a foreign individual standing in court is on the determination of territorial competence of the court, i.e. which court in the
Portuguese territory is competent under Article 80 paras. 1 and 2 of the CPC. The general rule concerning the territorial competence of the court is the court of the location of the defendant. However, if the defendant has domicile and residence in a foreign country, and if such defendant is not found inside the territory of Portugal, there is an inversion of the former rule: the territorially competent court is the court of the location of the domicile of the author. In such a case, if the domicile of the author is also in a foreign country, the territorially competent court is the court of Lisbon.

The following individuals are entitled to legal aid: foreign citizens and stateless persons with a residence permit valid in a Member State of the EU; foreign citizens without a residence permit valid in a Member State of the EU (if the laws of their countries of origin have reciprocal rights); and persons with usual domicile or residence in a Member State of the EU different from the Member State where the process will run (cross-border disputes) - see question 1.7.3, 3) above[201].

Foreign individuals are not strictly excluded from requesting injunctive relief or interim measures.

5) At what stage is the information provided to the public concerned (including the above parties)?

Insofar as concerns the EIA consultation regime, whenever a project is likely to have significant effects on the environment in another Member State, or if a Member State so requests, the APA sends a description of the project, together with any available information on its possible transboundary impact and on the nature of the decision which may be taken, to the authorities of the potentially affected State, at the latest by the time limit for publicising the EIA proceedings, that is 5 days after delivery of the decision on the conformity of the environmental impact study by the EIA authority (Articles 33 par. 1 and 15 of DL 151-B/2013).

The SEA consultation regime is not entirely clear on this matter, besides providing that a plan or programme being prepared that is likely to have significant effects on the environment in another Member State, or where a Member State likely to be significantly affected so requests such plan or programme, shall be sent to the concerned Member State. After approval of the plan or programme, it shall also be sent to the Member States that participated in the consultations (Articles 8 and 10 par. 3 of DL 232/2007).

6) What are the timeframes for public involvement including access to justice?

Insofar as concerns the EIA consultation regime, whenever a project is likely to have significant effects on the environment in another Member State, or if a Member State so requests, after the APA has sent a description of the project, together with any available information on its possible transboundary impact and on the nature of the decision which may be taken, to the authorities of the potentially affected State, the potentially affected State can declare, within 30 days, that it wishes to participate in the EIA proceedings (including individuals or ENGOs from the affected State). The deadline for providing access to justice for members of the public from other affected countries is the following: at the latest by the time limit for publicising the EIA proceedings (Article 33 par. 2 and Article 2 par. (s) of DL 151-B/2013). The deadline for any party from an affected State to administratively challenge the outcome of the EIA proceedings and/or the related administrative act (permit etc.) is the same as for nationals: for administrative challenge, the deadline is one year, 15 days or 30 days, depending on the kind of administrative challenge (see Question 1.7.1, 1) above). As for the deadline for judicial challenge, the general principle is that the administrative action can be brought to the court at any time without prejudice to the specific time limits as described in Question 1.7.1, 5) above.

The SEA consultation regime does not have specific timeframes for this.

7) How is information on access to justice provided to the parties?

Information on access to justice is a mandatory element to be included in the announcement of publicising the public consultation periods. The parties shall receive information concerning the possibility of challenging any decision, act or omission in relation to the rules of DL151-B/2013, through administrative complaint or administrative appeal, and through judicial administrative challenge, according to the CPA and the CPTA respectively (Annex IV par. (r) of DL 151-B/2013)[202].

The SEA consultation regime does not provide specific details on how information should be provided to the parties.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?

The CPC provides rules on translation and interpretation for foreign persons participating in judicial processes. The following rules are applicable:

The judge, on its own motion (ex officio), or by request of the parties, orders that the party shall present the translation of documents that are originally written in one or more foreign languages, or, if there are doubts about the reputation of the translation(s) presented by the party, the judge orders that the party shall present additional translations certified by a notary or authenticated by a diplomatic or consular officer of the country of the respective foreign language. The judge may determine that the document is to be translated by an expert designated by the court where the previous options are not possible (Article 134 of the CPC).

The language in the process is Portuguese, with the following exceptions (Art. 133, par. 2 and 3 of the CPC): where foreign nationals who cannot speak Portuguese have to give evidence in the Portuguese courts, an interpreter shall be appointed for them, where necessary, in order to facilitate communication, under oath. The involvement of an interpreter as set out above shall be limited to that which is strictly required.

9) Any other relevant rules?

Insofar as concerns capacity to bring an action before a court, a branch of an organisation with headquarters in a foreign country may have such capacity only if an obligation is at stake contracted by a Portuguese person or by a foreign person with domicile in Portugal (Article 13 of the CPC).

Insofar as concerns the notions of res judicata and litis pendentis, an action filed in a foreign court is irrelevant, unless otherwise established in international conventions (Article 580 of the CPC).

Insofar as concerns the effectiveness of decisions of foreign courts, they must be subject to a process of confirmation and revision in a Portuguese court, unless such decision from the foreign court are used only as evidence which will be freely appraised by the judge (Article 97B of the CPC).

Insofar as concerns legalisation of documents issued in foreign countries: without prejudice to community regulations or other international acts, the authentic documents issued in foreign countries are considered official if the signature of the officer is recognised by a Portuguese diplomatic or consular agent in the respective country (Article 440 of the CPC).

Insofar as concerns the sectoral rules replied above to Question 1.7.4, 3), the following rules apply regarding cross-border impacts:

In the legal regime of EIA of public and private projects likely to have significant environmental effects and in the legal regime of IPPC, the Portuguese State shall consult the State or States likely to be affected on the environmental effects of a project or an installation in their respective territories and on the measures foreseen to avoid, minimise or mitigate such effects (Article 32 of DL 151-B/2013). The competent authorities of a Member-State likely to be affected may formally express that they are willing to participate in the EIA proceedings, and the results of the public participation in such Member-State shall be taken into account in the EIA proceedings or in proceedings for licensing of installations. The final decision concerning the licensing or authorisation of the project or installation is sent by the APA to the competent authorities of the Member-State concerned (Articles 34 and 43 of DL 151-B/2013 and 43 and paragraphs 2, (i) and 8 of Annex IV of DL 127/2013).

Insofar as concerns cross-border damages to the environment, when there is damage to the environment that affects or is likely to affect the territory of another Member State, the competent authority shall immediately inform the members of the Government in charge of foreign affairs, environment and, if necessary, health. Such members of Government are then competent to send to the competent authorities of the Member States concerned all the relevant information and establish the articulation mechanisms with such authorities (Article 24 of DL 147/2008).
The police regulations were issued up to 2011 by the Civil Governors, which body was made extinct de facto by the Government in 2011 (by Decree-Law 114/2011 which transferred all the competences of these bodies to other administrative bodies such as the Municipalities, the Public Security Police, the Republican National Guard and the National Authority of Emergency and Civil Protection). However, the CRP, the most recent version of which dates from 2005, still contains a transitory disposition stating that the Civil Governors are the body competent to represent the Government in each respective territorial district (Article 291 of the CRP) – this transitory constitutional disposition is valid only until the administrative regions are implemented in the country, which has not yet occurred. CRP consolidated version available here.

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[3] Article 2, par.1 of Law no. 11/87
[5] Translation of Articles 9 and 66 of the CRP.


[15] Lei n.º 83/95, de 31 de Agosto sobre o Direito de participação procedimental e de acção popular (full consolidated text).

[18] Code of Civil Procedure (Código de Processo Civil – CPC) approved by Law no. 41/2013 of 26 June 2013, as last amended by Law no. 117/2019 of 13 September 2019 (Lei n.º 4/2013, de 26 de Junho, alterado pela última vez pela Lei n.º 117/2019, de 13/09) (full consolidated text). For word by word quotation in English of Articles 59, 62, 63 and 94 of the CPC, see How to proceed – Portugal.

[20] Lei n.º 19/2014 de 14 de Abril.
[23] Decre-Law no. 48/95 of 15 March, as last amended by Law no. 102/2019 of 6 September, approving the Penal Code (consolidated text).
[25] CPTA approved by Decree-Law no. 214-Q/2015, as last amended by Law 118/2019, which changes profoundly the previous version of the CPTA (consolidated text).
[26] Article 9.
[29] Decreto-Lei n.º 4/2015, de 7 de Janeiro (full text which has not undergone any changes).
[31] Law no. 35/98 of 18 July 1998, as amended by Law no. 82-D/2014 of 31 December 2014 (consolidated text).
[34] Aragão, 2012, page 29. Also see page 23 for a broad description of environmental case-law.
Articles 9.3 and 9.4 of the Aarhus Convention in the Member States of the European Union.

Law no. 52/2008
Implementation report - Portugal
How to bring a case to court - Portugal

Acórdão do STJ n.º 990/10.5T2OBR.C3-A.S1
de 14/04/1999.

Acórdão do STJ n.º 07A1340
CCDR Norte
de 26/01/2006.

A problemática do reenvio prejudicial
Law no. 3/2004
Acórdão do STJ n.º 98B1090
de 16/06/1999.

Overview of the court system in Portugal

Jurisdiction - Portugal

CCDR Lisboa e Vale Tejo
Tribunal Constitucional

Preparatory ruling requested by a defendant within an administrative offence appeal
Preliminary ruling before the CJEU

Guia prático do reenvio Prejudicial
Center for Studies Judiciaries.


For general information on alternative means for resolving disputes in Portugal, see How to bring a case to court - Portugal.
Queixa Ambiental, IGAMAOT

The right to interpretation and translation in Criminal Proceedings: Portuguese Law Standards

Decree-Law no. 34/2008

Portuguese Bar Association

Development of an Assessment Framework


NGOs may intervene in administrative proceedings according to Article 68, par. 2 of the CPA. NGOs may intervene in judicial proceedings according to Article 31 of the CPC.

Source page 105 of Study on EU implementation of the Aarhus Convention in the area of access to justice in environmental matters – Final report (September 2019)

An assistant in criminal process is a participant who can intervene during inquiry and instruction, providing evidence and requiring diligences, promote prosecution and make the suit proceed even if the Public Ministry did not charge the defendant, and finally can bring an appeal from the decision when he is affected by it.

More on the handling of processes in Portugal and costs for access to justice can be found on page 4 of Development of an Assessment Framework on Environmental Governance in EU Member States - Country fiche Portugal March2019

The Portuguese Bar Association is a Public Association created in 1926 that represents the law practitioners (i.e. Lawyers and trainee lawyers, which are obliged to register in OA in order to exercise such professions) and acts independently from the State bodies with a free and autonomous nature. All the Information in English available here.

How to proceed? - Portugal

Article 31 of the CPC.

Procedural rights of the defendant in Article 62 of the CPP: to be present and to participate actively in the proceedings; to be informed on the charge; to be heard by the court or the judge; to have the assistance of a counsel.


See also above Question 1.3, 5).

This value corresponds to half of the value of the jurisdiction of the second instance judicial courts (the courts of appeal) - Art. 44 of the Law of Organisation of Judicial System.

Criteria for the value are based not only on the plaintiff’s economic situation, but also on the reasons for dismissal (substance of the complaint or procedural reasons).

An administrative complaint means a complaint against the body that was itself responsible for committing (or omitting) the challenged administrative act.

See also above Question 1.3, 5).

5,000 Euros is the value of the jurisdiction of the first instance courts – Art. 44 of Law no. 62/2013 of 26 August 2013 approving the Law of Organisation of Judicial System - Lei da Organização do Sistema Judiciário.

The Law of Organisation of Judicial System, as last amended by Law no. 27/2019 of 28 March. Full updated consolidated text of the RCP, including annex Tables of values of judicial fees.


See also above Question 1.3, 5).

This value corresponds to half of the value of the jurisdiction of the second instance judicial courts (the courts of appeal) - Art. 44 of the Law of Organisation of Judicial System.

Criteria for the value are based not only on the plaintiff’s economic situation, but also on the reasons for dismissal (substance of the complaint or procedural reasons).

An administrative complaint means a complaint against the body that was itself responsible for committing (or omitting) the challenged administrative act.

See also above Question 1.3, 5).

5,000 Euros is the value of the jurisdiction of the first instance courts – Art. 44 of Law no. 62/2013 of 26 August 2013 approving the Law of Organisation of Judicial System - Lei da Organização do Sistema Judiciário.

The law does not exclude such possibility, the hierarchical appeal may be used for the following purposes: challenging administrative decisions issued by bodies subject to the hierarchical powers of superior bodies; or responding to administrative decisions unlawfully omitted by bodies subject to the hierarchical powers of superior bodies.

An administrative complaint means a complaint against the body that was itself responsible for committing (or omitting) the challenged administrative act.

See also above Question 1.3, 5).

5,000 Euros is the value of the jurisdiction of the first instance courts – Art. 44 of Law no. 62/2013 of 26 August 2013 approving the Law of Organisation of Judicial System - Lei da Organização do Sistema Judiciário.

The law does not exclude such possibility, the hierarchical appeal may be used for the following purposes: challenging administrative decisions issued by bodies subject to the hierarchical powers of superior bodies; or responding to administrative decisions unlawfully omitted by bodies subject to the hierarchical powers of superior bodies.

A special administrative appeal means an appeal against administrative acts committed or omitted by a body of the indirect administration (see question 1.3 - 1) above).

The rules for calculating the time limits in administrative proceedings are set out in Article 87 of the CPA: the deadlines are suspended on Saturdays, Sundays and public holidays. This means that all administrative time limits should be counted in working days. By contrast, the rules for calculating civil time limits are set out in Article 279 of the Civil Code and in Article 144 par. 2 of the CPC: the deadlines are continuous and not suspended on Saturdays, Sundays and public holidays.

The concepts of mandatory or optional administrative complaints and appeals are as follows: administrative complaints and appeals are mandatory when the possibility of access to judicial means depends on such complaints and appeals; they are optional when the judicial action does not depend on such complaints and appeals. According to Article 185 of the CPA, the complaints and appeals are only mandatory when deemed as such by the law.
[129] Also Nesbit, 2019, page 38 concerning “deadlines for provision of environmental information” reports that [Portugal has a] “basic deadline of 10 days”.

[130] See question 1.7.2. 5) below.

[131] The “administered” means all the addressees of the acts practised by the Public Administration.


[133] See case-law from the Central Administrative Court of the South of 4 July 2019 n.º 2412/17.1 BELSB (Acórdão do Tribunal Central Administrativo Suí n.º 2412/17.1BELSB de 04/07/2019: “Nos termos dos art.º 51.º e 54.º, n.º 1, do CPTA, são impugnáveis os actos administrativos com eficácia externa e que produzam efeitos jurídicos imediatos”).


[135] All decisions within the exercise of legal-administrative powers can be challenged provided that they are aimed at producing external legal effects on a concrete and individual situation, even if such decisions do not end a procedure, and including decisions issued by authorities not integrated in the Public Administration and by private bodies acting in the exercise of legal-administrative powers (Article 51 par. 1 of the CPTA and Article 148 of the CPA).

[136] The concept of an administrative act that can be challenged before court shall be characterised by reference to the concept of an administrative act of Article 148 of the CPA, which is understood as the decisions that, within the exercise of legal-administrative power, are aimed at producing legal external effects on an individual and concrete situation. On the other hand, Article 2 par. 1 on the scope of the CPA determines who is competent to deliver administrative acts, stating that the CPA is applicable to the conduct of any bodies, regardless of their nature, adopted within the exercise of public powers or regulated by provisions of administrative law (free adaptation from source in Portuguese, Cadilha, CEJ, April 2017, page 28).


[138] Extensive analysis of the CPTA rules on challenging administrative acts before court can be found in Caldeira, Marco "A impugnação de actos no novo CPTA: âmbito, delimitação e pressupostos", in “Comentários à revisão do EATAF e do CPTA”, AAFDL, 2016, retrieved from "A Revisão do EATAF e do CPTA.

[139] The principle of effective judicial protection includes the right to obtain, in a reasonable time, and through a fair trial, a judicial decision with the force of res judicata concerning each request that has been properly brought to the court as well as the possibility of executing such judicial decision and obtaining the injunction measures, preventive or conservatory, or ensuring the useful effect of the decision (Article 2 par. 1 of the CPTA).

[140] See EU Justice Scoreboard portal, the 2020 EU Justice Scoreboard Fact sheet | July 2020 and the respective report.

[141] Declarative process means the original process as opposed to the execution process, i.e. the process to execute a judgement of a declarative process.


[143] For the form of counting the deadlines of Article 98 of the CPTA, the civil rule set out in Article 279 of the Civil Code applies (Source: Carvalho, Ana Celeste "A Reforma do Código de Processo nos Tribunais Administrativos", 30 October 2015, page 16).

[144] For further developments, see Blanco de Morais, Carlos, "Novidades em matéria da disciplina dos regulamentos no código de procedimento administrativo", page 4.

[145] Supplementary means it is a general time limit applicable for the parties if the law does not set other specific legal time limits.

[146] The initial application means the first application presented by the party that starts the process brought to the court.

[147] Carvalho, October 2015, pages 16 et seq.

[148] Source: Q&A on administrative challenges, University of Porto.

[149] Deferral means postponement.

[150] The main process means the original process during which the injunction has been requested.

[151] There are two kinds of ordinary judicial remedy (ordinary appeals): apelação and revista (Article 140 of the CPTA).

[152] Article 143 par. 2 of the CPTA refers to a non-exhaustive list of appeals that do not have suspensive effect.


[154] The moment of such early stage is when the judge makes a liminal appraisal of the process regarding procedural orders, including the notification of the defendant.

[155] Articles 117 to 127 of the CPTA provide the procedural rules on all stages of the injunction process.

[156] Community law means EU law.


[158] The value of 1 Unit of Account (Unidade de Conta – UC) is currently 102 Euros. The annual update of the UC is determined in the Annual Budget Law: the update of this value is currently suspended (article 210 of Law no. 2/2020 of 31 March - Annual Budget Law for 2020), so the value of the UC is the same as it was in the previous year.

[159] As described in section 3.3.2. Q4 of Environmental Governance Assessment Portugal


[161] See question 1.4, 1) above.

[162] See question 1.4, 1) above.


[167] In administrative procedures, the judicial fees are reduced to 90% if the party introduces the respective requirements in conformity with the formulary and practical instructions of Order no. 341/2019 of 1 October 2019 (Article 6 par. 9 of the RCP) applicable to the administrative process of the mass procedures provided in Article 99 par. 3 of the CPTA. The mass procedures litigation occurs when there is administrative action concerning the practice or omission of administrative acts with more than 50 litigants. However, such mass litigation is only possible in the following adamanent cases that are not relevant to environmental cases: public recruitment competitions; proceedings of public examinations; public recruitment proceedings.

[168] These principles are regulated in Articles 6 to 9 and 11 of the CPA.


[170] See questions 1.8 below.

[171] See questionnaire on “Administrative Justice in Europe – Portugal” of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union, which does not include any such express obligation to provide access to justice information in the administrative
decision and in the judgment, available here and here. See also the Portugal report of the comparative report on Access to justice in Europe: an overview of challenges and opportunities by the European Union Agency for Fundamental Rights (FRA).

[172] Case-law 2938/16.4BELSB of 19 April 2018 of the Central Administrative Court of the South: “There is no legal rule imposing on the court the translation of the letter of notification of a party who is a foreign citizen and does not know the Portuguese language”. Acórdão do Tribunal Central Administrativo Sul n.º 2938/16.4BELSB de 19/04/2018 “Não existe norma legal que imponha ao tribunal a tradução da carta de notificação da parte, cidadão estrangeiro e desconhecedor da língua portuguesa, para depar em juízo (contrariamente ao que sucede com o regime do seu depoimento em juízo, em que se encontra garantida a tradução para o que for estritamente indispensável – art. 133.º, n.ºs 2 e 3, do CPC), tanto mais que o seu defensor foi igualmente notificado para o acto.”

[173] As stated above in question 1.4, 3).

[174] See also point 8 (In which language can I make my application) of How to bring a case to court - Portugal

[176] The national EIA authority is APA.

[177] The means of administrative review are the following:

- administrative complaint or administrative appeal challenging administrative acts, either by requesting their revocation, annulment, modification or replacement, or by reacting against unlawful omission of administrative acts because of violation of the duty to decide, requesting that the intended act shall be delivered (Article 184 par. 1 of the CPA); and
- administrative complaint or administrative appeal requesting modification, suspension, revocation or declaration of invalidity of administrative regulations that are directly harmful to the legally protected rights or interests of the interested party (the interested parties for this purpose shall be the plaintiff of the complaint or the applicant of the appeal) and administrative complaint or administrative appeal against unlawful omission of administrative regulations (Article 147 of the CPA).

The means of judicial review are the following:

- challenge of administrative acts;
- condemnation to practise due administrative acts;
- condemnation to refrain from practising certain acts;
- challenge of rules issued under administrative law;
- condemnation to emit rules due under provisions of administrative law;
- recognition of subjective legal situations directly arising from legal-administrative rules or from acts practised under provisions of administrative law;
- recognition of qualities or of fulfilment of requirements;
- condemnation of the Public Administration or private persons to refrain from certain behaviours;
- condemnation of the Administration to adopt the conducts necessary to restore violated rights or interests, including in de facto situations where there is no legitimate title;
- condemnation of the Administration to comply with duties to provide that arise directly from legal-administrative rules and do not concern issuing a challengeable administrative act or that are constituted by legal acts practised under provisions of administrative law, and that may concern the payment of a certain amount, the delivery of a certain thing or the provision of a certain fact;
- civil liability of legal persons;
- interpretation, validation or execution of contracts;
- refund of unjust enrichment; and
- legal relations between administrative bodies (Article 37 par. 1 of the CPTA).

[178] Proponent means the natural or legal person, public or private, introducing a request for authorisation or for licensing of a project (Article 2 subpar p)). Proponent means the developer in the sense of Article 1(2)(b) of EIA Directive (Directive 2011/92/EU).

[179] According to Article 8 of DL 151-B/2013, the EIA authority is APA (see question 1.3, 1) above) or the Regional Spatial Planning Commissions (Comissões de Coordenação e Desenvolvimento Regional – CCDR (see question 1.3, 1) above).

[180] The environmental impact study means the document prepared by the proponent within the EIA process containing a summary description of the project, the identification and evaluation of the positive and negative likely environmental impacts, the predictable evolution of the factual situation if the project were not executed, the environmental management measures to avoid, reduce and remedy the expected adverse impacts, and a non-technical summary of such information (Article 2 subpar. j)). This meets the requirement of Article 5 of Directive 2011/92/EU.

[181] Case-law of the Central Administrative Court (TCA) of the South of 21 February 2019 no. 243/17.8BELLE revoked the injunction ordered in August 2018 by a first instance administrative court – court a quo – required together by ENGOs and a civil organisation (ALMARGEM, QUERCUS and SCIAENA association for marine science and cooperation) against the administrative body General Directorate of Natural Resources, Safety and Maritime Services of the Ministry of the Sea and two counter-stakeholder business corporations. The administrative appeal brought to the second instance TCA of the South decided that the injunction requirement of periculum in mora was not proved and that the public interest of possible harm on cetaceans and other marine fauna did not prevail and in consequence condemned the appealed ENGOs and civil organisation to pay all the court fees. It is worth highlighting that the first instance decision suspended the effects of the administrative act that authorised the private use of national maritime space – “título de utilização privativa do espaço marítimo nacional (TUPEM)” – and summoned the counter-stakeholders to stop all prospection and execution works. This injunction was challenged by the Ministry of Sea and those stakeholders (the appellants), arguing that the public discussion process should not be deemed flawed and the court a quo could not substitute the discretionary power of the administrative body APA, among other allegations raised by the appellants (Acórdão n.º 243/17.8BELLE de 21/02/2019 do Tribunal Central Administrativo Sul (“ALMARGEM (…), SCIAENA – Associação de Ciências Maríneas e Cooperação e QUERCUS (…) requereram providência cautelar (…) contra a Direcção-Geral de Recursos Naturais, Segurança e Serviços Marítimos e o Ministério do Mar, indicando como contrainteresadas a (…), e a …, SA (…)”). Further comments on other environmental judgments can be found in Gomes, Carla Amado, e-book “DIREITO DO AMBIENTE Anotações jurisprudenciais Dispersas”, 2017.

[182] Portal Participa, launched in 2015, is used for information dissemination and participation in environmental issues.


[184] A comprehensive list of the rights with granted administrative protection includes: “the recognition of subjective legal situations arising directly from administrative or legal acts; the recognition of individual qualities or fulfilment of conditions; the recognition of the right to refrain from behaviours and, in particular, to refrain from adopting administrative acts in the case of threat of future injuries; the annulment or declaration of nullity or inexistence of administrative acts; the condemnation of the administration to pay, to deliver things or perform facts; the condemnation of the administration to repair damages (in natura or by monetary compensation); the resolution of disputes concerning the interpretation, validity or enforceability of administrative
contracts; the declaration of illegality of administrative norms; the condemnation of the administration to practise administrative acts, material acts or operations due according to the law or necessary to restore subjective legal situations; the injunction to provide information, allow access to documents or issue certificates; or the adoption of appropriate interim measures to ensure the effectiveness of the decision. Source: Aragão, 2012, page 15.

[185] In particular, DL 151-B/2013 does not set out a rule similar to Article 11 of Directive 2011/92/EU stating that the procedure before a court of law “shall be fair, equitable, timely and not prohibitively expensive”.


[188] The exploration of the waste incineration or co-incineration installation can only take place after this final decision on the licensing request.

[189] The Coordinating Authority is responsible for coordination of the licensing proceeding or authorisation of activities covered by DL 127/2013 (see this question 1.8.2, 5) below), and for delivering authorisation or licensing for the installation, modification and exploration of such activities.

[190] A comprehensive list of the rights granted with administrative protection includes: “the recognition of subjective legal situations arising directly from administrative or legal acts; the recognition of individual qualities or fulfilment of conditions; the recognition of the right to refrain from behaviours and, in particular, to refrain from adopting administrative acts in the case of threat of future injuries; the annulment or declaration of nullity or inexistence of administrative acts; the condemnation of the administration to pay, to deliver things or provide facts; the condemnation of the administration to repair damages (in natura or by monetary compensation); the resolution of disputes concerning the interpretation, validity or enforceability of administrative contracts; the declaration of illegality of administrative norms; the condemnation of the administration to practise administrative acts, material acts or operations due according to the law or necessary to restore subjective legal situations; the injunction to provide information, allow access to documents or issue certificates; or the adoption of appropriate interim measures to ensure the effectiveness of the decision. Source: Aragão, 2012, page 15.

[191] In particular, DL 127/2013 does not set out a rule similar to Article 25(d) of Directive 2010/75/EU stating that the review procedure “shall be fair, equitable, timely and not prohibitively expensive”.

[192] The dissemination of licensing requests takes place in two stages: dissemination of information on the process that will be made available to the public consultation; dissemination of the process to the public concerned for comment (paragraph 1 of Annex IV).

Stage (a) includes the following elements:
- identification of the request;
- identification of the operator (i.e. any natural person or any private or public legal person that intends to explore an installation or is the owner of an installation - Article 3, subpar. pp) of DL 127/2013);
- identification of the environmental technical officer (i.e. the technical officer appointed by the operator, responsible for the environmental management of the waste incineration and co-incineration installation and/or main interlocutor during the licensing procedure and the issuing of licences (Article 3 subpar. zz));
- identification and location of the installation;
- indication of the elements included in the licensing request and all additional elements;
- location and date where and when the relevant information is made available and the respective means of availability;
- duration of the consultation period;
- if applicable, the existence of DIA or EIA process pending;
- subject to cross-border EIA or consultation between the Member States;
- indication of the authorities that can supply relevant information and the authorities responsible for receiving observations or questions, and the respective time limits;
- explicit statement that the licence or the installation exploration authorisation can only be issued after delivery of a positive final decision;
- and indication of the possibility of challenging any decision, act or omission concerning the rules of chapter II of DL127/2013 (i.e. concerning the installations developing the activities listed in annex I) through administrative complaint or optional hierarchical appeal, and through judicial challenge, according to, respectively, the CPA and the CPTA.

Stage (b) is concluded with the collection of comments from the public concerned after dissemination of the process.

[193] That is, rules concerning the installations developing the activities listed in annex I, which includes industries in the energy sector, the waste management, production and processing of metals sector, the mineral industry sector and the chemical sector.

[194] See also case C-529/15.


[198] For instance, Gomes (2014) (see Question 1.4, 3).

[199] See question 1.7.4, 5 above.

citada Lei, prevê-se, de forma expressa, que a protecção jurídica abrange os estrangeiros e apátridas em situação de insuficiência económica comprovada. Porém, no que diz respeito aos estrangeiros, a protecção jurídica apenas lhes é concedida quando tenham título de residência válido num Estado-membro da UE, ou quando tenham noutro Estado, desde que o direito de protecção jurídica seja atribuído aos portugueses pelas leis do respetivo Estado (cf. art. 7.º, n.º 2 da Lei n.º 34/2004, de 29-07 e Portarias n.º 10/2008, de 03-01 e n.º 1085-A/2004, de 31-08).

[202] Other mandatory elements to be included in the publication of public consultation periods listed in Annex IV include: identification of the proponent; identification of the project and its location; indication that the project is subject to EIA proceedings when the public consultation stage of Article 15 occurs; indication that the project is subject to proceedings for checking its environmental conformity; indication that the project is subject to consultation between the Member States, where applicable; indication of the documents integrating the EIA proceedings and the location and date where and when they are available and other relevant information and means of availability; indication of the documents integrating the environmental conformity checking proceedings and the location and date where and when they are available and other relevant information and means of availability; duration period of the public consultation and means of its implementation; identification of the EIA authority; identification of the authority competent to issue the Declaration of Impact Assessment (DIA); identification of the authority competent to issue the decision on the environmental conformity of the execution project; identification of the authority competent to license the project; identification of the authorities responsible for supplying relevant information on the project; identification of the authorities responsible for receiving opinions, suggestions and other inputs and the respective time limit; explicit statement that the licence or authorisation for the project can only be issued after issuing of the DIA, the declaration on environmental conformity of the execution project or the time limit for issuing such DIA or declaration (tacit decision); time limit for issuing the DIA; and time limit for issuing the decision on environmental conformity of the execution project. Last update: 18/12/2023

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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 inside the scope of EU environmental legislation outside the scope of the EIA and IED Directives

There is broad access to justice beyond EIA and IED based on effective judicial protection. The following legal acts fall within the scope of EU environmental legislation outside the scope of EIA and IED Directives:


- Decree-Law no. 150/2015 of 5 August 2015 establishing the regime of prevention of major accidents involving dangerous substances and limitation of their consequences for human health and the environment (DL 150/2015) ([6]), transposing Directive 2012/18/UE (Seveso III).


Other environmental regimes not transposing Directives:


Law no. 17/2014 of 10 April 2014 approving the Sea Management and Planning Law ([12]).

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 general statutory rules of the CPA and the CPTA apply to the legal instruments identified in the previous section, namely 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). As replied above to Question 1.4, 2), in this regard there are no different or special rules applicable in sectoral legislation, since the general rules stated above apply to all sectoral legislation. Those general rules concerning who can challenge an environmental administrative decision and standing rules applicable for NGOs and individuals and on procedural time limits are described above in Questions 1.4, 1) and 3) and 1.7.1.

Law 58/2005 (the Water Law transposing Water Framework Directive 2000/60/EC) establishes that an interested party (that is, an applicant for a water use permit) has the right to request prior information from the national water authority (APA) concerning the possibility of use of water resources for the intended purpose, but the information given only constitutes legally protected rights or interests (that is, that are able to give legal standing to holders of such rights or interests) inasmuch as it is recognised by DL 226-A/2007, which implements the Water Law (Article 56 of Law 58/2005). The provisions of DL 150/2015 (transposing Directive 2012/18/UE on the control of major accident hazards involving dangerous substances) on access to justice are in line with Article 23 of the Directive and expressly ensure to the public the right to seek a review, in accordance with the rules on environmental...
access to justice[13], and to administratively challenge, through optional administrative complaint or hierarchical appeal, any acts or omissions of a competent authority, respectively, in relation to the request for information provided in Article 31 and to the public participation provided in Article 11(1)[14] (Article 34 of DL 150/2015). Such rights derive from the general rules of the CPA and the CPTA.

The definition of public concern is in conformity with the Directive: it means the public affected or likely to be affected by, or having an interest in, the taking of a decision on any of the matters covered by Articles 8 and 11[15], and, for the purposes of this definition, environmental non-governmental organisations (ENGOs) are deemed to have an interest (Article 3 subpar. q) of DL 150/2015).

DL 146/2006 ensures the right to public information: The noise strategic maps and action plans shall be disseminated by electronic means and physically by the competent authorities, such as the municipal authority and the APA (Article 13).

DL 142/2008 does not regulate what information to the public or the right to challenge comprise, but expressly regulates the intervention of ENGOs in the process of collection and treatment of wild animals and the cooperation of public and private authorities with ENGOs for the development of captive breeding programmes (Articles 33 and 34).

Regarding the effectiveness of the level of access to national courts in light of the CJEU case-law and any related national case-law, the following examples show that national case-law refers to community law (Directives) rather than to CJEU case-law[16]:

<table>
<thead>
<tr>
<th>Reference number and date</th>
<th>Issues addressed</th>
</tr>
</thead>
<tbody>
<tr>
<td>STA 0996/06 25 September 2012[17]</td>
<td>Development plan of the Natural Park Sintra-Cascais; principle of trust; principle of proportionality; land use plan; right to participation</td>
</tr>
<tr>
<td>STA 047310 15 February 2007[18]</td>
<td>Expropriation of public utility; highway; waters; Natura Network; aquifer</td>
</tr>
<tr>
<td>STA 46273A 8 July 2000[19]</td>
<td>Suspension of the effects of administrative acts; serious injury of public interest; environmental law; environmental protection</td>
</tr>
<tr>
<td>STA 031535 14 October 1999[20]</td>
<td>Transposition of Directive; immediate effect; preliminary ruling; protection area; Vasco da Gama bridge</td>
</tr>
</tbody>
</table>

Administrative complaint; tacit rejection; fees; wind farms; municipal orders

In administrative appeals and applications for judicial review, the judges have a large degree of discretion, since there are no clear criteria defined in the legislation or case-law. The judge has to balance the public and private conflicting interests. There is a general requirement in the general system for administrative and judicial procedures that court procedures should be timely. There is no general or specific environmental requirement that the administrative/judicial procedures should be effective. There are no specific safeguards to ensure that frivolous applications are not considered[24].

According to Article 2 of the CPTA, the principle of effective judicial protection includes the right to obtain, within a reasonable time, a judicial decision that is considered res judicata deciding on the claims presented before the court, as well as the possibility to obtain interim measures, be it anticipatory or protective, to ensure the effectiveness of the decision. For promotion of access to justice, all procedural rules should be interpreted in order to promote the emission of substantial judgments on the merits of the claims (Article 7 of the CPTA). This means an obligation on the judge to ensure that the judicial procedures proceed quickly.

However, there are studies that address the question of slowness of justice and length of court proceedings in Portugal[25].

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The scope of the administrative review and the judicial review cover both procedural and substantive legality.

The scope of trials before administrative courts is not mere legality control. Every legally protected right or interest must have adequate protection from the administrative courts[26] (Article 2 par. 2 of the CPTA).

All administrative acts with external effects are subject to appeal, regardless of their legal form, mainly when they are likely to affect the rights or interests protected. The appeal does not aim solely at declaring the act void on the basis of its illegality, but should also aim at the condemnation of the administration to practise the due act (Article 51 of the CPTA). In the final ruling, the court gives the administration a deadline to issue the act which was illegally omitted or denied, and may in some cases impose additionally, in the same final ruling of condemnation, the payment of a progressive fine designed to prevent any delay in the enforcement of the final ruling (Article 66 of the CPTA).

The applicant may request the declaration of nulity or of illegal omission of an administrative act due simultaneously with a second request for condemnation of the Administration to adopt the acts and operations needed to reconstruct the situation that would have existed if the contested measure had not been practised. If the due act that the administration is condemned to adopt involves the formulation of pure administrative opinions or typically administrative judgments, then the court cannot determine the precise content of the action to be taken but must clarify the guidelines and the obligations to be observed by the administration (Article 95 par. 5 of the CPTA).

Failure to exercise the right to challenge a measure contained in a statute or regulation does not preclude the right of appeal of its implementing acts or application. Failure to exercise the right to challenge a measure not individually identifying its addressees does not prevent appeal against implementing acts or application acts whose recipients are individually identified (Article 52 of the CPTA). Even confirmative acts can be challenged as long as the former act has not been contested or notified (even if it has been published) (Article 53 of the CPTA).

In an actio popularis judgment, the powers of the judge are quite far reaching, namely in collecting evidence and suspending the effects of the refuted act. The judge is not bound by the evidence presented by the parties but can collect further evidence on their own initiative (Article 17 of APL).

In Portugal the scope of review is very broad as the courts can look at all aspects of legality of the decisions challenged.

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. On the contrary, the CPTA establishes that the use of means of administrative review suspends the deadline for introducing judicial review of the challenged administrative decision. Such deadline only continues to run after notification of the decision issued on the administrative review or after the legal deadline.
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.? It is not necessary to participate in the public consultation phase of the administrative procedure in order to have standing before the national courts. The Water Law transposing Water Framework Directive 2000/60/EC ensures participation of the interested parties in the process of planning (Article 26 of Law 58/2005), establishing the principle of participation and the right of access to information. The national water authority must promote the active participation of both natural and legal persons (Article 84 of Law 58/2005). Within administrative proceedings relating to water, all natural and legal persons have the right to procedural information according to the CPA and the legislation concerning environmental information. All natural and legal persons have the right to access information on water originated or held by competent authorities, which may be subject to a fee to cover the costs of making the information available (Articles 86 and 88 of Law 58/2005).

The right to public participation in the decision-making process is also ensured in the following regimes: prevention of major accidents (Article 11 of DL 150 /2015 in line with Article 15(2) of Directive 2012/18/EU); waste management (Article 18-A of DL 178/2006); plans of action concerning environmental noise (Article 14 of DL 146/2006); nature and biodiversity conservation (Article 14 of DL 142/2008).

5) Are there some grounds/arguments precluded from the judicial review phase? There is a case similar to preclusion worth mentioning: appeal to the Constitutional Court is only possible if, in the previous judicial procedures, the argument of unconstitutionality of a legal rule was raised (Article 70 par. 1 indents (b) and (f) of Law no. 28/82 of 15 November 1982, as last amended by Organic Law no. 4/2019 of 13 September 2019).

Insofar as concerns the general rules applicable to judicial administrative reviews (Articles 37 et seq. of the CPTA), the following restrictions apply: In the context of civil liability of the Public Administration for unlawful administrative acts, the court can decide if a certain act is illegal, even if such act does not meet the challengeable requirements, i.e. if an unchallengeable act is at stake (this means even if such act is not an administrative act with external effects, because only administrative acts with external effects can be subject to administrative appeal). Without prejudice to this possibility, the effect of annulment of the unchallengeable act cannot be obtained through judicial review (Article 38 of the CPTA). An act is unchallengeable when it is not substantiated in a unilateral decision of the public authority, not directed at generating a consequence and not creating, modifying or extinguishing a right or duty or making a legal determination (this derives a contrario from the legal notions of administrative act in Article 148 of the CPA and challengeable acts in Article 51 of the CPTA).

The condemnation to refrain from practising certain acts can only be requested if it is likely that the acts issued would harm the legally protected rights or interests and that the use of such means of challenge is indispensable (Article 39 of the CPTA).

6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction? The constitutional right is implemented through the principle of effective judicial protection, which includes the right to a fair trial (Article 2 of the CPTA). The principle of equality must also be observed in the relations of the Public Administration with individuals (Article 6 of the CPA).

7) How is the notion of “timely” implemented by the national legislation? The constitutional principle of effective judicial protection, implemented by Article 2 of the CPTA, applies, including the right to obtain a judicial decision within a reasonable timeframe (see questions 1.3, 1) and 1.7.1, 4) above).

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? General administrative rules apply. See question 1.7.2 above.

In the noise regulations, the competent authorities may determine urgent injunction measures deemed indispensable to avoid serious damage to human health and to the well-being of the populations resulting from activities that violate the noise regulations (Article 27 of DL 9/2007).

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 cost rules on bringing a challenge on access to justice in these areas are the same as replied above to Question 1.7.3., as general rules apply. The following legal regimes implement the provisions on access to justice and effective judicial protection set out it Articles 20 and 268 of the CRP: cost of access to justice, protection from justice and protection from acts of the Public Administration. Justice shall not be denied to a person not having sufficient economic means, which is implemented by the legal mechanism of legal aid. The Public Administration is subject to the principle of proportionality (Article 266 of the CRP and Article 7 of the CPA), which in this context means that proportionality is a general safeguard against prohibitive costs.

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

In transposing Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment, DL 232/2007 addresses the need for better use of the EIA mechanism a priori before submitting certain projects to a prior EIA regulated by DL 151-B/2013 (see question 1.8.1 above), allowing for EIA of such projects at a time when the options for the decision-making process are less restricted.

The scope of DL 232/2007 includes plans and programmes:

(a) which relate to agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning, or land use and which set the framework for future development consent of projects subject to EIA listed under Annexes I and II of DL 151-B/2013;

(b) which, in view of the likely effect on a site included on the national list of sites, a site of community interest, a special area of conservation or a special protection area, have been determined to require an assessment pursuant to Article 10 of Decree-Law no. 140/99 (Natura 2000 network);

(c) other than those referred to in subparagraphs (a) and (b) which set the framework for future development consent of projects, which are likely to have significant environmental effects.

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 applicable national statutory rules on standing for both individuals and NGOs are the same as described above in questions 1.4, 1) and 3) and 1.7.1. Article 68 of the CPA states that citizens, civil organisations that defend environmental rights and local authorities have legal standing for protecting diffuse interests regarding acts or omissions of the Public Administration that cause relevant damage to fundamental assets such as the environment. NGOs may be involved in administrative proceedings (Article 68 par. 2 of the CPA).
Anyone who claims to be the holder of a direct and personal interest, in particular those who have been harmed in their rights or legally protected interests by the challenged act, has standing in judicial administrative reviews, as well as any public or private person regarding their statutory rights and interests (Article 55 and 68 of the CPTA). In administrative courts, as well as in civil courts, *actio popularis* extends the legal standing to any person, association or foundation for protection of the interests at stake, regardless of personal interest in the demand. Legal standing is granted on the grounds of their qualification as an environmental NGO; they do not need to claim ‘sufficient interest’ or any ‘rights capable of being impaired’.

There is a general requirement in the general system for administrative and judicial procedure that court procedures should be timely. There is no general or specific environmental requirement that the administrative/judicial procedures should be effective. There are no specific safeguards to ensure that frivolous applications are not considered.

According to Article 2 of the CPTA, the principle of effective judicial protection includes the right to obtain, within a reasonable time, a judicial decision that is considered *res judicata* deciding on the claims presented before the court, as well as the possibility to obtain interim measures, be it anticipatory or protective, to ensure the effectiveness of the decision.

The level of access to national courts in light of the CJEU case-law and any related national case-law is not very effective. The main indicators summarised by Prof. Aragão are:

- the low numbers of environmental cases (low litigation rates) brought before the courts, demonstrating lack of citizen trust in the courts;
- the time required to obtain a final court decision;
- the number of “development projects/plans/programmes/activities” challenged in court and the number effectively prevented.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The scope of the administrative review and the judicial review is provided in general administrative rules of the CPA and the CPTA, as replied above to Question 2.1. 2). It covers both procedural and substantive legality.

Under DL 232/2007, the following examples of acts can be challenged: if the authority responsible for developing the plan or programme fails to request the opinion from the authorities that can have an interest in the environmental effects of the plans or programmes (Article 5 of DL 232/2007). Also, if the competent authority fails to issue the environmental report on plans or programmes that are subject to environmental assessment (Article 6 par. 1 of DL 232 /2007).

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Before filling a court action, there is no requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures. See question 2.1. 3) above.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

In order to have standing before the national courts it is not necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.

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?

Concerning the transposition of SEA, there are no special rules on this. General administrative rules apply. See question 1.7.2 above.

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 cost rules to bring a challenge on access to justice in these areas are the same as replied above to Question 1.7.3., as general rules apply. Also see question 2.1. 9) above.

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[31]

The following plans and programmes are examples of opportunities provided for public participation in the preparation of policies relating to the environment, pursuant to Article 7 of the Aarhus Convention[32]. These include procedures with reasonable timeframes for the different phases, allowing sufficient time for informing the public and for the public to participate and prepare effectively during the environmental decision-making (Article 6 par. 3), or provide for early public participation where all options are open and effective public participation can take place (Article 6 par. 4), or ensure that due account is taken of the outcome of the public participation in the decision (Article 6 par. 8):

**Climate change: The Action Program for Adaptation to Climate Change[33], the Strategic Framework for Climate Policy, the National Program for Climate Change 2020-2030 and the National Strategy for Adaptation to Climate Change 2020[34].**

**Waste:** PERSU 2020+ adjusting the Strategic Plan for Urban Waste (PERSU 2020)[35], the National Plan on Waste Management (PNGR) 2014-2020[36];

**Other plans/strategies:** The National Strategy for Environmental Education for 2017-2020 (ENEA 2020)[37]; the National Air Strategy 2020[38]; the National Action Plan for Energy Efficiency 2013-2016 and the National Action Plan for Renewable Energy[39]. Other examples of plans and programmes subject to public consultation concerning requirements of Article 7 of the Aarhus Convention can be found and are extensively described in the 5th National Report on Implementation of the Aarhus Convention – 2017 from the APA[40].

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 applicable national statutory rules on standing for both individuals and NGOs are the same as described above in questions 1.4. 1) and 3) and 1.7.1. Article 68 of the CPA states that citizens, civil organisations that defend environmental rights and local authorities have legal standing for protecting diffuse interests regarding acts or omissions of the Public Administration that cause relevant damage to fundamental assets such as the environment. NGOs may be involved in administrative proceedings (Article 68 par. 2 of the CPA).

Anyone who claims to be the holder of a direct and personal interest, in particular those who have been harmed in their rights or legally protected interests by the challenged act, have standing in judicial administrative reviews, as well as any public or private person regarding their statutory rights and interests (Article 55 and 68 of the CPTA). In administrative courts, as well as in civil courts, *actio popularis* extends the legal standing to any person, association or foundation for protection of the interests at stake, regardless of personal interest in the demand. Legal standing is granted on the grounds of their qualification as an environmental NGO; they do not need to claim ‘sufficient interest’ or any ‘rights capable of being impaired’. 
There is a general requirement in the general system for administrative and judicial procedure that court procedures should be timely. There is no general or specific environmental requirement that the administrative/judicial procedures should be effective. There are no specific safeguards to ensure that frivolous applications are not considered[41]. According to Article 2 of the CPTA, the principle of effective judicial protection includes the right to obtain, within a reasonable time, a judicial decision that is considered res judicata deciding on the claims presented before the court, as well as the possibility to obtain interim measures, be it anticipatory or protective, to ensure the effectiveness of the decision.

The level of access to national courts in light of the CJEU case-law and any related national case-law is not very effective. The main indicators summarised by Prof. Aragão are:
- the low numbers of environmental cases (low litigation rates) brought before the courts, demonstrating lack of citizen trust in the courts;
- the time required to obtain a final court decision;
- the number of “development projects/plans/programmes/activities” challenged in court and the number effectively prevented.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality? The scope of the administrative review and the judicial review is provided in general administrative rules of the CPA and the CPTA, as replied above to Question 2.1.2. It covers both procedural and substantive legality.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? Before filing a court action, there is no requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures. See question 2.1.2 above.

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.? It is not necessary to participate in the public consultation process in order to have legal standing before the courts. None of the plans/programmes referred to above establish such requirement, nor the general applicable administrative rules. There is no administrative procedure before the adoption of a plan or programme, but, as referred to at the beginning of this section 2.3, there is a procedure where participation opportunities are given:

The Action Program for Adaptation to Climate Change was subject to public consultation up to 28 November 2018 that was taken into consideration in the final document.

The Strategic Framework for Climate Policy, the National Program for Climate Change 2020-2030 and the National Strategy for Adaptation to Climate Change 2020 were subject to public consultation from 22 May to 5 June 2015, resulting in 60 contributions which were all thoroughly taken into consideration in the final documents of the climate policy. The report on the public consultation is available online on the APA portal.

The PERSU 2020+ adjusting the Strategic Plan for Urban Waste (PERSU 2020) takes into account the report on the public consultation, including the summary of 33 contributions collected through the available channels, the Portal Participa and the APA; The National Plan on Waste Management (PNGR) 2014-2020: pursuing the objective of Directive 2008/98/EC, this plan was accompanied by EIA proceedings. Both the plan itself and the environmental report resulting from the EIA proceedings were subject to public consultation for about one and a half months, with contributions from individuals, associations and public and private authorities, which were taken into consideration[42]; The National Strategy for Environmental Education for 2017-2020 (ENEA 2020) was subject to a process of participation aimed at promoting effective ownership of the civil society substantiated in a first stage of public participation with 49 contributions from private and public entities and a second stage of public consultation with 35 contributions; The National Air Strategy 2020: according to information from the APA, the public discussion took place from 20 April to 11 May 2015, and the collected comments and suggestions, which were included in the public consultation report, were taken into consideration for the corrections and improvements made in the final documents. [43][44]


5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There are no special rules on this, as general administrative rules apply. See question 1.7.2 above.

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 cost rules to bring a challenge on access to justice in these areas are the same as replied above to Question 1.7.3., as general rules apply. Also see question 2.1.2 above.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation

Since national SEA procedures and the adjacent administrative or judicial review procedures were referred to above in Question 2.2, the following plans and programmes are specifically required to be prepared by the EU legislation:

- The basic guidelines of waste management policy are laid down in the following plans: the waste management national plan, waste management specific plans and action plans at municipal level. Prior to the approval of such plans, there is a mandatory phase of hearing the Association of Portuguese Municipalities and the Minister of Environment’s local waste authorities (Articles 12, 13, 14, 15 and 16 of DL 170/2006). The waste management plans and preventive waste programmes are subject to public consultation prior to the approval, which shall be conducted according to rules set out in DL 232/2007, which were addressed in question 2.2.
- Another set of rules implementing the legal regime of environmental evaluation of plans and programmes, together with DL 232/2007, is laid down within the context of the land management system by Decree-Law no. 80/2015 of 14 May 2015 (DL 80/2015) in order to take into account the environmental effects in the proceedings of development, monitoring, public participation and approval of the land management instruments. It is ensured that there is participation of the organisations representing private interests in the periods intended for public participation.
- Directive 2003/35/CE providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment is transposed in various legal acts, namely in the national EIA legislation regarding EIA (DL 151-B/2013), IPPC (DL 127/2013), strategic environmental assessment (DL 232/2007) and water framework (Law 58/2005), and by the CPA itself[47], all addressed respectively in the above questions 1.8.1, 1.8.2, 2.2, 2.1 and 1.4 to 1.7.

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the content of the plan (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case-law and any related national case-law?

The applicable national statutory rules on standing for both individuals and NGOs are the same as described above in questions 1.4, 1) and 3) and 1.7.1.
Article 68 of the CPA states that citizens, civil organisations that defend environmental rights and local authorities have legal standing for protection of diffuse interests regarding acts or omissions of the Public Administration that cause relevant damage to fundamental assets such as the environment. NGOs may be involved in administrative proceedings (Article 68 par. 2 of the CPA).

Anyone who claims to be the holder of a direct and personal interest, in particular those who have been harmed in their rights or legally protected interests by the challenged act, has standing in judicial administrative reviews, as well as any public or private person regarding their statutory rights and interests (Article 55 and 68 of the CPTA). In administrative courts, as well as in civil courts, *actio popularis* extends the standing to any person, association or foundation for protection of the interests at stake, regardless of personal interest in the demand. Legal standing is granted on the grounds of their qualification as an environmental NGO; they do not need to claim ‘sufficient interest’ or any ‘rights capable of being impaired’.

In the context of the land management system, the following rights are guaranteed in line with the general guarantees of the administered[48] established in the CPTA: popular action and complaint both to the Ombudsperson and the Public Prosecutor. Specifically, the municipal land management plans and special land management plans recognise the right to directly challenge such plans through administrative review (Article 7 of DL 80/2015).

There is a general requirement in the general system for administrative and judicial procedure that court procedures should be timely. There is no general or specific environmental requirement that the administrative/judicial procedures should be effective. There are no specific safeguards to ensure that frivolous applications are not considered[49].

According to Article 2 of the CPTA, the principle of effective judicial protection includes the right to obtain, within a reasonable time, a judicial decision that is considered *res judicata* deciding on the claims presented before the court, as well as the possibility to obtain interim measures, be it anticipatory or protective, to ensure the effectiveness of the decision.

The level of access to national courts in light of the CJEU case-law and any related national case-law is even less effective than stated in questions 2.2 and 2.3 above. In Prof. Aragão’s words, “the SEA directive was transposed late (after the deadline) and before the transposition occurred the municipalities started a review procedure of many territorial management plans throughout the country. The territorial plans were reviewed and approved without an SEA when they should already have been submitted to SEA”.

2) **Does the form in which the plan or programme is adopted make a difference in terms of legal standing (see also Section 2.5 below)?**

There are no different *locus standi* conditions if the plan or programme is adopted by legislation, by an individual resolution of a legislative body, or by a single act of an administrative body, etc.

The only difference resides in the kind of judicial action that can be taken (Article 37 of the CPTA):

- A plan or programme adopted by an act of administrative bodies can be challenged through: condemnation to practise due administrative acts; condemnation to refrain from practising certain acts;
- A plan or programme adopted by legislation or a legislative body can be challenged through the rules issued under administrative law and condemnation to emit rules due under provisions of administrative law.

It should be highlighted that that rules on legal standing are uniform for every kind of process.

On the other hand, within the administrative proceedings the interested parties have two means at their disposal: to request that the competent bodies develop, amend or revoke regulations during the public hearing of the interested parties, provided this is justified by the high number of interested parties (Articles 97 to 101 of the CPA); to request that the competent body issues an administrative act, in which case there is a hearing of the interested party prior to the final decision (Articles 102 to 134 of the CPA).

3) **What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?**

The scope of the administrative review and the judicial review is provided in general administrative rules of the CPA and the CPTA, as replied above to Question 2.1, 2). It covers both procedural and substantive legality.

4) **Before filling a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?**

Before filling a court action, there is no requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures. See question 2.1, 3) above.

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.?**

It is not necessary to participate in the public consultation phase of the administrative procedure in order to have standing before the national courts.

6) **Are there some grounds/arguments precluded from the judicial review phase?**

There is a case similar to preclusion: appeal to the Constitutional Court is only possible if, in the previous judicial procedures, the argument of unconstitutionality of a legal rule was raised (Article 70 par. 1 indents (b) and (f) of Law no. 28/82 of 15 November 1982, as last amended by Organic Law no. 4/2019 of 13 September 2019).

The following restrictions apply to the general rules applicable to judicial administrative reviews (Articles 37 et seq. of the CPTA):

- In the context of civil liability of the Public Administration for unlawful administrative acts, it is possible for the court to decide if a certain act is illegal, even if such act does not meet the challengeable requirements, i.e. if an unchallengeable act is at stake (see question 2.1, 5) above). Without prejudice to this possibility, the effect of annulment of the unchallengeable act cannot be obtained through judicial review (Article 36 of the CPTA);
- The condemnation to refrain from practising certain acts can only be requested when it is likely that the acts issued would harm the legally protected rights or interests and that the use of such means of challenge is indispensable (Article 39 of the CPTA).

7) **Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?**

The constitutional right is implemented through the principle of effective judicial protection, which includes the right to a fair trial (Article 2 of the CPTA). The principle of equality must also be observed in the relations of the Public Administration with individuals (Article 6 of the CPA).

8) **How is the notion of “timely” implemented by the national legislation?**

The constitutional principle of effective judicial protection, implemented by Article 2 of the CPTA, applies, including the right to obtain a judicial decision within a reasonable time (see questions 1.3, 1) and 1.7.1, 4) above).

9) **Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?**

There are no special rules on this, as general administrative rules apply. See question 1.7.2 above.

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 cost rules to bring a challenge on access to justice in these areas are the same as replied above to Question 1.7.3., as general rules apply. Also see question 2.1, 9) above.
1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts


Regional Legislative Decree no. 19/2010/A of 25 May 2010 regulating the elaboration and dissemination of reports on the state of the environment and the support to the ENGO, as amended by Regional Legislative Decree no. 12/2019/A of 30 May 2019 (DLR 19/2010/A)[52], was adopted under the premises of the three Aarhus pillars.

Executive regulations and generally applicable instruments can be subject to administrative challenge in the same way as individual legal acts. The concept of administrative regulation[53] includes general and abstract legal rules which aim at producing legal external effects within the exercise of administrative legal powers (Articles 135 and 147 par. 3 of the CPA).

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedure for adopting or the content of the decision, act or omission of the national regulatory act (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case-law and any related national case-law?

The applicable national statutory rules on standing for both individuals and NGOs are the same as described above in questions 1.4, 1) and 3) and 1.7.1.

Article 68 of the CPA states that citizens, civil organisations that defend environmental rights and local authorities have legal standing for protection of diffuse interests regarding acts or omissions of the Public Administration that cause relevant damage to fundamental assets such as the environment. NGOs may be involved in administrative proceedings (Article 68 par. 2 of the CPA).

Anyone who claims to be the holder of a direct and personal interest, in particular those who have been harmed in their rights or legally protected interests by the challenged act, has standing in judicial administrative review, as well as any public or private person regarding their statutory rights and interests (Article 55 and 68 of the CPTA). In administrative courts, as well as in civil courts, actio popularis extends the standing to any person, association or foundation for protection of the interests at stake, regardless of personal interest in the demand. Legal standing is granted on the grounds of their qualification as an environmental NGO; they do not need to claim ‘sufficient interest’ or any ‘rights capable of being impaired’.

There is a general requirement in the general system for administrative and judicial procedure that court procedures should be timely. There is no general or specific environmental requirement that the administrative/judicial procedures should be effective. There are no specific safeguards to ensure that frivolous applications are not considered[54].

According to Article 2 of the CPTA, the principle of effective judicial protection includes the right to obtain, within a reasonable time, a judicial decision that is considered res judicata deciding on the claims presented before the court, as well as the possibility to obtain interim measures, be it anticipatory or protective, to ensure the effectiveness of the decision.

Insofar as concerns the level of access to national courts in light of the CJEU case-law and any related national case-law, the question of the direct effect of the SEA directive has not been raised before the courts[55].

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The scope of the administrative review and the judicial review is provided in general administrative rules of the CPA and the CPTA, as replied above to Question 2.1, 2). It covers both procedural and substantive legality.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Before filing a court action, is there no requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures. See question 2.1, 3) above.

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.?

It is not necessary to participate in the public consultation phase of the administrative procedure in order to have standing before the national courts.

DL 127/2008 was approved within the framework of both Aarhus and the United Nations Protocol on Pollutant Release and Transfer Registers, aiming at facilitating access to environmental information and a higher level of public participation.

Regulation of DLR 19/2010/A on reports on the state of the environment aims at ensuring the right to public participation in environmental matters and also support for ENGOs that are dedicated to the same objective of promotion of public participation in environmental matters. The competent authority for issuing the reports and other documents required to ensure public participation in the Autonomous Region of Azores is the regional body of autonomous administration responsible for environment, which must issue every three years a report on the state of the environment in Azores. Such regional body shall maintain technical and financial support for ENGOs that are deemed to develop activities of relevant public interest. Such support aims at ensuring actions of public participation.

For the purposes of the above-mentioned regulation applicable to the Autonomous Region of Azores, public concerned means the affected public or the public likely to be affected by or interested in the decision-making process, including the ENGO (Article 3 subpar. e) of DLR 19/2010/A).

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There are no special rules on this, as general administrative rules apply. See question 1.7.2 above.

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 cost rules to bring a challenge on access to justice in these areas are the same as replied above to Question 1.7.3., as general rules apply. Also see question 2.1, 9) above.

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[56]?

The request for preliminary ruling before the CJEU is voluntary for first instance courts, where an interpretation question is at stake. It is mandatory for: i) courts whose decisions cannot be appealed against if one of the parties requests it (that includes the defendant in a criminal procedure); ii) where a question of invalidity of an act is at stake; iii) where questions on validity and interpretation of framework decisions are at stake and of decisions on interpretation of conventions established under areas of police and judicial cooperation in criminal matters and on validity and interpretation of its implementing measures[57].

As mentioned above (see question 1.5, 3), the request for preliminary ruling is mandatory for the high courts, namely the STJ and the STA, when the interpretation of EU law is required to decide a question brought before the national courts[58]. However, these courts do not comply, as is clearly evident in
the statistics (per capita, per number of courts/judges, per number of years in the EU) on European preliminary rulings[59]. The fact that there are low numbers of actual preliminary rulings under Article 267 TFEU brought by Portuguese courts indicates that there are upstream problems in regard to access to justice.

The OA makes available a short summary on the practical issues of Article 267 TFEU. Further information on the OA can be found in question 1.6, 1) above.

[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.
[3] Article 10 of DL 140/99 transposes Article 6 par. 3 of Directive 92/43, which is one of the provisions analysed in the cited CJEU case-law C-664/15.
[6] Decree-Law No 150/2015, of 5 August
[12] Law No 17/2014 of 10 April 2014 establishing the basis for national policy on maritime spatial planning and management.
[13] National rules on environmental access to justice are provided by Law no. 26/2016 transposing Directive 2003/4/EC, as stated above in question 1.7.4, 1).
[15] The exact wording of Article 3 subpar. q) of DL 150/2015 cross-references Article 8 and 10. However, it is understood that the cross-reference to Article 10 is a typo and should actually be a cross-reference to Article 11, which transposes Article 15(2) of Directive 2012/18/UE. Article 3 par.18 of the Directive refers to “matters covered by Article 15(1)”.
[16] No case-law was found in the national data base of IGFEJ concerning Directive 2008/98.
[22] Acórdão do STA n.º 0849/08 de 07/01/2009.
[23] Acórdão do STA n.º 01273/13 de 03/12/2014.
[25] For example, as addressed in the Study Effective access to justice of the DGIP.
[26] A comprehensive list of the rights with granted administrative protection includes: “the recognition of subjective legal situations arising directly from administrative or legal acts; the recognition of individual qualities or fulfilment of conditions; the recognition of the right to refrain from behaviours and, in particular, to refrain from adopting administrative acts in the case of threats or injuries; the annulment or declaration of nullity or inexistence of administrative acts; the condemnation of the administration to pay, to deliver things or perform facts; the condemnation of the administration to repair damages (in nature or by monetary compensation); the resolution of disputes concerning the interpretation, validity or enforceability of administrative contracts; the declaration of illegality of administrative norms; the condemnation of the administration to practise administrative acts, material acts or operations due according to the law or necessary to restore subjective legal situations; the injunction to provide information, allow access to documents or issue certificates; or the adoption of appropriate interim measures to ensure the effectiveness of the decision. Source: Aragão, 2012, page 15.
[27] Cristina Maria Pina Alves Moreira, A aceitação do ato administrativo [Acceptance of the administrative act], Master’s in Law (Specialisation in Legal and Administrative Sciences), Faculty of Law of the University of Porto, p. 17: ‘Administrative acts open to challenge are any legal acts consisting of unilateral decisions of a public authority which seek to bring about the consequence of creating, modifying or removing a right or duty or of determining the legal nature of a given thing.’
[28] Case-law from the Constitutional Court of 20 November 1996 in process 606/95
[29] The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.
[31] See findings under ACC/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.
[33] Approved by Resolution 130/2019 of 2 August 2019, Resolução do Conselho de Ministros n.º 130/2019, de 2 de Agosto, aprova o Programa Programa de Ação para a Adaptação às Alterações Climáticas – P-3AC.
There is a mechanism called extension of the effects of the court decision in administrative procedures.[3] The effects of a court decision that has annulled or declared null a certain unfavourable administrative act, or that has recognised the existence of a certain favourable legal situation, can be extended to other persons who were not involved as parties in the respective judicial administrative process, if such persons are addressees of an administrative act with similar content or are placed in the same legal situation. This extension is valid only when there are several perfectly similar cases and is subject to the two persons who were not involved as parties in the respective judicial administrative process, if such persons are addressees of an administrative act with null a certain unfavourable administrative act, or that has recognised the existence of a certain favourable legal situation, can be extended to other persons who were not involved as parties in the respective judicial administrative process, if such persons are addressees of an administrative act with similar content or are placed in the same legal situation. This extension is valid only when there are several perfectly similar cases and is subject to the two
following conditions: at least five judicial decisions from superior courts with the same meaning and not more than five with opposite meanings. For the purposes of the extension, the interested party shall send a request, within 1 year from the time when the court decision became effective, to the public administrative body that was the defendant in the process at stake (Article 161 of the CPTA). For example, in a process where land with forest resources that was expropriated is at stake, the co-owners of the land invoke the right to extend the effects of the court decision that has decided on the expropriation process.[4]

The administrative executive process can take one of the following forms: execution for service provision or delivery of certain assets, if the Administration did not spontaneously execute the court decision within a procedural period of 90 days (Articles 162 to 169 of the CPTA); and execution of court decisions annulling administrative acts, in which case the Administration shall reconstruct the situation as if the annulled act had not been issued and shall fulfill the duties that were not fulfilled under that same act (Articles 173 to 179 of the CPTA).

The Government, the representative of the executive power, is the main authority in charge of national policy, which coordinates directly or indirectly through its subordinate institutions, national and local authorities. The main institutions subordinated to the Minister of Environment, Waters and Forests are:

1.1. Legal order – sources of environmental law
The Parliament is the supreme representative institution and the sole legislative authority of Romania. The Parliament is bicameral, and the 2 chambers are the Senate and the Chamber of Deputies. The Romanian Parliament adopts laws, motions, and decisions. Laws are constitutional laws (by which the Constitution is amended), organic laws, and ordinary laws.

The Government, the representative of the executive power, can issue in certain conditions ordinances (emergency or simple) and decisions for the implementation of primary legislation. The ministers can issue ministerial orders in their specialized area of competence.

1) General introduction to the system of protection of environment and procedural rights of persons (natural, legal, NGOs) in the specific national order
The main rules and regulations in the environmental field are usually set by laws, as well as government ordinances and decisions (primary legislation).

The Ministry of Environment, Waters and Forests is the main authority in charge of national policy, which coordinates directly or indirectly through its subordinate institutions, national and local authorities. The main institutions subordinated to the Minister of Environment, Waters and Forests are:
The National Environmental Protection Agency-NEPA (Administrația Națională pentru Protecția Mediului), which is mainly in charge of implementation, with 42
subordinated county agencies.

The National Forests Administration Romsilva (Administrația Națională a Pădurilor Romsilva) at the national level and a series of local Forest Districts.

The Forestry Guards (fomerly Territorial Inspectorates for Hunting and Forests) are in charge of implementation and enforcement of regulations.

The Commission’s 2017 Environmental Implementation Review report on Romania found that, ‘there is considerable room for improvement in terms of
administrative capacity, as well as concerning the implementation of environmental legislation’, and that ‘there is a lack of trust among political and
administrative layers, resulting in weak ownership of decisions and policies’.

There are various associations active in Romania as well as in the Black Sea area that interact with the government in representing the interests of civil
society, including through advocacy efforts during public consultation periods for both legislative acts and national and local strategies, plans or permitting
procedures for new developments. Romania has a set of administrative regulations for access to public information and transparency of public decision-
making which have allowed NGOs to ensure citizens’ access to decision-making. Civil society has been mainly involved in the permitting process for projects,
and EIA permitting procedures in particular, where local communities can exert pressure and on occasion have been successful in delaying the issuance of
permits until all concerns have been properly addressed. These NGOs include Greenpeace CEE Romania, WWF Romania, Bankwatch Association
Romania, Agent Green Association, Mare Nostrum, etc.

The Environmental Protection Law, Governmental Ordinance no 195/2005, Art. 5, stipulates that any person has the right to go to court or address the
administrative authorities to protect the right to a healthy environment, without having to prove impairment of a right. The environmental NGOs also have
standing in court in any environmental matter.

The treaties and international agreements are also very important in the protection of the environment. For acts of this type to have any effect on Romanian
legislation, they need to be approved by the Romanian Parliament.

Overall, in Romania the environmental rights – access to information, public participation, and access to justice – are guaranteed through the Romanian
Constitution and specific legislation.

2) Constitution – main (content of + including references) provisions on environment and access to justice in the national constitution (if applicable) including procedural rights

The Constitution regulates the right to a healthy environment as well as other connected human rights:

**Right to a healthy environment, Art. 35**

This article states that the state must acknowledge the right to a healthy, well-preserved, and balanced environment to every person. In order to accomplish
this, the state must provide the legislative framework. Also, there is an obligation for every person (natural or legal) to improve and protect the environment.

**Right to life, to physical and mental integrity, Art. 22**

This article guarantees the right to life as well as the right to physical and mental integrity of persons. Also, it prohibits torture, or any kind of inhumane or
degrading punishment or treatment. In the last paragraph the death penalty is abolished.

Although this article does not directly refer to the protection of the environment, “The right to life, as well as the right to physical and mental integrity of person
are guaranteed”, so it could not be respected without a healthy environment, as pollution can damage physical and mental health.

**The right to protection of health, Art. 34**

This article guarantees the protection of health. The state is bound to take measures to ensure public hygiene and health. Also, the organization of the
medical care and social security system in case of sickness, accidents, maternity and recovery, control over the exercise of medical professions and
paramedical activities, as well as other measures to protect physical and mental health of a person are established according to the law.

**Access to justice in the national constitution, Art. 21** states that

This article guarantees that every person is entitled to bring a case before the courts for the defence of his legitimate rights, liberties, and interests. It is
forbidden to restrict this right by any kind of law. It also establishes that all parties are entitled to a fair trial and a resolution of their cases within a reasonable
term. Administrative special jurisdiction is optional and free of charge.

**The right of international treaties on human rights, Art. 20**

This article refers to the priority of the pacts and treaties regarding fundamental rights. This means that when any inconsistencies exist between the pacts
and treaties on fundamental human rights that Romania is a party to, and the national law, the international regulations shall take precedence, unless the
Constitution or the national laws comprise more favourable provisions. Also, the constitutional provisions concerning the citizens’ rights and liberties shall be
interpreted and enforced in conformity with the Universal Declaration of Human Rights with the pacts and other treaties that Romania is a party to.

**The right of petition, Art. 51**

This article is about the right to petition. It states that citizens have the right to address the public authorities by petitions formulated only in the name of the
signatories. It also provides the right to forward petitions for legally established organizations (exclusively on the behalf of the collective body it represents).

The right to petition is exempt from tax. The public authorities are obliged to answer petitions in the time limits and the conditions established by law.

**The right of a person harmed by a public authority, Art. 52**

This article recognizes the right of any person aggrieved in his/her legitimate rights or interests by a public authority, by means of an administrative act or by
the failure of a public authority to resolve his/her application within the lawful time limit, to the acknowledgment of his/her claimed right or legitimate interest,
the annulment of the act and reparations for the damage. The exact conditions for this have to be regulated by an organic law. Also, the State shall bear the
patrimonial liability for any prejudice caused as a result of judicial errors. The State’s liability is established by law and does not eliminate the liability of the
magistrates if they exercised their mandate in ill will or gross negligence.

Under the Romanian legal system, the Constitution is the legal act at the top of the legal pyramid. All the other normative acts have to be consistent with the
Constitution’s provisions.

The constitutional right to environment can be invoked directly in courts. However, there are laws which further develop the environmental rights. On the
other hand, sometimes the courts and the administrative bodies will not apply the Constitution alone, stating that it is a general Act that cannot be applied
alone.
According to Article 11, paragraph 2 of the Constitution, treaties ratified by the Parliament become part of the national law. That means that one can rely directly on international agreements that are ratified by the Romanian Parliament.

3) Acts, Codes, Decrees, etc. - main provisions on environment and access to justice, national codes, acts

The environmental framework law in Romania is the Emergency Governmental Ordinance (EGO) no 195/2005 regarding the protection of the environment, approved by the Parliament. 

**Sectoral legislation** is passed through Acts issued by Parliament as well as Emergency Governmental Ordinances approved by Laws:

Emergency Governmental Ordinance no 195/2005 approved by Law no 265/2006 regarding the protection of the environment is the framework law in environmental issues,

Emergency Governmental Ordinance no 57/2007 on the regime of protected natural areas, habitat conservation natural, of wild flora and fauna, approved with modifications and additions by Law no 49/2011,

Law no 292/2018 on assessing the impact of certain public and private projects on the environment,

Governmental Decision no 1076/2004 on establishing the procedure for carrying out the environmental assessment for plans and programmes,

The Water Law no 107/1996,

Law no 104 of June 15, 2011 on ambient air quality,

Law no 211/2011 on the waste regime,

Law no 246/2020 on land use, conservation, and protection of soil,

The Forest Code – Law no 46/2008,

Law no 278/2013 on industrial emissions,

Law no 121/2019 on the assessment and management of ambient noise,

Law no 111/1996 (* republished *) FR2 on the safe conduct, regulation, authorization, and control of nuclear activities,

Order no 1798/2007 for the approval of the Procedure for issuing the environmental permit,

Law no 74/2019 on the management of potentially contaminated and contaminated sites,

Law no. 59/2016 on the control of major-accident hazards involving dangerous substances,

Law no 407/2006 hunting and protection of the hunting fund,

Emergency Governmental Ordinance no 64/2011 regarding the ecological storage of carbon dioxide, approved with modifications by Law no 114 / 2013,

Emergency Governmental Ordinance no 68/2007 approved by Law no 19/2008 regarding environmental liability with regard to the prevention and remedying of environmental damage,

Emergency Governmental Ordinance no 43/2007 on the deliberate release into the environment of genetically modified organisms, approved with modifications and additions by Law no 247/2009,

Emergency Governmental Ordinance no 202/2002 on integrated coastal zone management approved by Law no 280/2003, etc,

According to EGO no 195/2005 Art. 5, “the state recognizes to any person the right to a healthy and ecologically balanced environment and guarantees: Access to environmental information respecting the confidentiality conditions provided by law;

The right of association in environmental organizations;

The right to be consulted in decision-making processes regarding the development of environmental policies and legislation, the regulatory acts, plans and programmes;

The right to appeal directly or through the environmental organizations to the administrative and judicial authorities regarding environmental issues, regardless of whether an injury or damage occurred;

The right to compensation for the damages suffered.

The principles guiding the implementation of EGO 195/2005, according to Art. 3, are:

The principle of integrating environmental policy into other sectoral policies;

The precautionary principle in decision-making;

The principle of preventive action;

The principle of retention of pollutants at source;

The ‘polluter pays’ principle;

The principle of conservation of biodiversity and natural ecosystems specific to the biographic natural framework;

Sustainable use of natural resources;

Information and public participation in decision-making and access to justice in environmental matters;

Development of international cooperation for environmental protection.

Access to information must be ensured in accordance with to the Aarhus Convention and the national legislation regarding access to information:

Law no 86/2000 - ratification of the Aarhus Convention

Law no 544/2001 - Freedom of Information Act


Access to information and public participation in decision-making process as well as the principles of access to justice are also stated in Art. 20 of EGO 195/2005:

The public is informed in the regulatory procedures of the plans, programs, and activities according to the national legislation provisions. The consultation of the public during the regulatory procedures is mandatory and it is carried out according to the national legislative provisions. The public’s access to justice is ensured according to the national legislative provisions. The environmental NGOs have standing in court in environmental cases.

Overall, in Romania the environmental rights – access to information, public participation, and access to justice – are guaranteed through the Romanian Constitution and specific legislation.

4) Examples of national case-law, role of the Supreme Court in environmental cases

As examples of national cases and the role of the Supreme Court in environmental cases we can mention:

**Saligny Case - File no 2937/2012**

At the first instance court, the plaintiffs requested the annulment of a partial authorization for the conduct of nuclear activities. In support of the action, the applicants claimed that the contested authorization was illegally issued for the partial location of the nuclear waste dump in Saligny, Constanta County, because it was done without public consultation, which is mandatory according to the provisions of the Aarhus Convention. The plaintiffs also claimed that the public in the neighbouring states should be consulted.

The Appeal Court dismissed the action as unfounded stating that at the date of issuing the authorization for conduct of nuclear activities, the requirement for public consultation did not have to be met, as the act had only the status of an authorization of principle and so the procedure of public consultation was
necessary only for obtaining the final authorization. The court also rejected the ground of illegality in violation of the provisions of the Convention regarding access to information, noting that the defendant submitted in the authorization a file for the public communication programme.

The plaintiffs filed a recourse. In the first ground of recourse, the plaintiffs showed that the public information provided by the defendant was not in conformity with the Aarhus Convention as the entire public was not consulted, not all the documentation was available in order to obtain partial authorization, the public did not have precise deadlines to become aware of documentation, there was no public announcement at national level and in neighbouring states, and there was no deadline for the public to be able to express their point of view.

The High Court of Cassation and Justice, analysing all the arguments, admitted the declared recourse and cancelled the authorization for nuclear activities issued by the defendant. The decision is final.

**The lignite mine case - File no 34493/3/2013**

The Tribunal was invested with a complaint, requesting the annulment of an administrative act regarding the permanent removal of 130.8 ha of forest to continue the extraction of lignite. The arguments of the plaintiff showed that in essence the environmental procedure was only partially made, and only for a related activity (the deforestation), while the main activity (exploitation of lignite over an area of 130 ha) was not evaluated at all, even though the project for the extension of a lignite mine included the cutting of the forest and all the related activities, like mining coal deposits and other related or extension activities such as using fossil fuels. It was also shown that the project was incorrectly framed in Annex 2 to GD 445/2009, while it should have been framed in the Annex no 1, point 19 because the main purpose is clearly the extension of the lignite mines and not the forest cutting. Secondly it was shown that the defendants sliced the project in order to extend a coal mine, as the environmental assessment must be carried out for the main project as well as for all the related activities; otherwise the environmental agreement violates Community legislation and practices the European Court of Justice. Also, it was shown that the environmental agreement does not provide for measures to compensate for the clearing works, although this is compulsory according to national law.

The plaintiffs showed that the urban certificate for the land subject to deforestation was missing. Other factors invoked were: the lack of analysis of the climate factor; lack of analysis of the impact on the health of the population and on the protected sites in the vicinity; lack of any adequate assessment and violation of the provisions of the Aarhus Convention.

The court, after analysing all the circumstances of the case, admitted the action brought by the applicants and annulled the environmental agreement issued by the defendant, Gorj Environmental Protection Agency.

**Deforestation to build lignite mine - File no 2094/3/2012**

The initial complaint filed by the plaintiffs asked for a decision to be suspended. The object of this decision was the permanent removal from the forestry circuit of 0.9604 ha in order to extend the lignite mine. The court rejected the complaint as unfounded. The court considered that the document was issued in compliance with the legal conditions but that the plaintiffs had not provided any evidence of impending material damage which would be difficult or impossible to effectively rectify later, to justify the exceptional character of the suspension of the administrative act. The Tribunal ignored the fact that on the basis of the issuance of the contested document, not all the necessary documents provided by law were present. The court also ignored the fact that not all the documents were attached. Regarding the production of an imminent damage, the plaintiffs believe that the provisions of Law no 554/2004 should be interpreted according to the Aarhus Convention, and according to the provisions of the EU Treaty covering environment protection, a lignite mine was defined as having a major negative impact[1].

Analysing the records in the file, the Court of Appeal considered that the recourse was well-founded. Also, the court analysed the evidence submitted on the file and concluded that the announcement of the public consultation was posted at the mayor's office just 1 day before the decision was issued, making it impossible to effectively participate in the debate, thus not complying with the obligation imposed by national law and Aarhus Convention standards. The court also observed that, as the appellants correctly argued, the environmental declaration covered a much larger area than the one mentioned in Decision no 394/20/12/2011, respectively 50.89 ha compared to 0.9604 ha. Regarding the imminent damage, the court stated that the extension of the lignite mine had a negative impact on the environment. Therefore, the court found both that the condition of the case was well justified and the imminent damage was demonstrated. The court admitted the appeal and suspended the decision issued. The decision was final.

By way of example, we can name a few other important cases on the related matters:

- **File no 34493/3/2013**: Bucharest Tribunal, stage - fund, object - annulment of an administrative act, construction of Basarab upper-level passage, environment;
- **File no 2092/3/2007**: Bucharest Tribunal, stage - fund, object - annulment of an administrative act, construction of Basarab upper-level passage, environment;
- **File no 32614/3/2014**: Bucharest Tribunal, stage - fund, object - annulment of an administrative act, environment;
- **Decision no 2937/2012**: High Court of Cassation and Justice, stage - recourse, object - annulment of an authorization for the conduct of nuclear activities, environment;
- **File no 2252/2019**: Court of Appeal Bucharest, stage - fund, object - cancellation and suspension of administrative act, environment;
- **File no 495/57/2018**: Court of Appeal Alba Iulia, stage - appeal in cancellation, object - annulment of an administrative act, environment;
- **File no 34493/3/2013**: Bucharest Tribunal, stage - fund, object - annulment of an administrative act, environment; and the appeal from the Court of Appeal Bucharest, same file no.

The High Court of Cassation and Justice is the unique and supreme court in Romania, which has the role of ensuring the interpretation and uniform application of the law by other courts, according to its competence. The review in the interest of law is the main procedure for achieving this. Recently, the High Court of Cassation and Justice has issued a regulation concerning the standing in court of the NGOs acting in court against administrative decisions, stating that, their legitimate public interest is subsequent to the private legitimate interest stated in their constitutive acts and statutes as their general scope and specific objectives.

**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?**

According to Article 11, paragraph 2 of the Constitution, treaties ratified by the Parliament become part of national law. That means that one can rely directly on the international agreements.

Once it is ratified, the international law takes effect automatically in national law; it is part of the national law, thus giving the right for the interested parties to invoke it directly or in conjunction with other normative acts which may define the implementation framework, if that is the case, and imposing an obligation...
on administrative bodies or courts to take into account its provisions. According to Art. 20 para 2 of the Romanian Constitution, if there are inconsistencies between the human rights treaties to which Romania is a party and the internal legislation, the provisions of the international legislation take precedence, except where the internal provisions provide for more favourable legal norms.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

In Romania, there are 4 levels of court and three levels of jurisdiction, both in civil and criminal cases:

- District Courts (188)
- Tribunals (42)
- Courts of Appeal (15)
- High Court of Cassation and Justice.

2) Rules of jurisdiction – how is it determined if there is jurisdiction of the Court, cases of conflict between different national tribunals (in different Member States)?

In environmental litigation, sometimes the jurisdiction will be established according to civil law (for example when the litigation is about an obligation to do something[2], and when the defendant is not a public institution). The competence can also be established according to administrative law, for example when the litigation is about an administrative act.

Environmental cases are usually under the jurisdiction of the administrative courts. In this case, the competent first court is the County Tribunal if the public authority being called as defendant is at the local or county level (e.g. the County Environmental Protection Agency or the County Council) or the Court of Appeal if the public authority is at the central level (e.g. the National Environmental Protection Agency, the Ministry of Environment, etc.). The appeal in such cases will be heard by the Court of Appeal if the first Court is the Tribunal, or the High Court of Cassation and Justice if the first court is the Court of Appeal.

According to administrative procedure law, there are only two grades of jurisdiction: first court and cassation appeal.

1.2.1. The general competence applicable to the environmental litigation when the defendant is not a public institution.

The jurisdiction is established by the object of the cause and its value.

District courts

The district courts do not have legal personality and are established within national counties and in Bucharest.

In civil matters, the district courts hear any applications which can be expressed in terms of money, up to and including 200,000 lei, regardless of whether the parties have the status of professionals.

District courts also hear appeals against decisions of the local public administration authorities with local jurisdiction and other institutions with such jurisdiction, in the cases provided for by the law, and any other applications which are by law within their jurisdiction.

In criminal matters, the district courts hear mainly the following cases:

- Regarding environmental crimes, there are some special provisions in EGO 195/2005. According to Art.98 EGO 195/2005:
  - Paragraph 1 “The following acts constitute crimes and are punishable by imprisonment from 3 months to one year or by a fine if they were likely to endanger the life or health of humans, animals or vegetation: burning of stubble, reeds, shrubs, and grassy vegetation in protected areas and on lands subject to ecological restoration; accidental pollution due to non-supervision of new works, operation of installations, technological equipment and treatment and neutralization, mentioned in the provisions of the environmental agreement and/or the integrated environmental authorization.”
  - Paragraph 2 “The following acts constitute crimes and are punishable by imprisonment from 3 months to one year or by a fine if they were likely to endanger the life or health of humans, animals or vegetation: pollution by the discharge, in the atmosphere or on the ground, of some wastes or dangerous substances; the production of noise beyond the permitted limits if this seriously endangers human health; the continuation of the activity after the suspension of the environmental agreement or of the authorization, respectively of the integrated environmental authorization; the import and export of prohibited or restricted dangerous substances and preparations; failure to immediately report any major accident by persons in charge of this obligation; the production, delivery or use of chemical fertilizers, as well as any unauthorized plant protection products, for crops intended for sale; non-compliance with the prohibitions regarding the use on agricultural lands of plant protection products or chemical fertilizers.”
- Paragraph 3 “The following acts constitute crimes and are punishable by imprisonment from 6 months to 3 years if they were likely to endanger the life or health of humans, animals or vegetation: non-supervision and non-insurance of landfills and hazardous substances, as well as non-compliance with the obligation to store chemical fertilizers and plant protection products only packaged and in protected places; the production or import for the purpose of placing on the market, as well as the use of dangerous substances and preparations without observing the provisions of the normative acts in force and the introduction on the Romanian territory of waste of any nature for the purpose of their elimination; transport and transit of dangerous substances and preparations, in violation of the legal provisions in force; carrying out activities with genetically modified organisms or their products, without requesting and obtaining the import/export agreement or the authorizations provided by the specific regulations; cultivation of genetically modified higher plants for testing or commercial purposes, without the registration required by law”;
- Paragraph 4 “The following acts constitute crimes and are punishable by imprisonment from 1 year to 5 years if they were likely to endanger the life or health of humans, animals or vegetation: provocation, due to non-monitoring of ionizing radiation sources, environmental contamination and/or exposure of the population to ionizing radiation, failure to promptly report the increase over the permitted limits of environmental contamination, improper application, or failure to intervene in case of nuclear accident; unloading wastewater and waste from ships or floating platforms directly into natural waters or knowingly causing pollution by discharging or sinking into natural waters, directly or from floating ships or platforms of hazardous substances or waste.”
- Paragraph 5 “The following acts constitute crimes and are punishable by imprisonment from 2 to 7 years: continuation of the activity that caused the pollution after the order to cease this activity; failure to take measures to completely dispose of hazardous substances and preparations that have become waste; refusal to intervene in case of accidental pollution of waters and coastal areas;
refusal to control the introduction and removal of dangerous substances and preparations or the introduction into the country of crops of microorganisms, plants and live animals of wild flora and fauna, without the consent of central public authority for environmental protection.

The attempt to commit one of these crimes is punishable under criminal law[3].

The finding and investigation of crimes are done ex-officio by the criminal investigation authorities according to their legal competence. Regarding the competence for these crimes, there is no special provision, so they will be judged by the district court (this is the common court in criminal matters). The investigation will be conducted by the prosecutor's office which has the competence to invest the district court.

Other normative acts that include special crimes regarding the environment:
The Forrest Code (Law no 46/2008)[4]. The forest code also includes a provision regarding the competent authorities. In addition to the criminal investigation bodies, the following are competent to ascertain the facts provided for in Arts. 106, 107-109 and 110: forestry staff within the central public authority responsible for forestry and territorial structures with forestry specifics, forestry staff within the National Forests Authority (Romsilva) and its territorial structures, forestry staff within the forestry regime schools, authorized officers and non-commissioned officers of the Romanian special police.


Tribunals
The 42 national tribunals have legal personality and are organized at the county level. The area of jurisdiction of each tribunal covers all district courts in the county in which the tribunal is situated.

In civil matters, the tribunals hear the following cases:
As courts of first instance, the tribunals hear all the applications which are not by law within the jurisdiction of other courts;
As courts of appeal, they hear appeals against judgments handed down by district courts at first instance;
As courts of cassation, they hear applications for review of judgments handed down by district courts, which, under the law, are not subject to appeal, and in any other cases expressly provided for by law.
The tribunals decide on conflicts of jurisdiction between district courts within their area of jurisdiction, and applications for review of judgments handed down by district courts in the cases provided for by law.

Courts of appeal
The Courts of appeal in Romania are headed by a President, who may be assisted by one or two Vice-Presidents.
The 15 courts of appeal have legal personality, each court covering the jurisdiction of several tribunals (around 3).

In civil matters, the courts of appeal hear the following cases:
as courts of first instance, they hear applications relating to administrative and tax disputes, in accordance with the special legal provisions;
as courts of appeal, they hear appeals against judgments handed down by tribunals at first instance;
as courts of cassation, they hear applications for review of judgments handed down by tribunals on appeal or against judgments handed down at first instance by tribunals which, under the law, are not subject to appeal, and in any other cases expressly provided for by law.
As courts of appeal, they hear appeals against criminal judgments handed down by district courts and tribunals at first instance.
The courts of appeal also decide on conflicts of jurisdiction between tribunals or between district courts and tribunals within their area of jurisdiction, or between district courts within the jurisdiction of different tribunals in a court of appeal's area of jurisdiction.
The courts of appeal also decide on requests for the extradition or transfer abroad of convicted persons.

High Court of Cassation and Justice
As the highest court in Romania, it is the only judicial institution with the power to ensure uniform interpretation and application of the law by the other courts. The review in the interest of law is the main procedure for achieving this.
The High Court of Cassation and Justice has four sections, each having its own jurisdiction:
Civil Section I (civil matters);
Civil Section II (commercial matters);
Criminal Section;
Administrative and Tax Litigation Section.
The four five-judge panels, the Joint Sections, the panel on reviews in the interest of law, and the panel on clarifying certain legal matters are other sections of the supreme court, which have their own jurisdictions.
Civil Section I, Civil Section II, and the Administrative and Tax Litigation Section of the High Court of Cassation and Justice hear applications for review of judgments handed down by courts of appeal and other court decisions, as provided for by law, and applications for review of non-final judgments or judicial acts of any nature which cannot be appealed by any other means, and where the legal proceedings before a court of appeal have been interrupted.
The High Court of Cassation and Justice meets in Joint Sections for the following:
To address referrals regarding changes to the case-law of the High Court of Cassation and Justice;
To refer to the Constitutional Court in order to verify the constitutionality of laws before their promulgation.
The jurisdiction is determined according to the value of the object of the court application.
The jurisdiction is established by the value of the object stated in the principal request. The accessory value is not taken into consideration (penalties, interests etc.).
If the plaintiff files multiple requests based on different acts or facts (at the same court), the jurisdiction will be established based on the value, nature, or the object of the case. If one of the requests should be in the jurisdiction of another court, the cause will be disjointed, and the court will decline its jurisdiction in favour of the competent court.

Rules regarding the territorial jurisdiction of courts. The general rule is that the request for summons will be addressed to the court in the jurisdiction where the defendant lives at the moment when the action has been submitted to the court. The court remains competent to judge the matter even if the defendant is moving to another place. If the address of the defendant is unknown the request for summon will be addressed to the court in the circumscription of the plaintiff.

There are some rules in certain fields regarding special competence: The request for legal action against an association, company, or other entity without legal personality (Art. 110 Civil Procedural Code).

Claims against the state, central or local authorities and institutions, as well as other legal persons under public law can be filed either at the court where the plaintiff lives or at the court at the defendant's headquarters. (Art. 111 Civil Procedural Code).
The parties of the litigation can file in writing or verbally (Art. 126 Civil Procedural Code)
Rules regarding the quality of the defendant/plaintiff (if he/she is a judge), Art. 127 Civil Procedural Code.
The lack of jurisdiction can be public or private. We can talk about the lack of public jurisdiction when:
The jurisdiction over the litigation is not subject to a court’s jurisdiction (this exception can be invoked by parties or by the judge in any stage of the case); There is a violation of material competence, when the trial is within the jurisdiction of another court (this exception can be invoked by parties or by the judge at the first court session, when the parties are legally summoned before the first court); If there is a violation regarding the jurisdiction of a court, for example when a request has to be filed at a specific court (according to territorial jurisdiction) and is filed at another court.

**Jurisdiction checking**

At the first hearing, which the parties are legally summoned before the court and can formulate conclusions, the judge is obliged to verify and to establish if the notified court is competent in all aspects (general, material, and territorial).

When such an exception is invoked, the court is obliged to establish the competent court or if that is the case to establish another competent institution. If the court considers itself competent it will continue to judge the case (this decision can be attacked when the court has given the final judgement, together with the other issues in question). But if the court considers itself not competent to try the case, its decision is final and cannot be attacked. The case will be sent to the competent court or institution, as appreciated by the first court.

**Cases of conflict**

We are in the presence of jurisdictional conflict when:

Two or more courts declare themselves equally competent to judge the same trial;

When two or more courts have mutually declined the jurisdiction to judge in the same process or, in the case of successive refusal, if the last invested court declines in favour of one of the courts that previously declared itself incompetent.

Also, if the court dismisses the application as inadmissible because the jurisdiction over the matter belongs to another institution without jurisdictional activity or because it is not within the jurisdiction of the Romanian courts, the decision can be attacked with recourse to the superior court.

The court before which the conflict of jurisdiction has arisen will suspend ex officio the trial of the case and will forward the file of the competent court to resolve the conflict.

**Resolution of the conflict of competence**

The conflict of jurisdiction arising between two courts is resolved by the court immediately superior and common to the courts in conflict.

There can be no conflict of jurisdiction with the High Court of Cassation and Justice. The decision to decline the jurisdiction or to establish the jurisdiction pronounced by the High Court of Cassation and Justice is mandatory for the referring court.

The conflict of jurisdiction arising between a court and another body with jurisdictional activity is resolved by the court hierarchically superior to the court in conflict.

The court competent to judge the conflict will decide, in the council chamber, without summoning the parties, by a final decision.

### 1.2.2. The jurisdiction of the courts when the defendant is a public institution

According to Law no 554/2004 (this is relevant for environmental litigation), Art. 10 states some rules regarding the competent court. So the disputes regarding administrative acts issued or concluded by local and county public authorities, as well as those regarding taxes and duties, contributions, custom debts, as well as their accessories of up to 3,000,000 lei (€619,208.10) will be resolved by the tribunals, and those regarding the administrative acts issued or concluded by the central public authorities, as well as those regarding taxes and duties, contributions, customs debts, as well as their accessories higher than 3,000,000 lei (€619,208.10), will be resolved by the courts of appeal. The cassation of a decision will be retried by the higher court, so if a decision is given by the tribunal it will be retried by the court of appeal, and if the first decision is given by the court of appeal, it will be retried by the High Court of Cassation and Justice.

According to Art. 10, paragraph (3), the plaintiff (natural or legal person) will address the matter exclusively to a court where he/she has a domicile or where he/she has headquarters. If the plaintiff is a public authority, public institution or assimilated to them, it must address the matter exclusively to a court from the domicile or headquarters of the defendant.

The provisions concerning the conflict of jurisdiction, jurisdiction checking, and other matters covered by the civil procedural code also apply to the administrative courts as common law, if the special law does not regulate special legal norms that would have priority (specialia generalibus derogant).

### 3) Specialties as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges

**There are no special courts for environmental matters. Generally, these cases (which have as their object administrative acts or actions or omissions of some public institution) start in the administrative section of the Tribunal and then move to the administrative section of the Court of Appeal on appeal. If the administrative act is issued by a central authority, then the first court will be the Court of Appeal and the second will be the High Court of Cassation and Justice (Law no 554/2004).**

Environmental cases are to be resolved not only in administrative sections of the courts, but also in other sections, whenever the subject of the litigation is not an administrative act or action or inaction by public authorities.

There is no possibility for forum shopping. Competences of the court are binding and clearly stated.

### 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

Article 18 of Law no 554/2004 regarding the administrative court procedure shows that they also have both cassation competences and some reformatory rights.

The court can:

- Decide that an administrative act is annulled totally or partially;
- Oblige the authority to issue a new administrative act or document or to execute a certain administrative procedure;
- Decide whether the administrative procedures that were done to issue the administrative act on trial are legal or not;
- Decide on the damages, if requested by the plaintiff;
- Regarding an administrative contract, the court can:
  - Decide to annul, totally or partially;
  - Oblige the authority to sign the contract if the plaintiff has the right to that contract;
  - Impose some obligations on the parties;
  - Replace the consent of one party if the public interest so requires;
- Decide on moral and material damages.

According to Art. 20, Law no. 554/2004 regarding the administrative appeal, in the case of admitting the appeal, the court of appeal, in cancelling the sentence, will adjudicate over the first court in the dispute. When the judgement of the first court was rendered without judging the merits or if the judgement was made in the absence of the party who was illegally summoned both in the administration of evidence and in the debate on the case, the case will be...
referred once to this court. If the judgement in the first instance was made in the absence of the party who was illegally summoned to administer the evidence but was legally summoned in the debate in the first court, the court of appeal, in cancelling the sentence, will re-judge the litigation in the first court.

The court could never act on its own motion in Romania. However, the courts can ask the European Court of Justice for a preliminary ruling.

The court can discuss with the parties the necessity for certain evidence to be presented in court, such as documents, interrogations, judicial expertise, on-site research, and/or witnesses, as well as material evidence (pictures, movies, recordings, etc.) and can order their administration even if the parties do not agree[7].

An interesting situation can be encountered when the court (against the will of the parties) establishes the need for judicial expertise. The cost for judicial expertise is usually borne by the party which requested it or by both parties, but if the court establishes the need for such an expertise when the parties disagree and the parties do not pay the cost it will not be administered.

The injunctive relief can only be granted if the plaintiff has formulated such a request.

1.3. Organisation of justice at administrative and judicial level

1) System of the administrative procedure ministries and/or specific state authorities

The administrative appeal in Romania is regulated by Law no 554/2004 regarding the Procedure in the Administrative Courts. This regulation is available for all environmental cases. According to this article, before addressing the competent administrative litigation court, the person who is considered injured in his or her right or in a legitimate interest by an administrative act addressed to him must ask the issuing public authority or the hierarchically superior authority, if possible, within 30 days from the date of communication of the document, to revoke the prejudicial act in whole or in part, given the circumstances. However, for justified reasons (e.g. if the party was ill, in a coma or abroad, so the communication could not be received), the injured person (addressee of the act) can file a complaint in the case of unilateral administrative acts over the 30-day period but no later than 6 months from the date of the administrative act or from the moment when the plaintiff was aware of the cause of annulment, but no longer than 1 year after the date of the administrative act.

However, if the said act is a normative act, the complaint can be addressed any time. According to Art. 7¹ the administrative complaint concerning the normative acts (acts of the government) can be filed regardless of any deadline.

In Romania there is no independent body that would revise the legality of the administrative acts during the administrative appeal. In the case of actions introduced by the prefect, the People’s Advocate, the Public Ministry, the National Agency of Civil Servants, or regarding the request of the persons injured by ordinances or provisions of ordinances or of the actions directed against administrative acts, which are no longer in term to be revoked, as they entered the civil circuit and have started to produce legal effects, as well as the cases from Art. 2, alin 2[8] and Art. 4[9] the administrative complaint is not mandatory.

2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?

The person whose right recognized by law or whose legitimate interest was impaired by an administrative act or who did not receive any response within the 30 days or received an unjustified refusal to their request for environmental information (Art 2 L 554/2004) may refer to the competent administrative litigation court, in order to request the cancellation in whole or in part of the act, repair the damage caused and, possibly, reparations for moral damages. Also, the person who considers himself/herself harmed in a right or legitimate interest can submit a request to the court if the authority did not resolve the addressed matter in the time specified by law or if the authority refused to carry out a certain administrative operation necessary for the exercise or protection of the person’s rights or legitimate interests. The reasons invoked in the application for annulment of the act are not limited to those invoked by the prior administrative complaint.

The competent court will be:

The Tribunal when the object is a litigation regarding administrative acts emitted or concluded by the local or county public authority as well as when the complaint refers to taxes, assessments, contributions, customs fees, and accessory, up to a total of 3,000,000 lei (619,336.43 euros).

The Court of Appeal, when the object is a litigation regarding administrative acts emitted by the central public authorities as well as when the complaint refers to taxes, assessments, contributions, customs fees, and accessory, superior to the sum of 3,000,000 lei (619,336.43 euros).

The plaintiff, a natural or legal person in private law, will apply exclusively to the court from his domicile or headquarters. When the plaintiff is a public authority, public institution or assimilated to these it will apply exclusively to the court where the defendant has his domicile or headquarters.

There is no reference in any law to the fact that environmental cases should be timely. Such reference exists for all administrative cases and it only applies in administrative courts. However, a case in such courts could last for more than 2 or 3 years.

3) Existence of special environmental courts, main role, competence

There are no special courts for environmental matters. Generally, these cases start in the administrative section of the Tribunal and then proceed to the administrative section of the Court of Appeal, on a cassation appeal. The third level of jurisdiction, the appeal, does not exist in this case. If the administrative act is issued by a central authority, then the first court will be the Court of Appeal and the second will be the High Court of Cassation and Justice.

Environmental cases are to be resolved not only in administrative sections of the courts, but also in other sections, whenever the object of the litigation is not an administrative act.

4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)

If a person is not satisfied with the response of the administrative authority, the harmed person can file a complaint with the Tribunal or the Court of Appeal (based on the jurisdiction described above from Law 554/2004). The litigation will be judged in a hearing. The response to the complaint (submitted by the defendant) is mandatory and will be communicated to the plaintiff at least 15 days before the first date of trial. The decisions of the court are drafted and motivated within 30 days of the pronouncement. If the object of the complaint is a unilateral administrative act, the court solving the complaint can:

- cancel in whole or in part the administrative act;
- suspend the effects of the administrative act (this is possible only if, within 60 days, the plaintiff files an action for annulment of the administrative act);
- issue another document or perform a certain administrative operation.

In resolving the complaint, the court will also establish the material or moral damages. When the object of the action in administrative litigation is drawn up by an administrative contract the court can:

- Order its cancellation, in whole or in part;
- Oblige the public authority to conclude the contract to which the applicant is entitled;
- Request one of the parties to fulfill a certain obligation;
- Supplement the consent of a party when the public interest requires it;
- Oblige the payment of damages for the material and moral damages.

The judgment given in the first instance may be appealed within 15 days from communication of the written decision of the court. The appeal suspends enforcement and is judged in urgency. If the appeal was admitted, the court of appeal, cancelling the sentence, will re-judge the litigation. When the judgement of the first court was rendered without analysing the main arguments of the plaintiff or if the judgement was made in the absence of the party who
was illegally summoned both in the administration of evidence and in the debate of the merits of the case, the case will be referred once again to the first court, to be retried. If the judgement in the first instance was made in the absence of the party who was illegally summoned to administer the evidence but was illegally summoned in the debate on the case, the court of appeal, cancelling the sentence, will re-judge the litigation merits.

5) Extraordinary ways of appeal. Rules in the environmental area. Rules for introducing preliminary references

The extraordinary remedies are:
- “The Appeal for Annulment” not aiming to retry the case, but to correct some obvious mistakes, procedural or material; (Art. 503, Civil Procedure Code)
- “The Review” (Art. 509, Civil Procedure Code). – it aims to view the case again on 12 determined situations: if the court decided on things that were not asked for or did not decide on a requested thing or gave more than was asked;
if the object of the case does not exist anymore;
if a judge, witness or expert who took part in the trial has been definitively convicted of an offence relating to the case or if the judgment was given on the basis of a document declared false during or after the trial, when these circumstances influenced the solution pronounced by the court. If the finding of the crime can no longer be made by a criminal judgment, the reviewing court will first rule, incidentally, on the existence or non-existence of the alleged crime. In the latter case, when the application is heard, the person accused of committing the crime will be cited;
a judge has been definitively disciplined for exercising his function in bad faith or gross negligence, if these circumstances have influenced the solution pronounced in question;

after the judgment was given, evidence was found to have been withheld by the opposing party or could not be presented due to circumstances beyond the control of the parties;
the decision of a court on which the review whose review is requested has been based has been quashed, annulled or changed;
the state or other legal persons under public law, minors and those placed under judicial interdiction or those placed under guardianship have not been defended at all or have been dishonestly defended by those in charge of defending them;
there are final adverse decisions, given by courts of the same or different degrees, which violate the res judicata authority of the first judgment;
the party was prevented from appearing in court and notifying the court of this, from a circumstance beyond his will;
The European Court of Human Rights has found a violation of fundamental rights or freedoms due to a court decision, and the serious consequences of this violation continue to occur;

after the judgment became final, the Constitutional Court ruled on the exception invoked in that case, declaring unconstitutional the provision which was the subject of that exception.
- There is also a special review provided by Art. 21, Law no 554/2004, for violating the principle of the priority of European Union law, regulated in Art. 148 paragraph (2) in conjunction with Art. 20 paragraph (2) of the Constitution of Romania, republished.

There are no other special provisions regarding environmental law. The judicial procedure is regulated by the Civil Procedure Code. The court could never act on its own motion in Romania. However, the courts can ask the European Court of Justice for a preliminary ruling.

Regarding the preliminary ruling, the legislation is not extensive. The High Court of Cassation and Justice has given some directions in this matter. The High Court of Cassation and Justice through Decision no 2167/2016 has ruled that an application to the CJEU can only be made when in an active litigation is raised the question of the validity of interpretation or the validity of community law. The national court will determine the relevance of Community law for the resolution of the dispute and whether a preliminary ruling is necessary. Also, the question of which may be referred by the national court concerns exclusively questions of interpretation, validity, or application of Community law, and not matters relating to national law or elements of the case before the court.

The answer of the Court of Justice does not take the form of a simple opinion, but of a reasoned decision or order. The receiving national court is bound by the interpretation given when resolving the dispute before it. The decision of the Court of Justice is equally binding on the other national courts invested with an identical issue (Arts 519, 520 of the Civil Procedural Code).

Concerning internal interpretation of the national legislation, the national courts, in the last jurisdiction grade, noting that a question of law, the clarification of which depends on the merits of the case, is new and the High Court of Cassation and Justice has not ruled on it and is not subject to appeal in the interest of the law being settled, can ask the High Court of Cassation and Justice to rule on this issue of law.

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?

There is no ADR (Alternative Dispute Resolution) in Romania accessible for the public in environmental matters.

Although this possibility is not expressly mentioned in the administrative law, the parties if interested, could resolve the litigation according to mediation law [10]. For example, a company that caused pollution could settle with a case with an individual person.

7) How can other actors help (ombudsperson (if applicable), public prosecutor), accessible link to the sites?

According to Art. 1 para 3 of Law no 554/2004, the Ombudsman can challenge in court an administrative act if they received a petition from an individual or an organization. The petitioner will become the plaintiff in the case filed by the ombudsman. The petitioner rightfully acquires the status of plaintiff, to be cited as such. If the petitioner does not approve of the action filed by the Ombudsman at the first court session, the administrative litigation court cancels the request. According to the Regulation no 18/2019, Art. 31, the Ombudsman may approve the ex officio notification when they find, by any means, that the rights or freedoms of the natural persons have been violated. However, the procedure started ex officio by the Ombudsman stops at the request of the injured person in his rights and freedoms. Also, the Ombudsman is entitled to notify the Government of any illegal administrative act or fact of the central public administration and of the prefects (Art. 28, alin. 1, Law no 35/1997).

The Ombudsman can challenge individual administrative acts issued with excess power by the public authorities. The person whose rights are violated must give a previous agreement to the prosecutor to submit the case to the court. This person will become the plaintiff. If the prosecutor considers that a public legitimate interest is harmed through administrative acts, they can submit a case to the competent court of justice that has jurisdiction at the domicile of the public authority that issued the act. The prefects and the National Agency of the Public Clerks can also file cases in court. The latter can file cases only if the legislation regarding the public function is violated.

There is no other special administrative body that has competence related to environmental matters. As the right to a healthy environment is a fundamental right, the competent body to deal with such complaints could also be the Ombudsman.

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)?

The environmental administrative decision can be challenged by environmental NGOs (Art. 20 of Emergency Governmental Ordinance 195/2005 regarding environmental protection law) and any individual without having to prove a prejudice (Art. 5 of Emergency Governmental Ordinance 195/2005 regarding environmental protection law). This means in Romania that for environmental issues actio popularis is regulated.

According to the procedure of the administrative courts, Art. 2 letters a, r, and s of Law no 554/2004, the NGOs are considered to be “social organisations” that can challenge the administrative acts (which include environmental administrative acts) based on “the public legitimate interest”, if the protection of the environment is an objective included in the NGO’s statutes.
The legitimate public interest is defined as the interest concerning "the law order and the constitutional democracy, guaranteeing the rights, freedoms and fundamental duties of the citizens, satisfying the community needs, realizing the jurisdiction of the public authorities".

The individual, however, according to Art. 2 letters a and Art. 8 para 2, can invoke the legitimate public interest only subsequent to the private legitimate interest. However, as Emergency Governmental Ordinance 195/2005 regarding environmental protection law is a special law, Art. 5 will be applied with priority according to the specialia generalibus derogant principle. Therefore, in the environmental cases the right to a healthy environment can be invoked as a substantive right of each individual, even if no prejudice was suffered.

The legitimate private interest is defined as "the possibility to claim a certain conduct, considering the realization of a future and predictable subjective right, foreshadowed".

2) Are there different rules applicable in sectoral legislation (nature conservation, waste management, water, EIA, IPPC/IED, etc.)?

There are no different rules applicable in sectoral legislation (nature conservation, waste management, water, EIA, IPPC/IED, etc. There are the same general rules applicable in the entire sectoral legislation.

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.).

The standing rules are the same as described in question 1.4.1

4) What are the rules for translation and interpretation if foreign parties are involved?

The Civil Procedure Code, Arts. 225 and 150 para 4 regulate the rules for interpretation and translation:

Concerning written documents in a foreign language (the only official language is Romanian): they shall be submitted in certified copy (signed for conformity on each page), accompanied by an authenticated translation carried out by an authorized translator. If there is no authorized translator for the language in which the documents in question are written, the translations made by trusted persons who know the language can be used, under the conditions of the special law[11].

Concerning the proceedings in front of the court:

When one of the parties or of the persons to be heard does not know Romanian, the court will use an authorized translator. If the parties agree, the judge or the registrar may act as an authorized translator. If the presence of an authorized translator cannot be ensured, the provisions of Art. 150 paragraph (4), apply. If one of the persons mentioned in para. (1) is mute, deaf, or deaf-mute or, for any other reason, they are not able to express themselves, communication with them will be in writing, and if they cannot read or write, an interpreter will be used (the cost will be borne by the party who requested an interpreter/translator).

1.5. Evidence and experts in the procedures

1) Evaluation of evidence – are there any limits in obtaining or evaluating evidence, can the court request evidence on its own motion?

There are no special rules in environmental matters. The means of evidence that can be used in any civil litigation are:

a. Documents[12]. There can be multiple types of documents such as:

Authentic documents[13] (the authentic document is drawn up or, as the case may be, authenticated by a public authority, notary or other person invested by the state with public authority). This document constitutes full proof until it is declared false.

Under private signature[14] (this type of document simply means that it carries the signature of the parties, it is not subject to any other formality other than the exceptions provided by law. This kind of document recognized by the one to whom they are opposed or, as the case may be, considered by law to be recognized, constitutes evidence between the parties until proven otherwise.

Documents on electronic media[15]. This type of document means that the data for a legal document is stored on an electronic device. Unless otherwise provided by law, the document that reproduces the data of an act, filed on electronic media, constitutes full proof between the parties until proven otherwise.

b. Witnesses[16]. Witness testimony can be used in all cases where the law does not provide otherwise. No legal document can be proved by witnesses if the value of its object is greater than 250 lei. However, evidence of any legal act, regardless of its value, can be made with witnesses, against a professional, if it was done by him in the exercise of his professional activity, unless the special law requires written evidence. If the law requires the written form for the validity of a legal act, it cannot be proved by witnesses. The testimony of witnesses is never admitted against or over what a document contains or what would be alleged to have been said before, during or after its preparation, even if the law does not require the written form to prove the act respectively, except in the cases provided in Art. 309, par. (4).

c. Presumptions[17]. Presumptions are the consequences that the law or the judge draws from a known fact to establish an unknown fact. There are two kinds of presumptions, legal and judicial.

d. Expertise[18]. When, in order to clarify some factual circumstances, the court considers it necessary to know the opinion of some specialists, it will appoint, at the request of the parties or ex officio, one or 3 experts. A broad analysis of expertise and experts is made in the following points.

e. Material means of proof[19]. These are material means of proving the things that by their characteristics, their appearance or the signs or traces they retain serve to establish a fact that can lead to the resolution of the process. Material means of proof also include photographs, photocopies, films, discs, sound recording tapes, as well as other such technical means, if they were not obtained by breaking the law or good practice.

f. On-site research[20]. The on-site investigation can be done, on request or ex officio, when the court considers that it is necessary to clarify the process.

g. Confession[21]. The confession or acknowledgment by one of the parties, on its own initiative or during the interrogation procedure, of a fact on which the opposing party bases its claim or, as the case may be, defence. The court may grant, upon request or ex officio, the call to the interrogation of any of the parties, regarding personal facts, which are likely to lead to the settlement of the trial.

According to Article 13, alin. (1) of Law no 554/2004 regarding the administrative court procedure, when the court receives the complaint it orders the parties to be summoned. The public authority that issued the document will communicate along with the response to the complaint the contested act along with the full documentation behind its issuance and any other documents necessary to resolving the case. According to the same article, paragraph 2, when the plaintiff is a third party (as defined in Art. 1, paragraph 2) or when the complaint was filed by the Ombudsman or by the Public Minister, the court has to order the administrative authority to submit all documents that were considered when they issued the act whose annulment is being asked for. The plaintiff can provide any evidence to prove the allegations: documents, interrogations, judicial expertise, on-site research, and/or witnesses, as well as other material evidence (pictures, movies, recordings, etc).

In civil and criminal proceedings, the court has no obligation to force the defendant to provide documents. However, there is a procedural regulation that would allow the court to consider that the party who refused to show certain documents recognized the allegation of the other party, but only in civil cases.

The evidence is proposed in the complaint filed by the plaintiff and in the response to the complaint by the defendant. It the parties fail to do so, the sanction that intervenes is the lapse of the right to propose evidence in court. However, according to Art. 254 of the Civil Law Procedure Code there are some exceptions (detailed below at point 1.5.2).

The court can order evidence on its own if it considers that the truth can be established, according to the active role of the court even if the parties do not agree[22]. However, this role, applicable only in civil cases, is limited by the right of the plaintiff to bring his/her own action in court. The evidence must be first allowed by the court and then actually taken to the court. There are no differences between civil procedure and administrative procedure.
However, the civil procedure has three jurisdictional steps: the first court, appeal, and cassation appeal. In the first court and in the first appeal any evidence can be proposed to the court, and the court will only allow the evidence that is useful for the case. In the cassation recourse, only documents can be provided as evidence. The appeal itself can only be admissible on limited motives specified in the civil procedural code.

In the administrative procedure there is only the first court and recourse. In the recourse only documents can be allowed as evidence, but the court can analyse the case on all aspects, to compensate the missing appeal in this procedure.

2) Can one introduce new evidence?
 According to the common procedure from the Civil Procedure Code, all the evidence must be proposed by the plaintiff in the application, and by the defendant through the response of the application. However, there are some exceptions[23] such as:

The necessity for the evidence results from the modification of the application made by the plaintiff;

The necessity for the evidence results from the court research and the parties could not have foreseen its necessity;

One of the parties explains to the court that the evidence could not be presented based on some justified reasons;

The administration of the new evidence does not lead to postponement of the judgment;

There is express agreement from all parties;

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts

When for the total understanding of some aspects, the court considers that an expert opinion is needed, 1 or 3 experts will be appointed by the judge, based on his own decision or at the request of the parties[24]. If necessary, the court will request the expert opinion to be produced by a laboratory or a specialized institute[25]. In those fields that are highly specialized, where there are no authorized experts, the court can request on its own initiative or at the request of the parties the opinion of a specialist in the relevant field. There is a centralized list of judicial experts on the web page of the Ministry of Justice where an interested person can search for a specific expert as well as searching through a list of multiple experts. The [website includes names, authorization numbers, the location including the county, city, street, and number of the building as well as a phone number.

1.5.3.1. There is the expert opinion binding on judges, is there a level of discretion?

Regarding the technical conclusions of the expert, the court must consider these conclusions. However, the court can disregard the expertise if it was produced in violation of the procedural norms regarding judicial expertise or if the conclusions contradict the object of the case. Art. 264 Civil Procedure Code states that in order to establish the existence or non-existence of the facts for which the evidence was administered, the judge freely considers the evidence according to his beliefs.

1.5.3.2. Rules for experts being called upon by the court

The rule is that the expert will be called upon by the judge when the court considers that an expert opinion is needed on its own instigation or at the request of the parties. When the expert was called upon by the judge, the expert must comply with the court disposition; if not, the expert can be subject to a peremptory writ, judicial fine or payment of compensation, exception to these dispositions is made according to the Civil Law Code Art. 330 alin. (4) when the expert is a laboratory or a specialized institute.

If the parties do not come to an agreement regarding the appointment of the expert, they will be appointed by the court, by drawing lots, from the list drawn up and communicated by the local office of expertise, comprising the persons registered in its list and authorized, according to the law, to provide judicial expertise.

1.5.3.3. Rules for experts called upon by the parties

According to Art. 330 alin 5, Civil Procedural Code, the parties can name their own experts, provided that the court will allow it, in the capacity of personal advisers, if the law does not say otherwise. The experts summoned by parties like this can formulate questions and observations and, if necessary, draw up a separate report on the objectives of the expertise.

1.5.3.4. Which are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?

The decision of the court regarding the appointment of the expert will include the objectives of the expertise, the deadline for submitting the final report, the provisional fee and, if necessary, an advance for travel expenses. For this purpose, the court can establish a hearing in the council chamber, during which it will ask the expert what the estimate fee of the expertise is as well as the time needed. Based on the expert opinions and the parties’ opinion the court will establish the exact amount of the fee necessary for the expertise. The fee for the services of a judicial expert is paid by the party who requested the expertise done. The proof of payment of the fee is deposited at the court registry by the party who was obligated by the decision, within 5 days of the appointment or within the term established by the court.

Any attempt by the experts to request or receive a sum greater than the fee set by the court is punished[26] under criminal law. At the motived request[27] of the experts, revising the work done, the court will be able to increase the fees due to them, summoning the parties, but only after submitting the report, the answer to the possible objections or the additional report as the case may be.

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 specialized lawyers in the environmental field

The lawyers represent the interests of a party in court. Legal counsel is not compulsory in environmental matters or in any matter except criminal cases, in accordance with the Criminal Procedure Code. In criminal cases, including environmental crimes, the accused must be assisted by a lawyer if they find themselves in one of the cases listed at Art. 90 Criminal Procedure Code[28]. There are some provisions at Art. 93, paragraph (4)[29] and (5), Criminal Procedure Code regarding the need in some situations for compulsory assistance by lawyers for the injured party, civil part, and the civilly responsible party. In Romania there are more and more lawyers interested in defending the environment, as it ensures a kind of popularity and public recognition of the lawyer. This is much-needed recognition because advertising by lawyers in Romania is very restricted. The only legal means of professional publicity are listed in the statutes of the profession of lawyer (Decision 64/2011, published in the Official Monitor of Romania), in Art. 244.

In Romania, in each county and in the municipality of Bucharest, there is according to Law no 51/1995 a single Bar with legal personality. The bar is composed of all the lawyers listed in the Table of Lawyers. All the bars in Romania, constituted according to the laws regarding the profession of lawyers, are members in the National Union of Bars of Romania (U.N.B.R). At present are 41 bars, 1 from each county of the country. The National Union of Bars in Romania, along with all the bars, ensures the qualified exercise of the right to defence, jurisdiction and discipline, protection of dignity and honour of all the lawyers[30].

Regarding the publicly accessible website of the bar, each bar from each county has a web page with a section dedicated to a list of lawyers that one can contact (e.g. the Bucharest Bar). This page however does not provide information on the specialized field in which the lawyers work.

1.6.1.1. Existence or not of pro bono assistance

Pro bono assistance is not expressly provided by law but in some cases the fee for the lawyer’s services can be borne by the state. Although pro bono assistance is not provided by the legislation directly, it is not forbidden either, so if a lawyer or a law firm chooses to offer pro bono assistance, it can.
Emergency Governmental Ordinance no 51/2008 regulates legal aid in civil cases. Such cases can also be environmental cases. Legal aid is provided according to this normative act, only for individuals who have an exceptionally low income.

1.6.1.2. 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.)?

Pro bono assistance is not available. There is no legislation or any other public tools to make it available, except for the procedure provided by EGO 51/2008.

1.6.1.3. Who should be addressed by the applicant for pro bono assistance?

Pro bono assistance is not available.

2) Expert registries or publicly available websites of bars or registries that include the contact details of experts

There is a centralized list of judicial experts on the web page of the Ministry of Justice from where an interested person can search for a specific expert as well as searching through a list of multiple experts. The website includes names, authorization numbers, the location including the county, city, street, and number of the building as well as a phone number.

As for the bar website, each bar has an internet page where one can search for a specific lawyer or explore the page with all the lawyers listed in each bar. The list has the contact details for each lawyer so an interested person can find one very easily. For example, if you are interested in a lawyer from Bucharest you can access and find what you are looking for.

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible

Listing all the NGOs active in environmental issues from Romania would be extremely hard as there are so many, so these are only examples which are relevant:

**Combating and controlling pollution:**

- AGENT GREEN
- Association ARIN
- Association Centrul Ecologic Green Area
- Federation Coalitia Natura2000 Romania
- Association Harta Verde România
- Association SALVATI FLORA SI FAUNA DELTEI DUNARI
- INSTITUTUL ROMAN PENTRU PROTECTIA MEDIULUI INCONJURATOR
- Bankwatch Romania Association
- Terra Mileniul III
- Eco Civica Foundation

4) List of International NGOs, who are active in the Member State

A brief list of some International NGOs which are active in Romania:

- **Habitat for Humanity**
  In Romania, through the six subsidiaries, Habitat for Humanity managed to provide a decent living for 16.000 people, and another 20.000 Romanians benefited from the disaster prevention programmes.
- **The ICRC** is an independent, neutral organization providing humanitarian protection and assistance for victims of armed conflict and other situations of violence. It acts in response to emergencies and also promotes respect for international humanitarian law and its implementation in national law. - Red cross - local website
- **UNICEF**. This NGO works in over 190 countries and territories to save children’s lives, to defend their rights, and to help them fulfill their potential, from early childhood through adolescence.
- **WWF** - environmental NGO active especially in nature and waters area.
- **Greenpeace CEE Romania** - environmental NGO working specialty in the energy and air pollution area.

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 administrative complaint must be filed within 30 days after the content of the administrative environmental decision was known to the interested public. The complaint can also be submitted after more than 30 days for justified reasons, but no later than 6 months after the date when the public became aware of its content (Art. 7.3 of Law no 554/2004 regarding the administrative procedural law).

There is no extraordinary appeal to an administrative body.

2) Time limit to deliver decision by an administrative organ

The administrative organ must reply to the administrative complaint in 30 days.

3) Is it possible to challenge the first level administrative decision directly before court?

In the case of actions introduced by the Prefect, the People’s Advocate, the Public Ministry, the National Agency of Civil Servants, or regarding the request of the persons injured by ordinances or provisions of ordinances or of the actions directed against administrative acts that cannot be revoked as they entered the civil circuit and have started to produce legal effects (this means that the performance of a legal act/operation was made on the basis of the said administrative act and that it had some legal consequences), as well as the cases from Art. 2, alin 2[31] and Art. 4[32] the administrative complaint is not mandatory and the case will be submitted directly to the competent court.

4) Is there a deadline set for the national court to deliver its judgment?

There is no exact deadline set for the national court to deliver its judgment. The judges can establish at the first hearing how long the case will take and establish an approximate duration for the case trial.

5) Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)

The action in court must be filed within 6 months after:
- the reply to the administrative complaint was filed or after a reply should have been received;
- the date when an unjustified refusal of the request from the public submitted to the public authority concerning their rights was received;
- the date when the authority should have communicated an answer to a request of the public concerning their rights.

The action can be submitted in court after the time limit of 6 months for justified reasons but no later than 1 year after the public was informed about the content of the act, or the date when the request was submitted to the public authority.

All the evidence should be mentioned in the initial action filed to the court, or no later than the first hearing set by the court.

1.7.2. Interim and precautionary measures, enforcement of judgments

1) When does the appeal challenging an administrative decision have suspensive effect?
The action in court against the administrative decision never has an automatic suspensive effect, according to Romanian legislation. The suspension of the effects of the administrative act must be granted by court, at the request of the plaintiff.

2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?

An injunctive relief granted by the authority that issued the administrative act, is not regulated (it does not exist). The activity regulated by the administrative act can be suspended in certain conditions by the: The National Environmental Guard[33] (participates in establishing the causes of pollution in environmental matters and applies sanctions provided by law including the stoppage or suspension of activities for determined periods if the health of the population is endangered or if pollutants are found to exceed the concentrations allowed by law) or The Environmental Protection Agency[34] if the Guard has imposed certain measures and conditions through the regulatory environmental decisions [35] that were violated by the operator, even after granting a deadline (60 days) to comply with the provision of the regulatory act. The interested public can submit requests and evidence and request the two institutions to suspend the activity regulated by administrative environmental decisions. The two can also be pursued in court if they unlawfully refuse to suspend the environmental administrative regulatory acts.

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?

Immediately after submitting the administrative complaint against the administrative act or against the unlawful refusal of the administrative competent institution, before the complaint was answered, and before the deadline for the answer to the complaint has expired, the plaintiff can ask the court to grant an injunctive relief, proving a justified case and an imminent prejudice[36]. An injunctive relief can only be granted by the court of justice. The request for injunctive relief can also be filed together with the action in court against the administrative act[37].

The injunctive relief cannot be requested at a later stage. The court will grant injunctive relief if the case is justified and there is an imminent prejudice (Law no 554/2004 does not provide a list or examples for such cases; the judge will establish this). The suspension granted by the court will operate until the litigation is resolved by the first court if it was granted for a request made after the administrative complaint was filed. If the suspension is granted for a request made together with the main action, the suspension of the effects will last until the decision of the court is final (also during the cassation appeal).

4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?

The effects of administrative decisions are not suspended by submitting an administrative complaint or by introducing an annulment request to the court. The only possibility to suspend the effects of the administrative decision is to be granted an injunctive relief.

5) Is the administrative decision suspended once challenged before court at the judicial phase?

The administrative decision will produce its effects even if it was challenged before the court. However, if the injunctive relief is granted, the decision of the court is enforceable immediately and the effects of the administrative act are suspended.

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?

The judicial bail is the amount of money that must be deposited by one of the parties to the lawsuit, as security, to cover any damages that would result from taking action, at his request, against the other party, but they do not usually apply in environmental cases.

1.7.3. Costs - Legal aid - Pro bono assistance, other financial assistance mechanisms

1) How can it be calculated what costs will be involved when one intends to initiate a procedure - administrative costs, judicial costs, costs for filling a case, experts' fees, lawyers' fees, cost of appeal, etc.

The court fees are regulated by Emergency Governmental Ordinance no 80/2013 regarding the stamp court fees. For the administrative procedure, Art. 14 stipulates the following:

In the matter of administrative litigation, the applications filed by those injured in their rights by an administrative act or by the unjustified refusal of an administrative authority to resolve their request regarding a right recognized by the law are charged as follows: the requests for the annulment of the act or, as the case may be, the recognition of the claimed right, as well as for the issuance of a certificate, a certificate, or any other document - 50 lei (10.39 euros; 1 euro = 4.81 lei); The fees will be applied for each request. For example, if we ask for the annulment of three administrative acts, the fee is 50 lei x 3 = 150 lei = 31.18 euros.

The requests with patrimonial character, by which the damages suffered by an administrative act are requested - 10% of the claimed value, but not more than 300 lei (= 62.37 euros).

Experts fees and lawyer’s fees are not regulated. The expert's fees are established by the judge. The expert can request an increase in the fee based on evidence regarding the necessary efforts for providing the scientific analysis of the case. The lawyer's fees are established between the client and the lawyer according to the complexity of the case. The minimum fee as recommended by the National Union of Bars from Romania for an annulment of an administrative act with administrative complaint and injunction relief is 5,500 lei (1,136.36 euros).

2) Cost of Injunctive relief/interim measure, is a deposit necessary?

The injunctive relief fee is provided by Art. 27 of Emergency Governmental Ordinance no 80/2013 regarding stamp court fees: Any other actions or requests that cannot be assessed in money, except for those exempted from the payment of the stamp duty according to the law, are charged at 20 lei (4.12 euros).

3) Is there legal aid available for natural persons?

Emergency Governmental Ordinance no 51/2008 regulates legal aid in civil cases. Such cases can also be environmental cases. Legal aid is provided according to this normative act, only for individuals who have an exceptionally low income.

In order provide access to justice to every person addressing a matter to a court of justice, even to those who do not have the financial resources to pay the judicial fee, Emergency Governmental Ordinance no 51/2008 provides access for those who need it to public judicial aid, which is basically a form of assistance provided by the government with the purpose of ensuring the right to a fair trial and a guarantee of equal access to justice. This assistance can be obtained in litigation regarding civil, commercial, administrative, work a public insurance cases as well as any other cases, except criminal ones. Public judicial aid may be requested, under the conditions of this emergency ordinance, by any natural person who cannot meet the costs of a trial or those involved in obtaining legal consultations in order to defend a legitimate right or interest in justice without endangering his or his family’s maintenance. Public judicial aid can be granted.

The total value of the judicial aid, in any form, cannot exceed during a period of one year, the equivalent of 10 minimum salaries. Beneficiaries of public judicial aid according to Art 8. of Emergency Governmental Ordinance no 51/2008 are persons whose net monthly average income per family member, in the last two months prior to the application formulation, is below 300 lei (62.06 euros). In this case, the amounts that constitute judicial public aid are fully advanced by the state. If the average monthly net income per family member, in the last two months prior to the application formulation, is
Special law no 178/1997 establishes a list of interpreters and translators to be used in the judicial system. Only authorized persons included to be certified by the Ministry of Culture as a translator for the specialty of legal sciences, from Romanian into the foreign language for which he requests in this list can be appointed. To become an authorized translator or interpreter, one must fulfill the conditions prescribed by Art 3 of the above-mentioned law:

1) Concerning written documents in a foreign language (the only official language is Romanian)

2) Is translation, interpretation provided to foreign participants? What are the rules applicable?

3) During different environmental procedures how is this information provided? From whom should the applicant request information?

4) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?

5) What are the sectoral rules concerning access to justice regarding plans and programmes, etc.?

6) Does the loser pays principle apply? How is it applied by courts, are there exceptions?

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?

The court cannot grant any exceptions form the payment by the law. However, EGO 80/2013 regarding the legal stamp duty, provides for certain exceptions to the obligation to pay the legal stamp duty for: actions and applications, including those for the exercise of ordinary and extraordinary remedies, relating to pensions and other social allowances, etc. but the only one that might apply in environmental cases is the one provided by Art. 29 letter j, concerning the granting civil damages for alleged violations of the rights provided in Arts. 2 and 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by Romania through Law no 30/1994, if the violation may be related to environmental issues in the meaning of ECtHR practice.

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?

The national rules on environmental access to justice are not available in a special section on a web page. The information can only be found in the legislation.

2) During different environmental procedures how is this information provided? From whom should the applicant request information?

Information on access to justice can be obtained from lawyers or specialized NGOs. In Romania in the justice system there are no procedures defined for environmental issues. Therefore, other than the fact that the competent court and the legal deadline for submitting the complaint is mentioned at the end of the administrative acts, there is no other information that can be obtained from any websites or public administration.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?

There is no active dissemination concerning access to justice regarding plans and programmes, etc. In the final part of the environmental regulatory acts, there is no other information that can be obtained from any websites or public administration.

4) Is it compulsory to provide access to justice information in the administrative decision and in the judgment?

All administrative decisions and judgments provide information on the necessary rules that must be followed to exercise the right of access to justice in that specific case: the competent court of justice, the applicable law, and the deadline.

5) Is translation, interpretation provided to foreign participants? What are the rules applicable?

Translation and interpretation are provided according to Art. 150 paragraph 4 and Art. 225 of the Civil Procedure Code:

Concerning written documents in a foreign language (the only official language is Romanian): they shall be submitted in certified copy (signed for conformity on each page), accompanied by an authenticated translation carried out by an authorized translator. If there is no authorized translator for the language in which the documents in question are written, the translations made by trusted persons who know the language can be used, under the conditions of the special law[38]. Special law no 178/1997 establishes a list of interpreters and translators to be used in the judicial system. Only authorized persons included in this list can be appointed. To become an authorized translator or interpreter, one must fulfill the conditions prescribed by Art 3 of the above-mentioned law: to be a Romanian citizen, or a citizen of the EU, the EEA or Switzerland, to be certified by the Ministry of Culture as a translator for the specialty of legal sciences, from Romanian into the foreign language for which he requests the authorization and from the foreign language into Romanian is medically fit;
Concerning the proceedings in front of the court:

When one of the parties or of the persons to be heard does not know Romanian, the court will use an authorized translator. If the parties agree, the judge or the registrar may act as translator. If the presence of an authorized translator cannot be ensured, the provisions of Art. 150 paragraph (4) apply. In case one of the persons mentioned in par. (1) is mute, deaf, or deaf-mute or, for any other reason, they are not able to express themselves, communication with them will be in writing, and if they cannot read or write, an interpreter will be used. The interpreter will be paid for by the party who requested the interpreter, and the amount can be provided by the other party according to the ‘loser pays’ principle.

1.8. Special procedural rules

The environmental impact assessment for private or public projects is regulated by Law no 292/2018.

Regarding access to justice, this Law (no 292/2018, Art. 21, para (1)) refers to the provisions of the administrative law (Law no 554/2004).

The development consent is a separate administrative act from the EIA permit, issued by the local/county public administration depending on the location and type of the decision: building permit, agreement on the use of land for intensive agricultural purposes, agreement of the head of the specialized territorial structure of the central public authority responsible for forestry, for projects on afforestation of lands on which there was no previous forest vegetation, the act issued by the competent authority in the field of forestry according to the provisions of Art. 40 of Law no. 46/2008 (the Forestry Code, republished), with subsequent amendments and additions, to achieve the objectives of deforestation in order to change the purpose of the land.

Disputes regarding administrative acts:

issued or concluded by local and county public authorities, as well as those regarding taxes and duties, contributions, custom debts, as well as their accessories of up to 500,000 lei (102,939 euros) will be resolved by the tribunals.

issued or concluded by the central public authorities, as well as those regarding taxes and duties, contributions, customs debts, as well as their accessories higher than 500,000 lei (102,939 euros), will be resolved by the courts of appeal.

The cassation of a decision will be retried by the higher court, so if a decision is given by the tribunal it will be retried by the court of appeal, and if the first decision is given by the court of appeal, it will be retried by the High Court of Cassation and Justice.

The legitimate private interest is defined as "the law order and the constitutional democracy, guaranteeing the rights, freedoms and fundamental duties of the citizens, satisfying the community needs, realizing the jurisdiction of the public authorities";

The individual, however, according to Art. 2 letters a and Art. 8 para 2, can invoke the legitimate public interest only subsequent to the private legitimate interest.

This is the general provision; however, Art 5 of EGO 195/2005 derogates from the general provision, establishing for any person the right to address, directly or through environmental protection organizations, the administrative and/or judicial authorities, in the matter of environmental issues whether or not the damage has occurred.

The legitimate private interest is defined as "the possibility to claim a certain conduct, considering the realization of a future and predictable subjective right, foreshadowed".

2) Rules on standing relating to screening (conditions, timeframe, public concerned)

The screening decision is not an administrative act that can be challenged in court.

In Romania actio popularis ensures standing in court for any person.

NGOs (Art. 20 of Emergency Governmental Ordinance no 195/2005 regarding the environmental protection law) and any individual without having to prove a prejudice (Art. 5 of EMERGENCY Governmental Ordinance 195/2005 regarding the environmental protection law).

According to the procedure of the administrative courts, Art. 2 letters a, r, and s of Law no 554/2004, the NGOs are considered to be "social organisations" that can challenge the administrative acts, (which include environmental administrative acts) based on "the public legitimate interest", if the protection of the environment is an objective included in the NGO’s statutes.

The legitimate public interest is defined as the interest concerning "the law and the constitutional democracy, guaranteeing the rights, freedoms and fundamental duties of the citizens, satisfying the community needs, realizing the jurisdiction of the public authorities";

The individual, however, according to Art. 2 letters a and Art. 8 para 2, can invoke the legitimate public interest only subsequent to the private legitimate interest.

3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?

The screening decision cannot be challenged at all. There is no access to justice against the screening decision.

The development consent is a separate administrative act from the EIA permit, issued by the local/county public administration depending on the location and type of the decision: building permit, agreement on the use of land for intensive agricultural purposes, agreement of the head of the specialized territorial structure of the central public authority responsible for forestry, for projects on afforestation of lands on which there was no previous forest vegetation, the act issued by the competent authority in the field of forestry according to the provisions of Art. 40 of Law no. 46/2008 (the Forestry Code, republished), with subsequent amendments and additions, to achieve the objectives of deforestation in order to change the purpose of the land.

The screening decision as well as the EIA permit can be challenged in court according to the general procedure regulated for all administrative acts.

The administrative complaint must be filed within 30 days after the content of the administrative environmental decision was known to the interested public.

The complaint can also be submitted after more than 30 days for justified reasons, but no later than 6 months after the date when the public became aware of its content (Art. 7.3 of Law no 554/2004 regarding the administrative procedural law).

According to Law no 554/2004, Art 10 contains some rules regarding the competent court.

Disputes regarding administrative acts:

issued or concluded by local and county public authorities, as well as those regarding taxes and duties, contributions, custom debts, as well as their accessories of up to 500,000 lei (102,939 euros) will be solved by the tribunals.

issued or concluded by the central public authorities, as well as those regarding taxes and duties, contributions, customs debts, as well as their accessories higher than 500,000 lei (102,939 euros), will be solved by the courts of appeal.

The cassation of a decision will be retried by the higher court, so if a decision is given by the tribunal it will be retried by the court of appeal, and if the first decision is given by the court of appeal, it will be retried by the High Court of Cassation and Justice.
The action in court must be filed within 6 months after:
the reply to the administrative complaint was received or after a reply should have been received;
the date when an unjustified refusal of the request from the public submitted to the public authority concerning their rights was received;
the date when the authority should have communicated an answer to a request of the public concerning their rights.
The action can be submitted in court after the time limit of 6 months for justified reasons but no later than 1 year after the public was informed about the content of the act, or the date when the request was submitted to the public authority.
All the evidence should be mentioned in the initial action filed to the court, or no later than the first hearing set by the court.

4) Can one challenge the final authorisation? Under what conditions if one is an individual, an NGO, a foreign NGO?
The final authorization can be challenged under the same conditions provided by Law no 554/2004, stipulated for any administrative act.

5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?
The courts can verify the procedural aspects of the EIA decision as well as the substantive legality and the scientific accuracy of the environmental statement, appointing experts to analyse the scientific data provided by the beneficiary of the project during the EIA procedure.
The courts cannot initiate a review of any administrative decision on their own motion.

6) At what stage are decisions, acts or omissions challengeable? There are no specific rules provided in the EIA Law no 292/2018. The general rules for challenging an administrative act will apply also for the screening decision and the EIA permit.

7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? According to Art. 7 of Law no 554/2004, the administrative complaint must be submitted to the competent administrative authority before acting in court against an administrative act, with the exceptions provided by Art. 7 para 5 (the refusal to grant a right of the plaintiff, or for administrative acts that entered the civil circuit and produced legal effects (i.e. the performance of a legal act/operation was produced on the basis of the said administrative act).

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? Standing is not conditional upon participation in the public consultation phase.

9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction? Measures specifically for fair and equitable trial are not provided by the EIA Law. The general measures in civil and administrative matters apply:
According to Art. 8 Civil Procedure Code, in a civil matter the parties are guaranteed the exercise of their procedural rights equally and without discrimination.
The right of equality in civil procedure is a fundamental right, being an application of a fundamental right from the Constitution (Art. 16, alin. (1), the principle of equality in face of the law and public authorities, and Art. 124, alin. (2) which states that the justice is unique, impartial, and equal for everyone, and a guarantee to an equitable process.

According to Art. 7, alin (1) of Law no 304/2004 regarding judicial organization, all people are equal in the face of the law, without privileges and without discrimination, and according to the same article, alin (2), justice is available equally for everyone, without discrimination on the basis of race, nationality, ethnic origin, language, religion, sex, sexual orientation, opinion, political affiliation, wealth, origin, or social condition or any other discriminatory criteria. Also, under Art. 2 of the same Law (304/2004) justice dispensed by judges in the name of the law is unique, impartial, and equal for all.
The equality of parties in a civil matter means that the parties have the right to be judged by the same organs of judicial power according to the same procedural rules, benefiting from the same procedural rights in the specific litigation that is subject to judging, which basically means that in an identical situation, parties cannot be treated differently.
The existence of specialized instances or specific different procedural rights in some matters is not contrary to this principle, because those specific courts resolve all the litigation that falls under the courts’ specialization, without any discrimination, and the special procedural rules will be applied to any party that is part of a litigation subject to the respective derogatory rules. The difference in the treatment of parties could become discriminatory only if a distinction was introduced in analogous or comparable situations, without these being based on a reasonable and objective justification.
The jurisprudence of the European Court of Human Rights enshrines the principle of equality of arms, which means equal treatment of the parties throughout the proceedings before a court, without one of them being favoured over the other.
Thus, the procedural documents for which the law imposes the obligation of communication are communicated to all parties. It would violate the principle of equality of arms, for example, when the court only communicated to one of the defendants the request for a trial. The same principle would be violated if, in evidence or in opposing the same allegations, the court approved the evidence of witnesses for one of the parties, but rejected it for the opposing party, although it proposed the trial in compliance with the terms and other requirements established by the law.
Law no 554/2004, Art. 13 para 2, stipulates that if the plaintiff is a third party (meaning the affected and interested public), the court must request the authority that issued the administrative act to urgently submit to the court the administrative act that was challenged in court as well as the documentation prepared for issuing the administrative act and any other papers (reports, studies, etc) needed for solving the cause.

10) How is the notion of "timely" implemented by the national legislation? The EIA law provides no special regulations for the time limits on the judicial procedures.
There are provisions of the Civil Procedure Code, but they are recommendations and are not binding for the courts:
an injunctive relief in a civil court must be tried urgently. The decision should be delivered in 24 hours and the written decision should be given within 48 hours after the decision was pronounced.
in the administrative court, the injunctive relief must be tried urgently. Art 14 of Law no 554/2004 establishes an urgent procedure for injunction, derogating from the general procedural regulations in the civil procedure that require longer for the case to receive a hearing in court.
The Civil Procedure Code provides further regulations that are also applicable for the administrative courts: after the judicial research is over (there is no deadline stipulated but at the first hearing the court and the parties will estimate the deadline for reaching a decision), the delivering of the decision can be delayed for up to 15 days, several times[39]. There is no regulation regarding how many times the court can postpone delivery of the decision. The written decision should be communicated to the parties within 30 days. In duly justified cases, this deadline can be extended twice by 30 days each time[40]. Judges can be sanctioned in a disciplinary manner for exceeding this term. However, in practice communicating the written decision usually takes more than 30 days and sometimes more than 90 days.

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?
The EIA Law has no specific provision concerning injunctive relief. The same procedure as described at point 1.7.2., applies.

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.
The IED Directive was transposed in Romania by Law 278/2013 regarding industrial emissions.
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?
The same regulation prescribed by Law no 554/2004 is also applicable for the IED permit (see chapter 1.4.3).

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned).
The IED procedure has no screening decision, therefore there are no regulations relating to this procedure.

4) Rules on standing relating to scoping (conditions, timeframe, public concerned)
The IED procedure has no scoping decision, therefore there are no regulations relating to this procedure.

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?
The decision that can be challenged according to Law no 278/2013 is the IED permit, called the integrated environmental authorization. The screening and the scoping phases are not regulated. The provisions of the law concerning the administrative appeal and the judicial review described at point 1.7.1. apply also for the integrated environmental authorization.

According to Art. 24 and 25 of Law no 278/2013, the issuance, update and review of the integrated of environmental authorization are subject to the public participation procedure and also of the access to justice procedure.

6) Can the public challenge the final authorisation?
According to Art. 25 of Law no 278/2013, the environmental integrated permit can be challenged in court according to the rules stipulated by Law no 554 /2004 regarding the administrative procedural law.

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?
According to Art. 25 of Law no 278/2013 and also according to Law no 554/2004 regarding the administrative procedural law, the court will review the substance as well as the procedural steps in the decisions, acts or the omissions that are object of the public consultation procedure. The courts cannot act on their own motion.

8) At what stage are these challengeable?
The integrated environmental authorization can be challenged after it was issued, according to the provisions of Law no 554/2004 described at point 1.7.

9) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
The provisions of Art. 7 of Law no 554/2004, described above, also apply to the integrated environmental permit. The administrative complaint is mandatory in the same procedure and with the same exceptions already described.

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?
There is no condition in the legislation so in order to have standing before the national courts it is not necessary to participate in the public consultation phase of the administrative procedure.

11) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
There are no special provisions in this regard in Law no 278/2013.

12) How is the notion of "timely" implemented by the national legislation?
There are no special provisions in this regard in Law no 278/2013.

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?
The same provisions concerning injunctive relief, regulated by Art. 14 and 15 of Law no 554/2004, are applicable.

14) Is information on access to justice provided to the public in a structured and accessible manner?
According to Art. 25 para 3 of Law no 278/2013, the integrated environmental authorization must mention the administrative and judicial remedies provided by law.

1.8.3. Environmental liability
Country-specific legal rules relating to the application of the Environmental Liability Directive 2004/35/EC, Articles 12 and 13

In Romania, the ELD Directive is transposed by Emergency Governmental Ordinance no 68/2007 approved by Law no 19/2008, and subsequently amended several times: Emergency Governmental Ordinance no 15/2009; Emergency Governmental Ordinance no 64/2011; Law no 249/2013; Law no 187/2012; Law no 165/2016.

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?
Emergency Governmental Ordinance no 68/2007 does not provide for any special rules or procedures concerning access to justice. The same procedures as provided by Law no 554/2004 are applicable. Standing in all environmental cases is governed by Art. 5 and 20 of EGO 195/2005.

According to the procedure of the administrative courts, Art. 2 letters a, r, and s of Law no 554/2004, the NGOs are considered to be "social organisations" that can challenge the administrative acts, (which include environmental administrative acts) based on “the public legitimate interest”, if, the protection of the environment is an objective included into the NGO’s statutes.

The legitimate public interest is defined as the interest concerning “the law order and the constitutional democracy, guaranteeing the rights, freedoms and fundamental duties of the citizens, satisfying the community needs, realizing the jurisdiction of the public authorities”.

The individual, however, according to Art. 2 letter a and Art. 8 para 2a, can invoke the legitimate public interest only subsequent to the private legitimate interest.

This is the general provision, however, Art. 5 of EGO 195/2005 derogates from the general provision, establishing for any person the right to address, directly or through environmental protection organizations, the administrative and/or judicial authorities, in the matter of environmental issues whether or not the damage has occurred. Art. 20 of EGO 195/2005 regulates the standig of the environmental NGOs in environmental matters.

2) In what deadline does one need to introduce appeals?
Emergency Governmental Ordinance 68/2007 does not establish any special deadlines for appeal is such matters. All the deadlines provided by Law no 554 /2004 are applicable (15 days from the communication date[41]).

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?
According to Art. 21 of Emergency Governmental Ordinance no 68/2007, the request for action is accompanied by the relevant information and data supporting the observations submitted.

4) Are there specific requirements regarding ‘plausibility’ for showing that environmental damage occurred, and if yes, which ones?
According to Art. 22 para 1 of Emergency Governmental Ordinance no 68/2007, in order to be analysed, the request for action must show, in a plausible way, that there is environmental damage. There are no further clarifications on this issue.
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)?

Within 5 days after the request for action was received, the competent authority, if the request for action is provides plausible information that there is environmental damage, will ask the operator in writing for an opinion concerning the allegations of the public. The operator must answer within 5 days.

Art. 23 of Emergency Governmental Ordinance no 68/2007 provides a 15-day deadline for the competent authority to deliver an answer to the action request sent by the public, including the NGOs. The 15 days are counted from the day when the competent authority submitted the request to the operator.

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?

In case of an imminent threat to the environment, according to Art 11 and 12 of Emergency Governmental Ordinance 68/2007, the competent authority may ask the operator to provide all necessary information, take preventive measure, and give instructions in this regard. The competent authority may take the necessary preventive measures if the operator has failed to fulfill his obligations under 10 (to inform and take the necessary preventive measures) if the operator could not be identified or if the operator is not obliged to bear the costs according to the emergency ordinance.

The public or NGOs who submitted requests for action or observations regarding imminent damage to the environment will be answered only after the necessary measures according to the ordinance have been taken.

7) Which are the competent authorities designated by the MS?

The competent authorities for identifying the environmental damage or an imminent threat or such damage, as well as for identifying the responsible operator, is the National Environmental Guard, through the county police stations.

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?

Art. 25 of Emergency Governmental Ordinance 68/2007 does not provide any special regulation in this regard, referring this matter to Law 554/2004 regarding the administrative procedural law. Therefore, Art. 7 of this law applies:

Against a refusal of the authority to take measures, or, if no answer is received in 30 days, the administrative complaint is not mandatory.

Against a decision issued by the authority, the administrative complaint is compulsory if the decision has not entered the civil circuit and has not produced its effects (entering the civil circuit means that the performance of a legal act/operation was made on the basis of the said administrative act; i.e. that it had some legal consequences).

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?

The rules regarding access to justice are provided for any individual or NGOs, regardless of their residence or citizenship.

2) Notion of public concerned?

The public concerned is any individual or NGOs. The right to a healthy and balanced environment is a fundamental right according to the Romanian Constitution Art. 35. Therefore, any person or environmental NGO is entitled to use the right of access to justice for the protection of the environment. The definition of the “public” is provided by Art 2 point 56 of Emergency Governmental Ordinance no 195/2005 regarding the protection of the environment: one or more natural or legal persons and, in accordance with national law or practice, their associations, organizations or groups.

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)?

The same regulations as described in chapter 1.7. for national NGOs are also valid for NGOs from other countries.

The NGOs from other countries have standing in the same conditions as national NGOs. The court is the same as if the NGO were national (the jurisdiction of courts was largely detailed in chapter 1.2.2, 1.2.3).

An important decision in this matter was given by the High Court of Cassation and Justice, Decision no 8/2020. This court established that in the unitary interpretation and application of the provisions of Art. 1 para. (1), Art. 2 para. (1) lit. a), r) and s) and Art. 8 para. (11) and (12) of the Law on administrative litigation no 554/2004 that, in order to carry out a legality check on administrative acts at the request of associations, as interested social bodies, the invocation of the legitimate public interest must be subsidiary to the invocation of a legitimate private interest, the latter arising from the direct link between the administrative act subject to legality directly and the objectives of the association, according to its statutes.

This decision gives the possibility for every NGO that has an objective (established in its statutes) in the same field as the said administrative act to contest the administrative act. (in our case, the protection of the environment).

The environmental administrative decision can be challenged by environmental NGOs (Art. 20 of Emergency Governmental Ordinance 195/2005 regarding the environmental protection law).

According to the procedure of the administrative courts, Art 2 letters a, r, and s of Law no 554/2004, the NGOs are considered to be “social organisations” that can challenge the administrative acts, (these include environmental administrative acts) based on “the public legitimate interest”, if the protection of the environment is an objective included in the NGO’s statutes.

The administrative complaint must be filed within 30 days after the decision of the administrative environmental decision was known to the interested public. The complaint can also be submitted after more than 30 days for justified reasons, but no later than 6 months after the date when the public became aware of its content (Art. 7.3 of Law no 554/2004 regarding the administrative procedural law).

As stated above, pro bono assistance is not expressly regulated by law but can be obtained if a lawyer or law firm agrees to it. Also, legal aid is offered in the same conditions as for national NGOs.

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)?

The same regulations as described in chapter 1.7 for individuals are applicable. In environmental matters any individual has standing without having to prove a prejudice (Art. 5 of Emergency Governmental Ordinance 195/2005 regarding the environmental protection law). The rules are the same as the one described previously. Legal aid may be granted if the person has a low income[42], and pro bono assistance can be obtained.

5) At what stage is the information provided to the public concerned (including the above parties)?

The public concerned from other countries are notified according to the Espoo Convention, which has been ratified by Romania through Law no 22/2001 and also according to the national legislation. Art. 26 of Law no 278/2013[43] provides that the public from the neighbouring countries must be informed at the same time as the national public. The same rule is also established by Art. 17 para 1 of Law 292/2018[44]. However, the procedure for communicating the information goes through the competent authorities from the neighbouring state and not directly to the affected public.
Art. 35 of Emergency Governmental Ordinance no 68/2007[45] provides that the national competent authority will inform the corresponding environmental competent authority. If the prejudice has already been produced, the national competent environmental authority will inform the competent authority from the neighbouring country within 24 hours. There are no provisions concerning the obligation to directly inform the public from the neighbouring countries that might be affected.

6) What are the timeframes for public involvement including access to justice?
The timeframes are similar to the ones established for the national public.

7) How is information on access to justice provided to the parties?
The information concerning access to justice is mentioned at the end of the administrative act, where information regarding the time frame, the applicable provision of law and the competent court is given.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?
There are no special rules in this regard. The same general provision described at points 1.4.4 and 1.7.4.5 are applicable.

9) Any other relevant rules?
No other relevant rules were identified.

[2]For a better understanding of this situation we can give the example where a phone carrier, after the expiration of the contract, refused to remove the equipment installed on the roof of a building. This was clearly an environmental problem, because of the radiation emitted by the antennas. In this case the competence was taken from civil law.
[3]If the execution of the crime has been stopped or because the execution was poorly conceived and the result of the crime did not happen, the author of the crime is still responsible and will be subject to an investigation. The punishment in this case will be cut in half, so if for a crime the imprisonment is 2 years to 4 years, in case of an attempted crime the punishment will be imprisonment from 1 year to 2 years.
[5]Art. 52
[6]Art. 2-8
[7]Civil Procedure Code, Art. 254, para (5)
[9]“in the case of unjustified refusal to resolve a claim regarding a legitimate right or interest or, as the case may be, the failure to respond to the applicant within the legal term”
[10]“when the legality of an administrative individual act, disregarding the emission date is invoked as an exception ex officio or by request of a party in a trial before the court”
[11]Law no 178/1997 regarding the licensing and payment of interpreters, Governmental Ordinance 51/2008 regarding legal aid in civil matters
[22]Civil Procedure Code, Art. 254, paragraph 5
[23]Civil Procedure Code, Art. 254, paragraph 2
[28]Art. 90 of the Criminal Procedure Code: “The legal aid is compulsory: when the suspect or defendant is a minor, hospitalized in a detention centre or in an educational centre, when they are detained or arrested, even in another case, when the security measure of medical hospitalization has been ordered against him, even in another case, as well as in other cases provided by law; if the judicial body considers that the suspect or defendant could not defend himself; during the trial in cases where the law provides for the crime of life imprisonment or imprisonment for more than 5 years”.
[29]Art. 93 para 4 and 5 of the Criminal Procedure Code: “(4) Legal assistance is mandatory when the injured person or the civil party is a person lacking capacity or with limited capacity; (5) When the judicial body considers that for some reason the injured party, civil party or civilly responsible party could not make one defence, has taken steps to appoint a lawyer”.
[30]Law no 51/1995, Art.10, paragraph 1,
[31]“in the case of unjustified refusal to resolve a claim regarding a legitimate right or interest or, as the case may be, the failure to respond to the applicant within the legal term”
[32]“when the legality of an administrative individual act, disregarding the emission date is invoked as an exception ex officio or by request of a party in a trial before the court”
[33]Governmental Decision no 1005/2013, Art 13 alin 2-point A letter d, regarding the organization and functioning of the National Environmental Guard.
[34]Emergency Governmental Ordinance no 195/2005, Art. 17 para-3 regarding the protection of the environment.
[35]Such as EIA permit, integrated environmental authorisation, SEA permit.
[37]Law no 554/2004 regarding the trial procedure in the administrative courts, Art. 15.
[38]Law no 178/1997 regarding the licensing and payment of interpreters, Governmental Ordinance 51/2008 regarding legal aid in civil matters
[40]Art. 426 para 5 of the Civil Procedural Code
[41]Art. 20, Law no 554/2004
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

At the national level, other specific activities that are not regulated by the EIA and IED directive, are regulated:

- EGO 57, from 20 June 2007, regulates the regime of protected natural areas, the conservation of natural habitats and of flora and fauna, transposing Directive 79/409/CEE (the Birds Directive) and the Directive 92/43/CEE (the Habitats Directive);
- Water Protection Act no 107/1996, amended several times;
- EGO 195/2005 regarding the environmental protection;
- EGO 43/2007, regarding the placement of genetically modified organisms on the market;
- EGO 202/2002, regarding integrated management of the coastal zone;
- Law no 104/2011, regarding the quality of the ambient air;
- Law no 211/2011, republished, regarding the waste regime;
- The Forest Code, Law no 46/2008, republished in Official Monitor no 611, August 2015;
- Law no 121/2019, regarding the evaluation and management of ambient noise;
- Law no 59/2016 regarding the control over the major accident hazards in which are involved dangerous substances transposing the Seveso Directive.

1) Which 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 applicable national statutory rules on standing for both individuals and NGOs are the same rules from administrative Law no 554/2005 as described above under questions 1.4.1 etc. Access to national courts is effective in Romania. The case law of the European Court of Justice will always have priority and will enjoy a presumption of genuine interpretation of EU law.

2) Which is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

There are no special provisions regarding this matter so the general rules will apply. They are described at point 1.3.1 and 1.3.2. The person whose right recognized by law or whose legitimate interest is impaired through a unilateral administrative act, who is dissatisfied with the response received to the previous complaint or who did not receive any response within the time limit[1] (30 days) may refer to the competent administrative litigation court, in order to request the cancellation in whole or in part of the act, repair the damage caused and, possibly, claim reparations for moral damages. Also, persons who consider themselves harmed in a right or a legitimate interest if the authority did not resolve the addressed matter in the time specified by law or if the authority refused to carry out a certain administrative operation necessary for the exercise or protection of the person's rights or legitimate interests can submit a request to the court. The reasons invoked in the application for annulment of the act are not limited to those invoked by the prior administrative complaint.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

The administrative review regulated by Art. 7 of Law no 554/2004 is mandatory. It must be done prior to recourse to a judicial review. Before addressing the competent administrative litigation court, the person who is considered injured in his or her right or in a legitimate interest in an individual administrative act addressed to him must ask the issuing public authority or the hierarchically superior authority, if it exists. However, exceptions can be made in the case of actions introduced by the prefect, the People's Advocate, the Public Ministry, the National Agency of Civil Servants, or regarding the request of the persons injured by ordinances or provisions of ordinances or of the actions directed against administrative acts that cannot be revoked as they entered the civil circuit, have produced legal effects, as well as the cases from Art. 2, alin 2 of Law 554/2004 (in the case of unjustified refusal to resolve a claim regarding a legitimate right or interest or, as the case may be, the failure to respond to the applicant within the legal term) and Art. 4 (when the legality of an individual administrative act (disregarding the emission date) is invoked as an exception ex officio or by request of a party in a trial before the court) the administrative complaint is not mandatory. A more detailed analysis can be seen at points 1.3.1 and 1.7.1.

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 Romania participation in the public consultation phase is not a condition to have standing before the courts.

5) Are there some grounds/arguments precluded from the judicial review phase?

If a person is not satisfied with the response of the administrative authority, or the authority did not give a response to the complaint in the time periods provided by law as well as in the case of a refusal (detailed in Art. 7 of Law no 554/2004, the harmed person can file a complaint at the Tribunal or the Court of Appeal (based on the jurisdiction described in Art. 10 of Law no 554/2004). The litigation will be judged in public hearing. The response to the complaint (submitted by the defendant) is mandatory and will be communicated to the plaintiff at least 15 days before the first date of trial. The decisions of the court are drafted and motivated within 30 days of the pronouncement. If the object of the complaint is a unilateral administrative act, the court solving the complaint can:
- cancel in whole or in part the administrative act
- oblige the public authority to issue an administrative act
- issue another document or perform a certain administrative operation
In resolving the complaint, the court will also establish the material or moral damages.
When the object of the action in administrative litigation is drawn up by an administrative contract the court can:
- order its cancellation, in whole or in part;
- oblige the public authority to conclude the contract to which the applicant is entitled;
Injunctive relief is possible both in administrative procedure and the Civil Procedure Code. Other administrative acts also produce effects regardless of an annulment action in court. The only suspensive effect is provided by the injunctive relief.

through a unilateral administrative act immediately after the money offered by the expropriator has been deposited into a bank account (the private owner

In expropriation procedures the administrative decision is immediately executed. The right of property is transferred from the private owner to the state
court to grant the injunctive relief will not suspend the execution of this decision.

There are no special rules regarding injunctive relief. The main rule is that there is no suspensive effect in any circumstances. In all cases the court must be

sector apart from the general national provisions?

30 days and even more than 90 days.

The Civil Procedure Code provides further regulations that are also applicable for the administrative courts: after the judicial research is over, the delivery of the decision can be delayed for up to 15 days, several times. There is no regulation regarding how many times the court can postpone the delivery of the decision.

6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

There are no special rules in this matter, so the general rules will apply.

According to Art. 8 Civil Procedure Code, in a civil matter the parties are guaranteed the exercise of their procedural rights equally and without discrimination.
The right of equality in civil procedure is a fundamental right, being an application of a fundamental right from the Constitution (Art. 16, alin. (1), the principle of equality before the law and public authorities, and Art. 124, alin. (2) which states that the justice is unique, impartial, and equal for everyone, and a guarantee of an equitable process.

According to Art. 7, alin (1) of Law no 304/2004 regarding judicial organization, all people are equal in the face of the law, without privileges and without discrimination, and according to the same article, alin (2), justice is being available equally for everyone, without discrimination on the basis of race, nationality, ethnic origin, language, religion, sex, sexual orientation, opinion, political affiliation, wealth, origin, or social condition or any other discriminatory criteria. Also, Art. 2 of the same Law (304/2004) states that justice dispensed by judges in the name of the law is unique, impartial, and equal for all. The equality of parties in a civil matter means that the parties have the right to be judged by the same organs of judicial power according to the same procedural rules, benefiting from the same procedural rights that are subject to judging, which basically means that in an identical situation, parties cannot be treated differently.

The existence of specialized instances or specific different procedural rights in some matters is not contrary to this principle, because those specific courts resolve all the litigation that falls under the courts’ specialization, without any discrimination, and the special procedural rules will be applied to any party that is part of a litigation subject to the respective derogatory rules. The difference in the treatment of parties could become discriminatory only if a distinction was introduced in analogous or comparable situations, without those being based on a reasonable and objective justification.

The jurisprudence of the European Court of Human Rights enshrines the principle of equality of arms, which means equal treatment of the parties throughout the proceedings before a court, without one of them being favoured over the other. Also, Art. 6 of the European Convention on Human Rights guarantees the right to a fair trial; according to paragraph 1 “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice”. Paragraph 2 of the same article states that everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. In paragraph 3 of Art. 6 ECHR, there are some minimum rights that must be respected regarding a person charged with a criminal offence.

Thus, the procedural documents for which the law imposes the obligation of communication are communicated to all parties. It would have violated the principle of equality of arms, for example, when the court would only communicate to one of the defendants the request for a trial. The same principle would be disregarded if, in evidence or, as the case may be, in combating the same thesis, the court would approve the evidence with witnesses only to one of the parties but rejecting it for the opposing party.

Of course, even if not expressly stipulated, the principle of equality of arms is an implicit principle of criminal law. In the criminal case, irrespective of the parties to the case, they address the same judicial organs explicitly established in accordance with the same procedural rules provided by the Criminal Procedure Code or by special laws. The establishment of a personal jurisdiction or of abbreviated procedures in case of acknowledgment of guilt is not incompatible with the principle of equality.

7) How is the notion of “timely” implemented by the national legislation?

There are no special provisions regarding this matter. The general rules that will apply are from the Civil Procedure Code, but they are recommendations and not binding on the courts:
an injunctive relief in a civil court must be tried urgently. The decision should be delivered in 24 hours and the written decision should be given within 48 hours after the decision was pronounced.
in the administrative court, the injunctive relief must be tried urgently. Art 14 of Law no 554/2004 establishes an urgent procedure for injunction, derogating from the general procedural regulations in the civil procedure that require longer for the case to receive a hearing in court.
The Civil Procedure Code provides further regulations that are also applicable for the administrative courts: after the judicial research is over, the delivery of the decision can be delayed for up to 15 days, several times. There is no regulation regarding how many times the court can postpone the delivery of the decision. The written decision should be communicated to the parties within 30 days. In duly justified cases, this deadline can be extended twice by 30 days each time. Several judges have been sanctioned for exceeding this term. However, in practice, communicating the written decision usually takes more than 30 days and even more than 90 days.

8) Is there injunctive relief available? If yes, which are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There are no special rules regarding injunctive relief. The main rule is that there is no suspensive effect in any circumstances. In all cases the court must be asked for injunctive relief. The effects of the act will be suspended only if the injunctive relief is admitted by the court. The appeal against the decision of the court to grant the injunctive relief will not suspend the execution of this decision. In expropriation procedures the administrative decision is immediately executed. The right of property is transferred from the private owner to the state through a unilateral administrative act immediately after the money offered by the expropriator has been deposited into a bank account (the private owner can receive the money only if he/she is not taking legal action against the expropriator asking for more money). An injunctive relief with the object of suspending this transfer is inadmissible according to the Expropriation Law no 255/2010.

Other administrative acts also produce effects regardless of an annulment action in court. The only suspensive effect is provided by the injunctive relief. Injunctive relief is possible both in administrative procedure and the Civil Procedure Code.
In administrative procedures the injunctive relief concerns only suspension of the effects of an administrative unilateral act. In civil proceedings the court can grant an injunctive relief to ensure the protection of a right, to prevent an imminent damage, and to remove the obstacles to execution of a court order. The injunction is given only in urgent matters and only for a limited period.

According to Article 14 of Law no 554/2004 regarding the administrative court procedure, you can ask for injunctive relief immediately after submitting the administrative complaint to the public authority that issued the act, before submitting to the court the request for the annulment of the act.

According to Article 15 of Law no 554/2004 regarding the administrative court procedure, injunctive relief can be also introduced together with the annulment request or through a separate request that can be filed until the first instance court has reached a decision regarding the annulment of the act.

To be granted, you must prove that the case is well justified and that without the injunctive relief an imminent damage would be suffered. In civil procedure the injunctive relief is granted in urgent cases and for a limited period, as described above.

9) Which 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?

There are no special rules in this matter. The general rules will apply.

The cost categories are:
- The fee of the court
- The fee of the lawyer
- The fee of the judicial expert

The courts’ fees are regulated by Emergency Governmental Ordinance no 80/2013.

- The fee for administrative court varies between approximately 10.35 euros (50 lei) and 62 euros (300 lei). At this moment in Romania 1 euro equals 4.84 lei.
- The fees for civil court are established according to the value of the case. There are several criteria given by certain values established by law.
  - if the value of the case is under 103 euros (500 lei), the court fee is 8% but no less than 4 euros (20 lei)
  - if the value of the case is between 103.72 euros (501 lei) and 1035 euros (5,000 lei), the fee of the court is 8.28 euros (40 lei) plus 7% for the amount above 103 euros (500 lei);
  - if it falls between 1,035 euros (5,000 lei) and 5,175.05 euros (25,000 lei), the fee of the court is 73.49 euros (355 lei) plus 5% for the amount above 1,035 euros (5,000 lei);
  - if it falls between 5,175.45 euros (25,001 lei) and 10,350.48 euros (50,000 lei), the fee of the court is 280 euros (1,355 lei) plus 3% for the amount above 5,174.94 euros (25,000 lei)
  - if it falls between 10,350.08 euros (50,001 lei) and 51,757.57 euros (250,000 lei) the fee of the court is 435.80 euros (2,105 lei) plus 2% for the amount higher than 10,348.68 euros (50,000 lei)
  - higher than 5,174.34 euros (250,000 lei) – 1,263.66 euros (6,105 lei) plus 1% for the amount higher than 51,746.94 euros (250,000 lei)

There are no special rules in this matter. The general rules will apply.

- The fee for appeal as second grade of jurisdiction is half of the fee at the first court but not less than 4.14 euros (20 lei);
- The fee for the recourse as third grade of jurisdiction is the fee of the court is 20.70 euros (100 lei) for the cassation motives regulated in Art. 488 para 1 points 1 – 7 of the new Civil Procedure Code. If the motives relating to the application of the substantive law in cases that can be valued in money, the fee of the court is 50% of the amount paid in the first court but no less than 20.70 euros (100 lei). For the cases that cannot be valued in money the fee of the court is 20.70 euros (100 lei).

If the appeal is filed against a decision of the court concerning:
- suspension of the trial proceedings, the fee is 4.14 euros (20 lei)
- annulment of the trial because the fee of the court was not paid, or other cases when the case was not trialled, the fee of the court is 10.35 euros (50 lei).

There is no criterion for estimating a fee of the expert or lawyer. A fee for an expert was about 2,000 euros (9,673.61 lei) and a fee for a lawyer not working for an environmental NGO was at least 1,000 euros (4,836.81 lei).

Very few lawyers work in NGOs, so access to lawyers is very difficult.

The fee to apply for injunctive relief in civil court is 4.14 euros (20 lei), if has no monetary value. If it does, the fee is 11 euros if the value is established at under 413.97 euros (2,000 lei) and 41.40 euros (200 lei) if the value established is higher than 413.97 euros (2,000 lei). There is no deposit needed.

The injunctive relief in administrative court is not mentioned, therefore it should apply Art. 27 which refers to any other cases that cannot be valued in monetary terms. For such cases, the fee of the court is 4.14 euros (20 lei).

The ‘loser pays’ principle applies every time the other party asks for the costs that they had to bear during the trial. If the other party does not ask for such costs then the principle will not apply. The court could also compensate the expenses if only a part of your request was admitted, and the rest rejected. In this case, the court could reimburse the expenses, so that either party will pay the remaining part, or nothing if the entire sum would compensate. There is no special regulation concerning the way the judge should allocate the costs. The judge could determine according to his own individual understanding whether the costs as requested by the party are equitable or not. However, the judge is not able to allow the costs to be higher than the amounts that are proved with fiscal receipts.

There are some exceptions from the judicial fee according to Art. 29 of Emergency Governmental Ordinance number 80/2013, but none of them refers to environmental cases

Also, Art. 30 states that the actions and applications are excepted from the judicial fee, including the legal remedies formulated, according to the law, by the Senate, the Chamber of Deputies, the Presidency of Romania, the Government of Romania, the Constitutional Court, the Court of Accounts, the Legislative Council, the People’s Advocate, the Public Ministry and the Ministry of Public Finance, regardless of their object, as well as those formulated by other public institutions, regardless of their procedural quality, when they have as their object public revenues.

In order to provide access to justice to every person addressing a matter to a court of justice, even to those who do not have the financial resources to pay the judicial fee. EGO nr. 51/2008 provides access for those who need it to a public judicial aid, which is basically a form of assistance provided by the government, with the purpose of ensuring the right to a fair trial and a guarantee of equal access to justice. This assistance can be obtained in litigation regarding civil, commercial, administrative, work a public insurance cases as well as any other cases, except the criminal ones. Public judicial aid may be requested, under the conditions of this emergency ordinance, by any individual who cannot meet the costs of a trial or those involved in obtaining legal consultations in order to defend a legitimate right or interest in justice without endangering his or his family’s maintenance.

The public judicial help was broadly described in sections 1.6.1.1 and 1.7.3.3, so in order not to overload this section, we will simply indicate the chapter where it was largely analysed.

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]
The SEA Directive 2001/42/EC was transposed into national law by Government Decision (GD) no 1076/2004. This decision establishes the procedure for carrying out the environmental assessment, applied for the purpose of issuing the environmental opinion necessary for the adoption of plans and programmes that could have significant effects on the environment. The decision also defines the role of the competent authority for environmental protection, the requirements of the stakeholders and the public participation procedure.

The screening decision as well as the SEA permit can be challenged in court according to the general procedure regulated for all administrative acts.

The administrative complaint must be filed within 30 days after the content of the administrative environmental decision was known to the interested public. The complaint can also be submitted after more than 30 days for justified reasons, but no later than 6 months after the date when the public became aware of its content (Art. 7 of Law no 554/2004 regarding the administrative procedural law).

According to Law no. 554/2004, Art. 10 contains the rules regarding the competent court.

So disputes regarding administrative acts:

issued or concluded by local and county public authorities, as well as those regarding taxes and duties, contributions, custom debts, as well as their accessories of up to 500,000 lei (102,939 euros) will be resolved by the tribunals.

issued or concluded by the central public authorities, as well as those regarding taxes and duties, contributions, customs debts, as well as their accessories higher than 500,000 lei will be resolved by the courts of appeal.

The cassation of a decision will be retried by the higher court, so if a decision is given by the tribunal it will be retried by the court of appeal, and if the first decision is given by the court of appeal, it will be retried by the High Court of Cassation and Justice.

According to the provisions of GD 1076/2004, the potential significant effects on the environment that may occur through the implementation of the plan or programme must be identified, described and evaluated.

The environmental assessment is carried out during the preparation of the plan or programme and is completed before its adoption or its submission in the legislative procedure. This procedure has 3 stages (2) [3].

1) Which 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 applicable national statutory rules on standing for both individuals and NGOs are the same as described above under questions 1.4.1 etc.

According to the procedure of the administrative courts, Art. 2 letters a, r, and s of Law no. 554/2004, the NGOs are considered to be “social organisations” which can challenge the administrative acts, (these include administrative administrative acts) based on “the public legitimate interest”, if the protection of the environment is an objective included into the NGO’s statutes.

The legitimate public interest is defined as the interest concerning “the law order and the constitutional democracy, guaranteeing the rights, freedoms and fundamental duties of the citizens, satisfying the community needs, realizing the jurisdiction of the public authorities”.

The individual, however, according to Art. 2 letter a and Art. 8 para 2, can invoke the legitimate public interest only subsequent to the private legitimate interest.

This is the general provision; however, Art. 5 of EGO 195/2005 derogates from the general provision, establishing for any person the right to address, directly or through environmental protection organizations, the administrative and/or judicial authorities, in the matter of environmental issues whether or not the damage has occurred.

An important decision in this matter was given by the High Court of Cassation and Justice, decision no. 8/2020. This court established that in the uniform interpretation and application of the provisions of Art. 1 para. (1), Art. 2 para. (1) lit. a), r) and s) and Art. 8 para. (11) and (12) of the Law on administrative litigation no 554/2004 that in order to carry out a legality check on administrative acts at the request of associations, as interested social bodies, the invocation of the legitimate public interest must be subsidiary to the invocation of a legitimate private interest, the latter arising from the direct link between the administrative act subject to legality directly and the objectives of the association, according to its statutes.

This decision gives the possibility for every NGO that has an objective (established in its statutes) in the field of the litigation to act against the said administrative act that has an impact in the field where the NGO acts.

The screening decision as well as the SEA permit can be challenged in court according to the general procedure (law no. 554/2004) as they are considered administrative acts.

Through the judgment given in Case 314/85, Photo Frost, the Court of Justice reiterated the principle according to which it is solely competent to rule on validity of the acts of the EU institutions, according to the necessity of uniform application of the European law, a requirement that is particularly strong when questioned the validity of an EU act. Therefore, the case law of the European Court of Justice will always have priority and will enjoy a presumption of genuine interpretation of EU law[4].

2) Which is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

There are no special provisions regarding this matter so the general rules will apply. They are described at points 1.3.1 and 1.3.2.

3) Before filing a court action, there is a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

There is a requirement of exhaustion of administrative review procedures prior to recourse to judicial review. General administrative rules from Law no. 554 /2004 apply, as described above at points 2.1.3, 1.3.1 and 1.8.3.6.

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 Romania participation in the public consultation phase is not a condition to have standing before the courts.

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?
Concerning the transposition of SEA there are no special rules on this. General administrative rules apply. See above answers to questions 1.7.2 and 2.1.8.

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? The costs that can arise from bringing such a challenge on access to justice in this area are described in EGO no 80/2013. These were detailed at points 1.7.3 and 2.1.9.

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[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 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 applicable national statutory rules on standing for both individuals and NGOs are the same rules from the administrative Law no 554/2005 as described above under questions 1.4.1 etc.

In Romania, there is no exhaustive list containing all the plans and programmes that can be challenged or not. This can be established based on the specific content of the plan. If the plan or programme does not fall under SEA, it will fall under Law no 52/2003 on decision-making transparency in public administration regarding the public consultation procedure, and other sectoral legislation. Such administrative acts can be challenged according to the general dispositions from Law no 554/2004.

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 are no special provisions regarding this matter so the general rules will apply. They are described at point 1.3.1 and 1.3.2.

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 a requirement of exhaustion of administrative review procedures prior to recourse to judicial review. General administrative rules from Law no. 554/2004 apply, as described above at points 2.1.3, 1.3.1 and 1.8.3.8.

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 Romania participation in the public consultation phase is not a condition to have standing before the courts.

5) Is injunctive relief available? If yes, what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There are no special provisions. General administrative rules apply. See above answers to questions 1.7.2 and 2.1.8.

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?

The costs that can arise from bringing such a challenge on access to justice in this area are described in EGO no 80/2013. These were detailed at points 1.7.3 and 2.1.9.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[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 content of the plan (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The SEA Directive 2001/42/EC was transposed into national law by Government Decision no 1076/2004. The plans and programmes that are specifically required by EU law to be prepared are adopted through Laws issued by the Parliament, or normative administrative acts such as Governmental Decisions or Ministerial Orders, depending on the importance of the plans/programmes. The Laws issued by the Parliament cannot be contested in court, however, they can be attacked on constitutionality issues by the parties to a judicial case based on the law, by the Ombudsman, or by the political parties from the Parliament after adoption or by the President of the Republic pending promulgation.

The Governmental Ordinance can be contested in court according to Law no 554/2004 Art. 9 only together with a claim of unconstitutionality. The other normative administrative acts can be contested in court according to the dispositions of Law no 554/2004.

The applicable national statutory rules on standing for both individuals and NGOs are the same from the administrative Law no 554/2005 as described above under questions 1.4.1 etc.

2) Does the form in which the plan or programme is adopted make a difference in terms of legal standing (see also Section 2.5 below)?

There are no different locus standi conditions if the plan or programme is adopted by legislation, by an individual resolution of a legislative body, or by a single act of an administrative body etc. The general rules from Law no 554/2004 apply.

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?

There are no special provisions regarding this matter so the general rules will apply. They are described at points 1.3.1 and 1.3.2.

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 a requirement of exhaustion of administrative review procedures prior to recourse to judicial review. General administrative rules from Law no. 554/2004 apply, as described above at points 2.1.3, 1.3.1 and 1.8.3.8.

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 Romania participation in the public consultation phase is not a condition to have standing before the courts.

6) Are there some grounds/arguments precluded from the judicial review phase?

There are no special provisions regarding this matter. The answer is the same as at point 2.1.5.

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

There are no special rules in this matter, so the general rules will apply. They are described at point 2.1.6.

8) How is the notion of "timely" implemented by the national legislation?

There are no special provisions regarding this matter. The general rules that will apply are from the procedural civil code. They are described at point 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?

There are no special provisions. General administrative rules apply. See above answers to questions 1.7.2 and 2.1.8.
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 costs that can arise from bringing such a challenge on access to justice in this area are described in EGO no 80/2013. These were detailed at points 1.7.3 and 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

The European legislation can be transposed into national law through different normative acts:

- Ministerial Orders (they can be contested according to the dispositions of Law no 554/2004 described in points 1.4, 1.8.1)
- Government Decisions (they can be contested according to the dispositions of Law no 554/2004 described in points 1.4, 1.8.1)
- Emergency Government Ordinances (they can be contested according to Art. 9 of Law no. 554/2004). The person injured in a right or in a legitimate interest by ordinances or provisions of ordinances may bring an action in the administrative court, accompanied by the exception of unconstitutionality, if the main object is not the finding of unconstitutionality of the ordinance or provision of ordinance.

Laws (they can be contested for an exception of unconstitutionality only by the court or commercial arbitration tribunal before which the exception of unconstitutionality was invoked (by the parties) or directly by the People's Advocate). The parties cannot directly address the matter of unconstitutionality to the Romanian Court of Constitutionality. The Constitutional Court also decides on the constitutionality of the laws, before their promulgation, at the notification of the President of Romania, of one of the presidents of the two Chambers, of the Government, of the High Court of Cassation and Justice, of the People's Advocate, of at least 50 deputies or of at least 25 senators, as well as, ex officio, on initiatives to revise the Constitution.

For example, the adoption of the Natura 2000 sites is made for SCIs through Orders of the Environment Minister and the SPAs through Governmental Decision. Any administrative decision or act implementing EU environmental legislation would be an administrative act, challengeable in court, except for Laws issued by the Parliament.

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedure for adopting or the content of the decision, act, or omission of the national regulatory act (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The applicable national statutory rules on standing for both individuals and NGOs are the same as in the administrative Law no 554/2005 as described above under question 1.4.1 etc.

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 are no special provisions regarding this matter so the general rules will apply. They are described at points 1.3.1 and 1.3.2.

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 a requirement of exhaustion of administrative review procedures prior to recourse to judicial review. General administrative rules from Law n. 554/2004 apply, as described above at points 2.1.3, 1.3.1 and 1.8.3.8.

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 Romania participation in the public consultation phase is not a condition to have standing before the courts.

5) Is injunctive relief available? If yes, what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There are no special provisions. General administrative rules apply. See above answers to questions 1.7.2 and 2.1.8.

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 cost that can arise from bringing such a challenge on access to justice in this area are described in EGO no 80/2013. These were detailed at points 1.7.3 and 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 [8]?

The national courts can ask the European Court of Justice for a preliminary ruling.

Regarding the preliminary ruling, our legislation is not very extensive. The High Court of Cassation and Justice has given some directions in this matter. For example, the High Court of Cassation and Justice through Decision no 2167/2016 has ruled that an application to the CJEU can only be made when an active litigation the question of the validity of interpretation or the validity of community law is raised. The national court will determine the relevance of Community law for the resolution of the dispute and whether a preliminary ruling is necessary. Also, the question of what may be referred by the national court concerns exclusively questions of interpretation, validity or application of Community law, and not matters relating to national law or particular elements of the case before the court. The answer of the Court of Justice does not take the form of a simple opinion, but of a reasoned decision or order. The receiving national court is bound by the interpretation given when resolving the dispute before it. The decision of the Court of Justice is equally binding on the other national courts invested with an identical issue.

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[2] The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.
[4] Priority of the EU legal order over national law, Razvan Horatui Radu.
[5] 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.
[6] 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.
[7] 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 Hoekscheaards Landschap, ECLI:EU:C:2017:774.
The protection of a healthy environment is a constitutional right, although not in the chapter of human rights, but nevertheless recognised as such. The legislative body is the National Assembly of the Republic of Slovenia, which consists of the elected deputies. The National Council of the Republic of Slovenia (as the lower chamber of the Slovenian Parliament) consists of members who represent local and functional interests. The executive power is exercised through the Government – the president and ministers are elected by the National Assembly. There are 16 ministries. For the environment, the Ministry of the Environment and Spatial Planning and its bodies are competent (bodies under the ministry: the Slovenian Environment Agency, the Inspectorate for the Environment and Spatial Planning, the Surveying and Mapping Authority, the Slovenian Nuclear Safety Administration, the Slovenian Environment Agency (according to the provisions provided by Law no 554/2004), the creditor must make a new request to the first court that tried the case (the execution court) and ask for enforcement of the court decision. The court can impose on the head of the public authority or to the obliged person (debtor) a fine of 20% of the gross minimum wage per household for each day of the delay. This sum will be paid into the state budget, and the plaintiff will be entitled to receive penalties. If the guilty are public servants or officials, the special regulations apply.

To find more national information about access to justice in environmental matters, please click on one of the links below:

3. Other relevant rules on appeals, remedies and access to justice in environmental matters


1. Access to justice at Member State level
Slovenian Water Agency). For nature conservation, there is the Institute of the Republic of Slovenia for Nature Conservation. The Government can adopt decrees and ordinances; the ministers can adopt rulings as binding general legal acts. On the local level, there are 212 local communities (main bodies are the mayor and the community council). There is no regional level organised in Slovenia. Legislation is presented in a legal information system [2].

As a party to the Aarhus convention, Slovenia granted the right to protect the right to a healthy environment to the ombudsman, to affected natural and legal persons, and to NGOs working in the public interest in certain areas (environmental protection, nature conservation, spatial planning). The conditions under which these individuals or organisations have legal standing are defined in environmental legislation. Apart from the subjects mentioned above, anyone can pursue their rights at the Constitutional Court, provided they can demonstrate legal interest.

2) Constitution – presenting main provisions on the environment and access to justice in the national constitution (if applicable) including procedural rights (content of + including references)

The Constitution of the Republic of Slovenia [3] declares that everyone has the right to a healthy living environment in accordance with the law and that the state shall promote a healthy living environment (Article 72). Also, everyone has the right to safe drinking water (Article 70a). The manner in which property is acquired and enjoyed shall be established by law so as to ensure its economic, social, and environmental function (Article 67). Ratified and published treaties shall be applied directly (Article 8) and Slovenia is a party to the Aarhus convention.

3) Acts, Codes, Decrees, etc. - main provisions on environment and access to justice, national codes, acts

Environmental legislation is extensive and frequently changing. Through strategic environmental assessments (SEAs) and environmental impact assessments (EIAs), it is connected with spatial planning and construction permission regulation. All legislation is presented in the legal informational system of the Republic of Slovenia. There is also some legislation translated into English, but mostly it is not fully accurate. Access to justice is defined in the Environmental Protection Act, the Nature Conservation act, the Spatial Planning Act and the Building Act.

The Environmental Protection Act [4] is a basic act for the overall protection of the environment in Slovenia. It regulates horizontal common instruments and principles such as: the basic principles of environmental protection, environmental protection measures, strategic documents for environmental protection, strategic environmental assessment (according to the SEA Directive), environmental impact assessment and environmental consent (according to the EIA Directive), environmental permits (according to the IED), environmental monitoring and environmental information collection, emission trading, liability for environmental damage (according to the ELD), competent bodies in the areas of environmental protection, NGOs and their role in procedures and inspection. Access to justice is defined as a general right to exercise the constitutional right to a healthy environment (Article 14 – right to act against polluters) and as a right for a defined circle of affected persons and NGOs with the status of “public interest – environmental protection” (complaint against negative EIA screening decision, party in EIA procedure, IED procedure and environmental liability procedure).

The Government of the Republic of Slovenia determines the thresholds for emissions and most of the executive regulation for administering the areas listed above with decrees.

According to the Environmental Protection Act, the National Programme for Environmental Protection is the national programme constituting the framework for environmental protection in Slovenia and is adopted by the National Assembly [8] for a certain period (it also includes the Nature Conservation Plan as per the Nature Conservation Act and the National Water Plan as per the Waters Act).

The Nature Conservation Act [6] transposed the Convention on Biological Diversity into Slovenian legislation. It establishes biodiversity conservation measures (protection of wild plant and animal species, including their genetic material, their habitats and ecosystems) and the system for the protection of valuable natural features in order to contribute to nature conservation. It regulates:
- different types of protected areas: a habitat type, an ecologically important area, an area of special protection (the Natura 2000 areas are determined and regulated by the Decree on special protection areas (Natura 2000 areas) [7], landscape;
- measures for the protection of species and their habitats; the executive regulation is adopted by the government (in the form of decrees, according to the Habitats and Birds Directive);
- instruments for assessment of the environmental acceptability of plans and programmes (appropriate assessment for plans is carried out within the strategic environmental impact assessment and appropriate assessment of activities affecting nature is carried out within the environmental impact assessment, if this is carried out, otherwise separately);
- nature conservation permit;
- competent bodies for nature conservation;
- conditions for NGOs to obtain the status of “public interest – nature conservation” and their rights (the right to represent interests of nature conservation in all administrative procedures and disputes);
- inspection.

The Waters Act [8] lays down basic water regulations (it also transposes the Water Framework Directive). It emphasises that water is a public good. The Act introduces the institute of “right on water” (obtaining permission for special use of water, for example, fish farms, irrigation and hydroelectric power plants) and water consent (as a permit for intervention in the area of a certain water by influencing the water regime). In order to protect drinking water, protected water areas are defined, in which the disposal of waste, the use of fertilisers and other actions are prohibited. Water management is defined in more detail by the specific water management plans. The Water Act also defines the basic principles of water management. The highest strategic national water management plan is a national programme (adopted by the National Assembly for a maximum of 12 years). The water management plans include the implementing action plans. There are no special provisions for legal standing for NGOs or individuals in the administrative procedures related to water, therefore the general rules for legal standing in administrative procedure apply.

There are other important acts related to environmental protection, among them: the Act on Forests [9]; the Game and Hunting Act [10], the Animal Protection Act [11], the Underground Cave Protection Act [12], the Mining Act [13], the Ionising Radiation Protection and Nuclear Safety Act [14], the Triglav National Park Act [15], the Management of Genetically Modified Organisms Act [16], the Chemicals Act [17], and others which fall under the competence of different ministries.

Where spatial planning and construction permission has an impact on the environment, the strategic environmental assessment and environmental impact assessment are carried out within the procedure of spatial planning or construction permission. The Spatial Planning Act [18] provides access to justice regarding spatial plans, and the Building Act [19] does so in the part where the environmental impact assessment is integrated into the building permits procedure.

4) Examples of national case-law and the role of the Supreme Court in environmental cases

The Supreme Court has no special or particular role in environmental matters. It acts as a second-instance court of the Administrative Court, if the complaint is allowed, and for revision in cases of extraordinary appeal. It also decides on jurisdiction matters between the Administrative Court and the courts of general jurisdiction.

The core of case law (on the initiative of the NGOs) is generated by environmental impact assessments (the EIA Directive), appropriate assessments (the Habitats Directive), environmental permits (the IED), environmental liability (the ELD), water permits, nature conservation permits and spatial planning at the
Administrative Court. Several cases were initiated not only because of opposition to the content of the administrative decision, but also because of recognition of standing in the administrative procedure for NGOs that was not recognised or rejected. At regular court there are civil claims for compensation and for termination of harmful practices or emissions. There are also many cases concerning review of the constitutionality and legality of regulations and general acts, constitutional complaints for violation of human rights with individual acts.

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?

According to Article 8 of the Constitution, ratified agreements shall be applied directly, therefore you can also directly rely on international environmental agreements, especially in matters where they are not correctly transposed or transposed at all into national law (besides the national end EU transposing regulation). It is also important that you rely on international agreements in the administrative procedure in order to build up the case for a potential procedure before the Administrative Court, and later the Constitutional Court in the potential case of human rights violation.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

Generally, there are three levels in the Slovenian court system: 44 local and 11 district courts on the first level, 4 higher courts on the second, and the Supreme Court as the third instance. There are also specialised courts: the Labour and Social Court and the Administrative Court. The vast majority of environmental cases are dealt with by the Administrative Court, which has status equal to the second level courts. The rest of the cases are dealt with by the courts of general jurisdiction (on the first level by local or district courts). In the event that appeal against the Administrative Court’s decision is allowed, the second instance is the Supreme Court.

The Constitutional Court is the highest judicial authority for the protection of constitutionality, legality, human rights and fundamental freedoms. Also, there is a State Prosecutor General as part of the general justice system and as an independent state authority.

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)?

The Courts Act defines the jurisdiction of local, district, high courts and the Supreme Court. The Administrative Dispute Act defines jurisdiction of the Administrative Courts, and the Labour and Social Courts Act defines jurisdiction of the Labour and Social Courts. The Administrative Court is competent for judicial protection of the rights and legal interests of individuals and organisations in decisions and actions of state authorities, local community authorities and bearers of public authority - administrative decisions and (legality) of individual acts and actions with which authorities have encroached on the human rights and fundamental freedoms of an individual, unless a different form of judicial protection has been guaranteed (Articles 1 and 4). The core procedural act is the Civil Procedures Act. It sets out the rules for resolving conflicts or uncertainties regarding jurisdiction. The addressed court assesses its jurisdiction according to the statements in the suit and its own findings. If it establishes that another body (like arbitration) is competent for the case, or that the case is not of Slovenian court jurisdiction, it dismisses the suit. If it establishes that the case falls within another court’s jurisdiction, it stops the procedure and sends the case to the other court. The high court has jurisdiction for resolving disputes about jurisdiction among (regular) courts, and the Supreme Court resolves disputes about jurisdiction among lower courts.

There is also the Arbitration Act which defines sets out rules on arbitration in Slovenia. The district court in Ljubljana has jurisdiction in relation to some concerns regarding the arbitration agreement: admissibility of the arbitral proceedings, the appointment or exclusion of an arbitrator, the award for the arbiter, the declaration of enforceability of domestic and recognition of foreign arbitral awards. The appeal against the court decision can be lodged with the Supreme Court. But the subject of arbitration agreement can only be pecuniary claims, and other claims only if the parties can agree on them.

3) Specialties as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges

There are no specialised courts for environmental disputes. Most environmental cases are processed by the Administrative Court, since there are a lot disputes regarding decisions of state institutions in administrative procedures. There are some specialised judges for environmental and spatial planning cases, but not as a separate organisational unit. There are no laypersons contributing; the process is led by the senate of three judges or one judge.

A minority of environmental disputes are processed before regular (local or district) courts – these are civil suits against polluters. There are no specialised judges for the legal area of the environment.

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

The Administrative Court is not bound by the legal grounds of the request of the plaintiff, but to the factual claims set out in the lawsuit. Each party proposes evidence for their requests, but the court decides which evidence will be used. The Administrative Court is not bound by the proposals of the parties and may hear any evidence which could contribute to resolution of the case.

If the court grants the claim of the plaintiff, it can decide to:
- abolish the administrative decision and return the case to the administrative level (this is the most commonly the case);
- abolish the administrative decision and decide about the matter; this occurs if the case has a solid base in facts, and especially if a new administrative procedure would cause irreparable damage to the plaintiff (this is never the case in environmental matters).

1.3. Organisation of justice at administrative and judicial level

1) System of the administrative procedure (ministries and/or specific state authorities)

Administrative bodies, defined by the State Administration Act, are: ministries, bodies/institutions within the ministry and administration units. For environmental protection, nature conservation and spatial planning, the following institutions are relevant:

- Ministry of the Environment and Spatial Planning;
- bodies within the ministry: the Slovenian Environment Agency, the Inspectorate for the Environment and Spatial Planning, the Surveying and Mapping Authority, the Slovenian Nuclear Safety Administration, the Slovenian Water Agency;
- the Institute of the Republic of Slovenia for Nature Conservation;
- administrative units, which are the basic building blocks of the administrative system covering geographical areas.

The first level of administrative decision-making can be undertaken by all the institutions above, depending on the type of permit/consent. Usually or most commonly, the first level is covered by administrative units or bodies within the Ministry of the Environment and Spatial Planning, and the second level (appeal instance) is the ministry itself.

2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?

Against the final decision at administrative level, a suit can be filed with the Administrative Court in accordance with the Administrative Dispute Act. The suit can be filed by the plaintiff, and representation by attorney is not a necessary condition. The court fee should be paid (148 EUR), and is returned to the plaintiff if they are successful. There is a possibility for the court to decide without a hearing. The average time for a decision is approximately one year.

The administrative body (a state institution) as a defendant is represented by the State Attorney’s Office.

The procedural rules are set out in the Administrative Dispute Act and in the Contentious Civil Procedures Act.

3) Existence of special environmental courts, main role, competence
There is no special environmental court.

4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)

In administrative procedures, except where the Ministry of the Environment and Spatial Planning decides as first-instance body, complaint is possible (within 15 days) unless it is specifically excluded (for example, in environmental liability proceedings). The Ministry carries out the second-instance administrative procedure regarding the complaint and issue the decision. The administrative procedure is regulated by the General Administrative Procedure Act[31]. Where complaint is not possible, administrative dispute at the Administrative Court is allowed.

Against the final decision (judgment) of the Administrative Court, appeal to the Supreme Court is possible. According to the Administrative Dispute Act, this is the case only where the court establishes different facts than the administrative body (defendant) and changes the administrative decision on this ground on its own motion, or finds out that the decision or action of the administrative body is illegal. In the judgment, the Administrative Court defines if appeal is allowed. Against a decision about temporary injunction, appeal against the decision to the Supreme Court is possible.


Revision, as extraordinary appeal to the Supreme Court, is possible if the Supreme Court allows it. The Supreme Court decides about the proposal of the interested party; the proposal should be filed within 15 days after receiving the judgment. The Supreme Court allows the revision if the decision about important legal question is expected. If the revision is allowed, it can be filed only because of violation of the procedural rules, or if the application of law is wrong. The revision appeal is allowed only with the representation of an attorney.

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?

Mediation between parties is always possible on a voluntary basis[32], but it is not used often for environmental cases. In civil disputes, the regular courts offer mediation as part of the court procedure (Act on Alternative Dispute Resolution in Judicial Matters[33]). The parties could also agree on an arbitration agreement, if the matter concerns a pecuniary or other claim on which the parties can settle. This can be the case only in civil suits regarding compensation claims against polluters. It is not used in practice.

7) How can other actors help (ombudsperson (if applicable), public prosecutor), accessible link to the sites?

The Ombudsman has a strong role to play in protecting the constitutional right to a healthy environment.[34] According to the Human Rights Ombudsman Act[35], the Ombudsman acts on the basis of individual initiatives if the state or a local body violates human rights. If the administrative or court procedure is already addressing the matter, the Ombudsman does not intervene unless there is a substantial delay in proceedings or there are signs of obvious abuse of power. The Ombudsman can accept or reject the initiative. If it accepts it, then it begins the inquiry. After receiving the explanation of the competent body, it prepares a report where it expresses an opinion about the violation of human rights and proposes what action should be taken to stop the violation.

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)?

There is no general rule for all cases. There is a status of working in the public interest for NGOs, regulated by the Non-Governmental Organisations Act[36] - this means that the state acknowledges that some NGOs are operating not only in their own interest or in the interest of their members but for common welfare. This is recognised in different areas if NGOs fulfill certain conditions and can present accomplishments defined by the rules of different sectors (culture, sports, environment, etc). The NGO has to apply for the status at the competent ministry and the ministry issues an administrative decision. The NGO has to fulfill the conditions for the status at all times and has to report to the ministry every two years. Sectoral rules/conditions for environmental NGOs are set out in:

- the Environmental Protection Act and rules on detailed conditions and criteria for acquiring the status of a non-governmental organisation operating in the public interest in the field of environmental protection[37] for NGOs with the status of "public interest – environmental protection". According to the Environmental Protection Act, they can be a party in certain administrative procedures (file a complaint against the negative EIA[38] decision, be a party in the EIA[39] and IED procedure and the environmental liability procedure);
- the Nature Conservation Act and rules on the criteria determining the significant achievements of an NGO in order to be granted the status of an NGO operating in the public interest in nature conservation[40] for NGOs with the status of "public interest – nature protection"; they have to fulfill some additional criteria (if the NGO is an association, it must have 50 members; if the NGO is an institute, it must have two employees with a certain level of education; if the NGO is a foundation, it must have 10,000 EUR of property); NGOs with this status can participate in administrative procedures or in administrative disputes if they advocate nature protection interests in the way determined by the law;
- the Spatial Planning Act and rules on the criteria determining significant achievements of NGOs in order to be granted the status of an NGO operating in the public interest in spatial planning[41] for NGOs with the status of "public interest – spatial planning". They have the right to file a suit with the Administrative Court against some aspects of spatial plans (like land use).

Natural and legal persons have:

- the right to participate (and therefore to use the legal remedies) in certain procedures (environmental impact assessment (EIA), environmental permits (IED)) applicable for those who permanently reside, or are owners or other possessors of real estate, in the impact area (Environmental Protection Act);
- the right to be a party in administrative procedures, provided they demonstrate legal interest. Legal interest shall be demonstrated by a person who claims to be joining the procedure in order to protect their legal benefits – these shall be direct personal benefits based on an Act or other regulation (General Administrative Procedure Act[42], Article 43);

Civil initiatives can be a party in the integral building permission procedure (integral means that the building permission procedure is combined with the environmental impact assessment (environmental consent) procedure). There should be 200 signatures of residents (natural persons of age) who live in the local community where the installation will be sited or in a neighbouring community (Building Act[43], Article 54).

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?

There is a general rule in the General Administrative Procedure Act concerning who has the right to be a party in an administrative procedure – those who demonstrate their legal interest (the person should claim to be joining the procedure in order to protect their legal benefits; these shall be direct personal benefits based on an Act or other regulation). In addition to that general rule, there are some specific rules in lex specialis:

- The Nature Conservation Act – defines the conditions for NGOs to hold the status of "public interest – nature conservation", and the right of such NGOs to represent nature conservation interests (be a party and use legal remedies) in all administrative procedures and in all administrative disputes in the way determined by the law. Legal remedies involve the administration appeal to a second-instance authority and/or filing a suit with the Administrative Court (administrative dispute).

The Environmental Protection Act defines the conditions for NGOs to hold the status of "public interest – environmental protection" and their right to participate (be a party and use legal remedies) in certain procedures: to appeal against a negative EIA screening decision, to be party in the EIA procedure, the EID procedure and the environmental liability procedure. The defined circle of affected individuals has the right to participate in EIA and IED procedure (be a party and use legal remedies). Legal remedies involve administrative appeal to a second-instance authority and/or filing a suit with the Administrative Court (administrative dispute). There is also a more general right to exercise the constitutional right to a healthy environment: individuals, their societies,
associations and organisations can file a request with the court against the polluter to stop harmful activities. The competent courts for such cases are regular first-instance courts (district).

- The Building Act regulates integral building permission procedure (joint building permission and environmental impact assessment – environmental consent) and defines the parties in this procedure. Civil initiatives (groups of 200 inhabitants of the affected local community) are also included in the defined circle of affected persons and NGOs with the status of “public interest – nature conservation / environmental protection”. All have the right to participate in the administrative procedure (be a party and use legal remedies – filing a suit with the Administrative Court).

- The Spatial Planning Act: against the spatial plan, legal remedy is possible (a suit with the Administrative Court) for a defined circle of persons and NGOs with the status of “public interest – environmental protection / nature conservation / spatial planning / cultural heritage conservation”. They can use the legal remedy provided they actively participated in the public discussions in previous stages of the procedure. The State Attorney’s Office has the same right for protection of the public interest. There are limited aspects of the plan that can be challenged.

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.)

The Constitutional Court has the general rule[44] that anyone who demonstrates legal interest may lodge a petition that the procedure for the review of the constitutionality or legality of regulations or general acts issued for the exercise of public authority be initiated. Legal interest is deemed to be demonstrated if a regulation or general act is issued for the exercise of public authority and its review has been requested by the petitioner for reasons of its direct interference with their rights, legal interests or legal position. Constitutional complaint against the violation of human rights by an individual act can be filed after all other legal remedies have been exhausted.

Administrative procedure:

The general rule for all administrative procedures applies for all persons – whether individual or NGOs. This rule is applicable unless a particular Act (e.g. the Nature Conservation Act or the Building Permit Act) defines other specific rules. The right to be a party in an administrative procedure is available to those who demonstrate their legal interest (the person should claim to be joining the procedure in order to protect their legal benefits; these benefits shall be direct personal benefits based on an Act or other regulation). The procedure usually goes further at the level of judicial review (administrative dispute at the Administrative Court) at the initiative of the party in the administrative procedure. Specific rules are defined in:

- The Nature Conservation Act – NGOs with the status of “public interest – nature conservation” have the right to represent nature conservation interests (be a party and use the legal remedy) in any administrative procedure and in administrative disputes in the way determined by the law.

- The Environmental Protection Act defines different rights for individuals and NGOs with the status of “public interest – environmental protection”:

  - strategic impact assessments: there are no provisions for NGOs to participate in SEA procedures, but (according to the Nature Conservation Act) an association with the status of “public interest – nature conservation” did succeed at the Administrative Court in getting a position in an SEA procedure ([LII case II U 145/2016]); on the basis of this case, the Ministry of the Environment and Spatial Planning allowed 9 NGOs with the status of “public interest – environment protection / nature conservation” to be parties in the SEA procedure for the National Energy and Climate Plan[45]; the legal remedy here is complaint to the Government (semi-administrative procedure) if the authority that prepares a plan is at state level or suit with the Administrative Court if the authority that prepares the plan is at local community level;

  - environmental impact assessment screening procedure (Article 51a): NGOs with the status of “public interest – environmental protection” can appeal against negative screening decisions (within 15 days after publishing of the decision on the website of the Slovenian Environment Agency);

  - environmental impact assessment (Article 64): the law presumes the existence of legal interest for persons who permanently reside, or are owners or other possessors of real estate, in the impact area, and NGOs with the status of “public interest – environmental protection” shall have a legal interest to enter the procedure for issuing an environmental consent in order to protect their rights, provided they apply for the procedure within 35 days after publishing of the public consultation documents (but it is recommended that the party in this application also presents all the comments and arguments in the case); a recent decision by the Administrative Court states that this legal assumption of legal interest does not exclude the existence of legal interest according to general rules of administrative procedure, widening the circle of possible parties[46];

  - environmental permit – IED (Article 73): persons who permanently reside, or are owners or other possessors of real estate, in the impact area of the installation and NGOs with the status of “public interest – environmental protection” have a legal interest in participating in the procedure for issuing an environmental permit, provided they apply for the procedure within 35 days after publishing of the public consultation documents (but it is recommended that the party in this application also presents all the comments and arguments in the case);

  - other environmental permits, but not SEVESO (Article 84a): the Ministry of the Environment and Spatial Planning will publish the documentation for the procedure if it gets five applications for party status in the procedure. If so, anyone can apply for party status in the procedure within 30 days of public announcement of the procedure;

  - environmental liability procedure (110g and 110e): legal or natural person who are harmed or could be harmed by environmental damage and NGOs with the status of “public interest – environmental protection” have the right to inform the Slovenian Environment Agency about the environmental damage and demand that the agency acts. They can also be a party in the procedure for determining the remedy measures.

There is also the right to the protection of a healthy environment, which is “open” to all individuals and NGOs (not only those with the status of public interest) – Article 14. According to this, citizens may, as individuals or through societies, associations or organisations, file a request at a court that the person responsible for an activity affecting the environment terminates the activity if it causes, or would cause, an excessive environmental burden or presents, or would present, an imminent threat to human life or health, or that the person responsible for the activity affecting the environment be prohibited from starting the activity if there is a high probability that it will cause such consequences. For these cases, the first-instance regular courts are competent.

- The Building Act regulates integral building permission procedure[47] (combined building permit and environmental impact assessment – environmental consent). Parties in the procedure can be (Article 36, 38, 50, 54) persons who are a party in the regular building permission procedure, persons who permanently reside, or are owners or other possessors of real estate, in the impact area, other persons claiming that building and its environmental burdens would have an impact on their rights and benefits, NGOs with the status of “public interest - environmental protection / nature conservation”, civil initiative (200 signatures of residents in the local community or a neighbouring community). They can be party if they apply after they are invited by the administrative body (namely the Ministry of the Environment and Spatial Planning) or in the procedure according to the Environmental Protection Act if they apply (with their reasons for objection) in the procedure within 35 days after publishing of public consultation documents. NGOs with the status of “public interest – environmental protection / nature conservation” also have the right to legal remedy (suit with the Administrative court) if they were not a party to the procedure within 30 days after publishing on the online platform e-administration (Article 58);

- Spatial Planning Act (Article 58): against the spatial plan, legal remedy is possible (a suit with the Administrative Court within 3 months after enforcement) for persons if the plan determines ground for his rights and in this part significant consequences; NGOs with the status of “public interest – environmental
4) What are the rules for translation and interpretation if foreign parties are involved?
The general rules are set out in the Civil Procedure Act; the procedure at the court takes place in Slovene or a language that is used at the court (for Italian and Hungarian minorities). Parties or other participants can use their own language according to the Act – they can ask for a translator for the hearings and for a translation of the documents used at the hearings. The translators are official translators as per the Court Experts, Certified Appraisers and Court Interpreters Act[48]. All other documents should be in Slovene or another official language of the court. The costs for the translator are part of the costs of the procedure (the burden of the party who caused the cost).

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 procedures, according to the principal of substantive rule the administrative authority is obliged to determine the true facts and all relevant facts so that a lawful and correct decision can be established. It can order the presentation (ex officio) of any evidence if it concludes that this is necessary to clarify the case. Each party proposes the evidence for their requests, but the court decides which evidence will be used. The Administrative Court is not bound by the proposals of the parties and may hear any evidence which could contribute to resolution of the case.

2) Can one introduce new evidence?
The parties can propose evidence up to the end of the first hearing, except where the party can reasonably justify not presenting it sooner.

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts

In the procedure, experts can be nominated by the court at the proposal of the party. The court shall take evidence from an expert if it is necessary to establish or clarify a fact with expertise (knowledge) which the court does not have at its disposal – the proposal of certain experts is consulted on with the parties. Before the expert begins work, the costs shall be covered in advance – otherwise the court stops the procedure. Usually the expert opinion should be presented as evidence with the filing of a suit or in response to it. In such cases, the expert represents a cost for the party presenting the expert opinion (you can find an expert on the free market) and hiring an expert does not mean that another expert will not be nominated later in the procedure. The court decides which evidence should be used. It can call upon another expert if the parties present substantiated arguments for doing so, and the cost burden lies with the party who proposes or insists on this. Actually, if expertise is presented by a party, it is evaluated according to the principle of free evaluation of the evidence: it can be accepted by the court, but the court may also consider it to be a mere claim by the party and nominate another expert. The main rule is that experts are to be nominated by the sitting court. The court experts are regulated by the Court Experts, Certified Appraisers and Court Interpreters Act. They are listed in a special register for court experts (area of ecology – there are 8 experts). The court is not bound only to court experts; it can also nominate expert institutions or other experts.

3.1) Is the expert opinion binding on judges, is there a level of discretion?

In evaluating expertise, the judge assesses which facts are considered to be proven on the basis of evaluation of each piece of evidence individually and combined. Since the basic reason for nominating the expert is that the court does not have the knowledge necessary for establishing all relevant facts in the matter, the discretion is actually limited, as the court will not have the knowledge necessary to differ from it. However, if the court is not persuaded by the expertise (and is capable of explaining this), there is no obligation to follow it. The parties in the dispute comment on the expertise, and if the arguments are relevant they can also propose another expert. The other expert can be approved by the judge, but the rules are restrictive – it is possible only if the expertise is unclear, incomplete, internally contradictory or in contradiction of other facts and this cannot be eliminated by an additional hearing of the expert.

3.2) Rules for experts being called upon by the court

The court can nominate an expert if the parties in the dispute propose it, or to establish or clarify a fact with expertise (knowledge) which the court does not have at its disposal – but if the costs are not covered in advance by the plaintiff or the party that proposed this evidence, it stops the procedure. If expertise is presented by a party, it is evaluated according to the principle of free evaluation of the evidence: it can be accepted by the court, but the court may also consider it to be a mere claim by the party and nominate another expert.

3.3) Rules for experts called upon by the parties

The nominated court expert is obliged to respond to the invitation of the court, but they can be excused of duty if there are circumstances: concerning what the client (party) has entrusted to them as their attorney or confesses to them as a religious confessor, or concerning the facts that they have learned as their lawyer or doctor or in the exercise of any other profession or activity where there is a duty to maintain secrecy or on the grounds of other excusable arguments. They can also be excluded for the same reasons as are valid for exclusion of the judge from the case. The expert is nominated by court order. The judge decides whether the expert is only invited to the hearing or if he must prepare a written expert opinion (in practice, the judges decide for both). The procedure does not provide for separate complaint against the decision about the expert. If the expert declines to perform the work or does not come to the court without a substantial excuse, the judge can impose on them a penalty of 1,300.00 EUR and costs for delaying the procedure.

3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?

The estimated expert’s fee should be paid in advance by the party which proposed the evidence of the expert, or by the plaintiff if it is proposed by the court. The payment is ordered by court order. If the fee is not paid, the expert evidence is not included. There are no standard expert fees. They are determined by the rules on court experts, certified appraisers and court interpreters[49] - the work is divided into different phases and each phase of the work is then divided up in accordance with the level of complexity. The amounts are then determined using different categories for each phase: pages or hours. For instance, taking into consideration all phases of the procedure, the cost for the simplest expertise would be around 550 EUR and for the most complex around 2,000 EUR. But the upper limit is not fixed, and there are also fees for additional pages and hours.

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

Lawyers are regulated by the Attorneys Act[50] and are part of the general justice system’s independent service. They are organised by the Bar Association, which also holds the register of all attorneys (they can be selected by areas of “specialisation”, but “environment protection” is not included – civil or administrative areas should be selected). In the environmental area, the attorney is compulsory only in extraordinary legal remedies in court
procedures. Otherwise, the parties can represent themselves in court procedures (at the regular courts and the Administrative Court). If they do not represent themselves but choose another person to represent them, this latter person should be an attorney or a person who has passed the bar exam. Revision as extraordinary legal remedy at the Supreme Court can only be filed for by an attorney.

The representative of the public interest in an administrative dispute is the State Attorney General.

1.1. Existence or not of pro bono assistance

There is the possibility of free legal aid assistance under the Legal Aid Act[51] for NGOs with public-interest status in disputes regarding the pursuit of activities in the public interest for which they were established. For individuals, the condition for free legal aid is low incomes of the member of the family. Another condition is that the case is not clearly unreasonable and/or that the applicant in the case is likely to succeed, such that it is reasonable to initiate the proceedings. The free legal aid can cover the costs of the attorney for legal counselling and representation in court procedures, as well as other costs of procedure (Art. 26/5). The attorney can also provide pro bono legal aid: every year the Bar Chamber organises a pro bono day in December. The attorney decides voluntarily to participate on this day or to provide pro bono aid otherwise. The Code of Professional Ethics for Lawyers of the Bar Association of Slovenia imposes a (moral) duty on a lawyer to provide legal assistance to clients. The client's inability to adequately pay for a lawyer's work is not a reason to refuse legal aid in an emergency. Representing and defending the socially disadvantaged is an honourable task of lawyers in the practice of the legal profession. This task should be performed by a lawyer with special understanding. We should say that some pro bono work has been done for NGOs in environmental matters, but it is not usual. Since 2018, free legal advice has also been available to all from the Green Counsel, provided by an NGO[52].

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.)?

The free legal aid can be approved on the basis of application in administrative procedures. Against the decision, the applicant can file a suit with the Administrative Court. All information about free legal aid, the procedure and application is available on the general webpages of the courts[53]. Other pro bono assistance has no formality; it is a personal decision of the individual attorney.

1.3 Who should be addressed by the applicant for pro bono assistance?

The free legal aid is approved by the district court which has jurisdiction for the dispute. It considers the seat of the NGO and the place of residence of individuals. The administrative dispute is decided by the Administrative Court. The court has a special service for free legal aid. Pro bono assistance is a matter for arrangement with the attorney.

2) Expert registries or publicly available websites of bars or registries that include the contact details of experts

There is a Bar Association, which has a register of attorneys, but there is no list with specialisation for environmental law listed. Regarding experts, there is no list of such experts, but we can use:

- the list of court experts,
- the list of accredited emission measurement providers listed in the registry of ARSO,
- experts for environmental impact assessments for projects – those who have participated in already finished environmental impact assessment procedures are listed on the webpage of ARSO.

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible

There is no list of NGOs active in the field, only a register of NGOs with public-interest status in the state business register AJPES (Legal Entity Identifier)[54]. Regarding participants for procedures in the areas of environmental protection, nature conservation and spatial planning, there are relevant NGOs with public-interest status in the areas of environmental protection, nature conservation, spatial planning and cultural heritage protection. The tables below present the NGOs with public-interest status in areas of environmental protection, nature conservation and spatial planning, presented by name. NGOs with public-interest status in the area of cultural heritage protection are less relevant for environmental protection, though they can have limited access to court procedures against a final spatial planning decision (advocating only cultural heritage interests).[55]

Table 1 List of NGOs with the status of "public interest – environmental protection" (on 12.3.2020)

| Inštitut za mladinsko participacijo, zdravje in trajnostni razvoj |
| Lutra, Inštitut za ohranjanje naravne dediščine |
| Društvo za ohranitev Udinboršta |
| Ribiška zveza Slovenije |
| Društvo krajinskih arhitekov Slovenije |
| Društvo Planet Zemlja |
| Društvo Ekologi brez meja |
| Društvo previvalcev "Ronket" |
| Inštitut za uporabno ekologijo Maribor |
| Slovenska potapljaška zveza |
| Društvo Proteus, gibanje za naravo in okolje Bela krajina |
| Focus, društvo za sonaraven razvoj |
| Umanotera, Slovenska fundacija za trajnostni razvoj |
| Okoljsko raziskovalni zavod |
| Sobivanje - Društvo za trajnostni razvoj |
| Lovska zveza Slovenije |
| Regionalno okoljsko združenje okoljevarstvenikov, Združenje ROVO |
| Društvo za ohranjanje naravne dediščine |
| Inštitut za politike prostora |
| Slovensko združenje za trajnostno razvoj |
| Društvo za okoljsko vzgojo Evrope v Sloveniji (DOVES - FEE Slovenia) |
| Društvo Bober - Okoljsko gibanje Dolnjeslovenska |
| Pravno-informacijski center nevladnih organizacij - PIC |
| Eko krog - društvo za naravovarstvo in okoljevarstvo |
| Alpe Adria Green, Mednarodno društvo za zaščito okolja in narave |
| Društvo Gibanje za trajnostni razvoj Slovenije - TRS |
| Zveza ekoloških gibanj Slovenije - ZEG |
1.7. Guarantees for effective procedures

Justice and Environment.

Some NGOs are also members of other international networks such as the European Environmental Bureau, Climate Action Europe, Friends of the Earth, Justice and Environment.

Table 2 List of NGOs with the status of "public interest – nature conservation" (as of 12.3.2020)

<table>
<thead>
<tr>
<th>Name of NGO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Društvo za raziskovanje jam Ljubljana</td>
</tr>
<tr>
<td>Jamarska zveza Slovenije</td>
</tr>
<tr>
<td>Slovensko društvo za zaščito voda</td>
</tr>
<tr>
<td>Jamarski klub Kamnik</td>
</tr>
<tr>
<td>Lutra, Inštitut za ohranjanje naravne dediščine</td>
</tr>
<tr>
<td>Društvo JASA</td>
</tr>
<tr>
<td>Ribliška zveza Slovenije</td>
</tr>
<tr>
<td>Planinska zveza Slovenije</td>
</tr>
<tr>
<td>Koroško Šaleški jamarski klub Speleos-Siga Velenje</td>
</tr>
<tr>
<td>Društvo za raziskovanje jam Simon Robič Domžale</td>
</tr>
<tr>
<td>Društvo Planet zemlja</td>
</tr>
<tr>
<td>Društvo krajinskih arhitektov Slovenije</td>
</tr>
<tr>
<td>Slovensko odonatološko društvo</td>
</tr>
<tr>
<td>Forum za Pohorje, združenje za trajnostni razvoj</td>
</tr>
<tr>
<td>Turistično okoljsko društvo Slovenj Gradec</td>
</tr>
<tr>
<td>Zavod SYMBIOSIS</td>
</tr>
<tr>
<td>Društvo Proteus, gibanje za naravo in okolje Bela krajina</td>
</tr>
<tr>
<td>Gobarsko mikološko društvo Ig</td>
</tr>
<tr>
<td>Društvo za biološko dinamično kmetovanje Podravje</td>
</tr>
<tr>
<td>INTERSO Integracija ekonomije, razvoja, sociale in okolja, Inštitut za individualno in družbeno odgovornost</td>
</tr>
<tr>
<td>Turistično društvo Barje</td>
</tr>
<tr>
<td>VIVAMAR – Društvo društvo za trajnostni razvoj morja</td>
</tr>
<tr>
<td>Gobarsko društvo Lisička Maribor</td>
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<tr>
<td>Lovska zveza Slovenije</td>
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<tr>
<td>Društvo za preučevanje rib Slovenije</td>
</tr>
<tr>
<td>Turistično društvo Cer Cerovo</td>
</tr>
<tr>
<td>Društvo za opazovanje in proučevanje ptic Slovenije</td>
</tr>
<tr>
<td>Prihodnost, društvo za varovanje in ohranjanje naravnega okolja</td>
</tr>
<tr>
<td>Društvo ljubiteljev Križne jame</td>
</tr>
<tr>
<td>Društvo za okoljsko vzgojo Evrope v Sloveniji (DOVES - FEE Slovenia)</td>
</tr>
<tr>
<td>Društvo Bober - Okoljsko gibanje Dolenska</td>
</tr>
<tr>
<td>Herpetološko društvo - Societas herpetologica slovenica</td>
</tr>
<tr>
<td>Dondes, Društvo za ohranjanje naravne dediščine Slovenije</td>
</tr>
<tr>
<td>Alpe Adria Green, Mednarodno društvo za zaščito okolja in narave</td>
</tr>
<tr>
<td>Gobarsko mikološko društvo slovenske Istre</td>
</tr>
<tr>
<td>Cipra Slovenija, Društvo za varstvo Alp</td>
</tr>
<tr>
<td>Društvo Druščina polharjev &quot;Polh&quot; na Dolenskem</td>
</tr>
<tr>
<td>Društvo za proučevanje in ohranjanje meduljev Slovenije</td>
</tr>
<tr>
<td>Društvo za raziskovanje jam Ljubljana</td>
</tr>
<tr>
<td>Mikološka zveza Slovenije</td>
</tr>
<tr>
<td>Morigenos - slovensko društvo za morske sesalce</td>
</tr>
<tr>
<td>Zveza društev za obvarovanje reke in sonaravni razvoj ob Muri - Moja Mura</td>
</tr>
<tr>
<td>Slovenska zveza za sokolarstvo in zaščito ptic ujed</td>
</tr>
<tr>
<td>Društvo gobarjev Štorovke-Šentrumar-Hočevidje</td>
</tr>
<tr>
<td>Jamarski klub Novo mesto</td>
</tr>
<tr>
<td>Gobarsko mikološko društvo Ljubljana</td>
</tr>
<tr>
<td>Društvo za ohranjanje, raziskovanje in trajnostni razvoj Dinardov Dinaricum</td>
</tr>
</tbody>
</table>

Table 3 List of NGOs with the status of "public interest – spatial planning" (as of 12.3.2020)

<table>
<thead>
<tr>
<th>Name of NGO</th>
</tr>
</thead>
<tbody>
<tr>
<td>DUPPS – Društvo urbanistov in prostorskih planerjev Slovenije</td>
</tr>
<tr>
<td>Kulturno društvo Prostorož</td>
</tr>
<tr>
<td>Estetika - Društvo za vzpodobanje etike v prostoru</td>
</tr>
<tr>
<td>Inštitut za politike prostora</td>
</tr>
<tr>
<td>Društvo PazilPark</td>
</tr>
<tr>
<td>Društvo krajinskih arhitektov Slovenije</td>
</tr>
<tr>
<td>Društvo arhitektov Ljubljana</td>
</tr>
<tr>
<td>Združenje FIABCI</td>
</tr>
<tr>
<td>Center arhitekture Slovenije</td>
</tr>
<tr>
<td>DESSA Ljubljana</td>
</tr>
<tr>
<td>Kulturno društvo MOTA</td>
</tr>
</tbody>
</table>

4) List of International NGOs, who are active in the Member State

Greenpeace – office in Slovenia (Društvo Prihodnost)

WWF Adria – office in Zagreb also covers Slovenia

CIPRA – CIPRA Slovenia

BirdLife - BirdLife Slovenia (Društvo za opazovanje in proučevanje ptic)

Friends of the Earth (via the office of Focus Association for Sustainable Development).

Some NGOs are also members of other international networks such as the European Environmental Bureau, Climate Action Europe, Friends of the Earth, Justice and Environment.

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).

- 15 days, according to the General Administrative Procedure Act.

2) Time limit to deliver decision by an administrative organ

According to the General Administrative Procedure Act, the organ must generally decide within 30 days or at least within 60 days. There are some special provisions for certain environmental procedures in other acts (e.g. the Environmental protection Act), but in those cases the decision period is even longer.

3) Is it possible to challenge the first level administrative decision directly before court?

It is possible to challenge the first level administrative decision directly before court when the Ministry of the Environment and Spatial Planning is the first-level administrative organ and in environmental liability procedures.

4) Is there a deadline set for the national court to deliver its judgment?

Generally, no. The court should decide without unnecessary delay, according to court order. But for certain procedures (environmental consent and environment permission), the Environmental Protection Act demands the court decisions in three months.

5) Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)

In the administrative procedure, the evidence should be submitted at the same time as an application is submitted. It can be submitted later if there are certain reasons for it, or other if parties claim something different and there is a need for further evidence. In the court procedure, evidence should be submitted by filing the suit or until the end of the first hearing (civil procedures). Since there is usually no hearing at the Administrative Court, the last opportunity for submitting evidence is by answering the official response of the opposing party. The party can submit the evidence later if it can reasonably justify not presenting it sooner.

All written documentation is sent to other parties in the procedure and usually there is not less than 15 days to answer in administrative procedures and 30 days in court procedures.

1.7.2. Interim and precautionary measures, enforcement of judgments

1) When does the appeal challenging an administrative decision have suspensive effect?

Generally, the appeal against an administrative decision by the second-instance authority always has suspensive effect, except when a specific Act stipulates otherwise. An appeal against a final administrative decision (the suit with the Administrative Court) does not have this effect, unless provided for by a (special) law. Only when the specific Act defines that certain decision can be effective only after the final court decision (or after the period for filing the suit and nobody does this).

2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?

Injunctive relief is possible in first-instance administrative procedures. This is implemented in the form of a temporary decision and primarily relates to the time “during” the procedure. There are no specific provisions about injunctive relief in environmental procedures.

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?

In the administrative procedure, a proposal for a temporary injunction is possible during the first-instance procedure. The law does not stipulate specific conditions.

4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?

Immediate execution irrespective of the appeal is possible if a specific Act defines this in regard to a certain decision. The general rule under the General Administrative Procedure Act also allows a verbal decision in the case of measures necessary in the public interest, and the authority can decide that the appeal does not have suspensive effect.

5) Is the administrative decision suspended once challenged before court at the judicial phase?

Generally, challenging the administrative decision before the court does not suspend the decision, but for certain decisions the Act can determine suspensive effect (e.g. environmental consent, environment permission).

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?

In the administrative procedure, a temporary injunction is not conditional on the financial deposit. The local courts are competent to provide injunctive relief according to the Claim Enforcement and Security Act. Initially the interested party has to pay the costs of the procedure in advance. Appeal against the order on injunction relief is allowed.

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.?

When we calculate costs, there is a distinction between whether a person or an NGO is a party in the administrative procedure (and then challenges the administrative decision at the Administrative Court or, in civil procedure, at the regular court (against polluters)).

Free legal aid (described in section 1.6.) is available only for court procedures. It is available for natural persons with low income and for NGOs with public-interest status. If the case is lost, the costs of the opposing party are not covered.

The general framework for calculating costs is as follows:

In administrative procedures (as a party in the procedure) natural persons with low income and NGOs with public-interest status (in matters concerning their area of public interest) are excused of taxes.

In the case of challenging an administrative decision at the Administrative Court, there is a court tax (148 EUR), which is returned if the plaintiff is successful (Court Fees Act[56]). There is no significant risk for the costs of the opposing party, because the procedure at the Administrative Court is mostly without hearing, not long and the State Attorney’s Office is entitled to reimbursement of costs in accordance with the Attorney tariff.

In the case of filing a suit with the regular court, there is an obligation to pay the court tax according to the Court Fees Act[57] and in consideration of the value of each case (rules for determining the value are regulated in the Contentious Civil Procedure Act);

The costs of attorneys are regulated in the Attorney Tariff[58] and calculated case by case, depending also on the timeframe of the procedure (a longer procedure can be expected than in standard civil cases), the number of legal remedies, hearings, filed papers. The different tasks are evaluated with points, each point being 0.6 EUR, and the number of points depends also on the value of the case;

The costs for experts cannot be estimated in advance but only on a case-by-case basis. We can expect that an expert institution should be engaged in a particular case. There are different sums in relation to the complexity or volume of materials to study.

We have to be aware that there is no average environmental case as a basis for calculating the average costs. There is a considerable difference between an administrative dispute (the opposing party is a state body) and an environmental request at the regular (local or district) courts (the opposing party is a poluter). It depends also on the length of the whole procedure up to the final solution. It may be that the same case proceeds two or three times at the Administrative Court in the same administrative procedure. And similarly for cases at the regular courts (one case against polluters lasted 20 years from filing.
of the suit up to the final decision). We can conclude that middle-income individuals or NGOs can afford the administrative procedure and administrative disputes, but taking an environmental lawsuit to the regular courts would be very risky for the same plaintiffs.

2) Cost of injunctive relief/interim measure, is a deposit necessary?
The court fee should be paid for the procedure (74 EUR); for other deposits, the court decides from case to case. It depends on measures which need to be executed during the process.

3) Is there legal aid available for natural persons?
Free legal aid is available for natural persons with low income.

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?
Free legal aid is available only to NGOs with public-interest status in matters concerning their area of public interest and to legal persons under certain (limited) circumstances. Free legal aid is explained under 1.6.

5) Are there other financial mechanisms available to provide financial assistance?
There are no other financial mechanisms available to provide financial assistance.

6) Does the 'loser party pays' principle apply? How is it applied by courts, are there exceptions?
The "loser party pays" principle applies. There are no rules about exceptions in environmental cases. But there are some additional rules for administrative disputes:
Parties shall always be billed for costs incurred through their own fault, as well as costs incurred by any chance occurrence affecting the party. If the court granted the action and annulled the administrative act contested in the administrative dispute, or established the illegality of the contested administrative act, the lump sum of costs shall be reimbursed to the plaintiff with respect to the performed procedural actions and the method by which the administrative dispute was processed, in compliance with the rules on the reimbursement of expenses to plaintiffs in administrative disputes.[59] The determined amount shall be paid by the defendant. If shared costs arise in the case the court shall decide what proportion of the costs each party shall bear.

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?
Yes, explained under the previous question.

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?
There is no official website with rules on environmental access to justice. There is only information about conditions and the process for NGOs with public-interest status. However, the Ministry of the Environment and Spatial Planning encourages NGOs to generate such information. Currently all relevant information is available on the [Environmental Defenders website][60].

1.7.5. Access to information on access to justice - provisions related to Directive 2003/4/EC
There is a general rule of free access to all environmental information, and each authority is also obliged to publish basic information about the environment and relevant procedures. The obligation is based on the Public Information Access Act[61] and the Environmental Protection Act. The [Information Commissioner][62] ensures free access to information.

2) During different environmental procedures how is this information provided? From whom should the applicant request information?
There is no system for providing procedural information. Anyone can address the competent authority with a request for access to information.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?
There is information on the websites of the Ministry of the Environment and Spatial Planning and the Slovenian Environment Agency, but mostly focused on providing investors with useful information and less on informing members of the public concerned about access to justice. However, the ministry supports NGOs in spreading this information (call for tenders for NGOs). There is no other active dissemination of information on access to justice.

4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment?
Every administrative or court decision has instructions about possible legal remedies against it.

5) Is translation, interpretation provided to foreign participants? What are the rules applicable?
There are no specific rules about translation for any foreign participants in environmental procedures. There are only general rules for the court procedure (described in section 1.4., 4th question). In administrative procedures, all written documentation and hearings are in Slovene (except in the case of Italian and Hungarian minorities), but if participants do not know the language, they have the right to participate in the procedure with the help of a translator. The authority is obliged to inform them of this, but the costs of the translator must be borne by the party who needs translation.

1.8. Special procedural rules


Country-specific EIA rules related to access to justice

1) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)
All applications for screening decisions and the subsequent decisions are published on the website of the Slovenian Environment Agency. There is no public consultation, and there are no provisions that would enable natural or legal persons or NGOs to be party to the procedure. Only NGOs with the status "public interest – environmental protection" can file a complaint against a negative screening decision, within 15 days after the decision is published. However, persons who can demonstrate legal interest are not expressly excluded and it is possible that the court would support their claim for standing (on the basis of CJEU decision C 570-13). The Administrative Court also decided that the NGO can be a party in the screening decision.[82]

2) Rules on standing relating to scoping (conditions, timeframe, public concerned)
There are no provisions for participation in the scoping phase. After the screening decision, the application for environmental consent, the impact assessment report and the draft administrative decision have been published, there is an open public consultation period of 30 days.

3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?
NGOs with the status of "public interest – environmental protection" and those who permanently reside, or are owners or other possessors of real estate, in the impact area can become a party in the procedure if they announce it within 35 days from the beginning of the public consultation (the authority invites them through a public announcement). This means the interested party should send an application for joining the procedure and present its arguments in the matter at the same time. The competent authority decides about the standing of the party – the decision can be challenged. If the decision is positive, then the interested person or NGO has a right to challenge the final EIA decision at the Administrative Court (if EIA is carried out as an integral procedure together with building permission, otherwise there is first a complaint to the second-instance administrative authority and then a challenge at the Administrative Court).

4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO?
Legal or natural persons who permanently reside, or are owners or other possessors of real estate, in the impact area and NGOs with the status of "public interest – environmental protection" have the right to be a party in the procedure and can therefore then challenge the EIA decision (assuming the decision of the authority to accept someone as a party is positive).

5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?
There are no specific rules for EIA judicial review. General rules are applicable (see under 1.3., 4th question), and substantive and procedural legality can be reviewed.

6) At what stage are decisions, acts or omissions challengeable?
When the competent authority adopts the final 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 a 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 the national courts it is not necessary to participate in the public consultation phase of the administrative procedure in the EIA procedure.

9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
There are no specific provisions for environmental cases. There is a general rule about fairness of court procedures.

10) How is the notion of "timely" implemented by the national legislation?
There are no specific provisions for environmental cases (see explanation under 1.7.1., 4th question). The deadline for appealing against a negative EIA screening decision is 15 days from the day the decision is published on the website of the Slovenian Environment Agency. In the EIA procedure, if the Slovenian Environment Agency is the deciding authority, there are also 15 days to appeal against a final EIA decision. If the deciding authority is the Ministry of the Environment and Spatial Planning (integral procedure), there are 30 days after the decision is published on the website to begin the administrative dispute. There is also provision for the Administrative Court to decide within 3 months in EIA cases.

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?
There are no specific provisions for injunctive relief in an EIA procedure. There are only general rules (see under 1.7.2.).

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? 
The Slovenian Environment Agency, as the competent authority for environmental permits, publishes the application for an environmental permit, BAT reference documents and drafts of the administrative decision for public consultation of 30 days. Within 35 days of public announcement, the parties that have standing can file a request to be a party in the procedure (Article 73 of the Environmental Protection Act).

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?
In accordance with the Environmental Protection Act, legal or natural persons who permanently reside, or are owners or other possessors of real estate, in the impact area and NGOs with the status of "public interest – environmental protection" have the right to be a party in the procedure and can therefore then challenge the environmental permit decision if they do so within 35 days from the beginning of public consultation. Legal standing may be recognised by the Administrative Court if the person demonstrates legal interest according to the general rules of administrative procedure (Article 43 of the General Administrative Procedure Act on protecting personal benefits based on the Act or other regulations).

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)
There are no special provisions other than those explained under the previous question.

4) Rules on standing relating to scoping (conditions, timeframe, public concerned)
There are no special provisions other than those explained under question 2.

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?
NGOs with the status of "public interest – environmental protection" and those who permanently reside, or are owners or other possessors of real estate, in the impact area can become a party in the procedure if they announce it within 35 days from the beginning of the public consultation (the authority invites them through the public announcement). This means the interested party should send an application for joining the procedure and present its arguments in the matter at the same time. The competent authority decides whether to allow standing as a party – the decision can be challenged. If the decision is positive, then the interested person or NGO has the right to appeal the final decision about the environmental permit to the Ministry of the Environment and Spatial Planning and to challenge the ministry’s decision at the Administrative Court.

6) Can the public challenge the final authorisation?
Only those referred to under the 2nd question above have standing.

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?
There are no specific rules for the environmental permit judicial review. General rules are applicable (see under 1.3., 4th question), but both substantive and procedural legality can be challenged.

8) At what stage are these challengeable?
It is challengeable at the final stage of the environmental permit decision.

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 a 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 the national courts it is not necessary to participate in the public consultation phase of the administrative procedure in the environmental permit procedure.

11) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
There are no specific provisions for environmental cases. There is a general rule about fairness in the court procedure.

12) How is the notion of "timely" implemented by the national legislation?
There are no specific provisions for environmental cases (see explanation under 1.7.1., 4th question), but there is a provision in the Environmental Protection Act that the Administrative Court should decide within 3 months.

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?
There are no specific provisions for injunctive relief in the IED procedure. There are only general rules (see under 1.7.2.).

14) Is information on access to justice provided to the public in a structured and accessible manner?
It is provided by publishing the documents relating to a particular permit on the website of the Slovenian Environment Agency for public consultation. In the announcement of the public consultation, there are also details of who can apply to join the procedure, and the timeframe for such.
1.8.3. Environmental liability


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?

Legal or natural persons who are or could be affected by the environmental damage and NGOs with the status of “public interest – environmental protection” can be a party in the environmental remediation procedure. In such cases, they can challenge administrative decisions at the Administrative Court.

2) In what deadline does one need to introduce appeals?

30 days after receiving the decision of the Slovenian Environment Agency.

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?

Information about the existence of environmental damage should be presented. The Slovenian Environment Agency initiates the procedure if the probability of environmental damage is proven.

4) Are there specific requirements regarding ‘plausibility’ for showing that environmental damage occurred, and if yes, which ones?

There are no specific requirements.

5) Is there 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)?

If legal or natural persons or NGOs with public-interest status are a party in the procedure, the environment agency receives the decision as a party in the procedure. Otherwise, there is no notification obligation.

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?

The MS applies an extension of the entitlement to request action by competent authority from damage to the environment in cases of imminent threat of such damage.

7) Which are the competent authorities designated by the MS?

The Slovenian Environment Agency.

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?

The administrative decision about the environmental remediation can be directly challenged at the Administrative Court.

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?

Other countries can be involved in the procedure of the strategic environmental assessment and the environmental impact assessment. If the plan or project could significantly impact on other countries, the Ministry of the Environment and Spatial Planning or the Slovenian Environment Agency informs them, as a minimum in the phase of strategic environmental assessment, of the draft plan or project and the environmental report or environmental impact assessment report, and gives them time to answer whether they are interested in participating. The competent authority of the other country can decide if it wants to participate in the procedure within time limits determined by the national ministry. If it decides to participate, the authorities of both countries agree on the period for opinions and comments, or on other forms of consultation. The Ministry then defines the period for domestic public participation in a timeframe agreed with the other country (if it is longer than 30 days). The Ministry sends the opinions of the other country to the authority that is preparing the plan. In EIA procedure, the Ministry is obliged to explain how it has taken into consideration the opinions of the other country.

The same rules are valid for environmental permits (under the Industrial Emissions Directive) if the facility could have cross-border impacts.

2) Notion of public concerned?

There are no provisions about the concerned public. It is assumed that the other country informs their public.

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)?

There are no provisions about NGOs of the affected country.

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)?

There are no specific provisions about individuals. Generally, persons who permanently reside, or are owners or other possessors of real estate, in the impact area can be a party in the procedure for the environmental permitting.

5) At what stage is the information provided to the public concerned (including the above parties)?

The information is provided together with the decision of the affected country if it has an interest in participating in the strategic environmental assessment and the environmental impact assessment.

6) What are the timeframes for public involvement including access to justice?

There are no provisions.

7) How is information on access to justice provided to the parties?

There are no provisions.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?

There are no provisions in the Environmental Protection Act. Since these are administrative procedures, the rules on administrative procedures can be applied (see under 1.4., q.4).

9) Any other relevant rules?

There are no other relevant rules.

[1] https://www.gov.si/drzavni-organji/organji-v-sestavi/agencija-za-okolje/ (there is ongoing transfer of the official websites to a new platform and the process is not complete yet); the old page is here.

[2] http://www.pisrs.si/Pis.web/ - in the right menu there are also some acts translated into English; in the upper right corner there is an option for translation of the page into different languages.


Determining the Intervention Measures to Mitigate and Remedy the Consequences of the COVID-19 Epidemic (Official Gazette RS, 80/20), which are being challenged at the Constitutional Courts with regard to the new conditions for NGOs with the status of public interest to have the right to participate in integral procedure.


[52] Legal-informational center for NGOs. Slovenia (Pravno-informacijski center nevladnih organizacij – PIC) offers this service on the webpage Environmental defenders as project activity financed by the Ministry for the environment and spatial planning and Eko fund.

[53] This is a project activity financed by the Ministry of the Environment and Spatial Planning and the Eco Fund.


[55] There are 114 such NGOs in the register of APJES as of 12.3.2020.


[60] Only in Slovene language for now; the page is managed by the Legal-Informational Centre for NGOs (Pravno-informacijski center nevladnih organizacij – PIC).


[63] See also case G-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?

There is a general rule – an article which protects the constitutional right to a healthy environment – Article 14 of the Environmental Protection Act: “In order to exercise the right to a healthy living environment, citizens may, as individuals or through societies, associations and organisations, file a request with a court that the person responsible for an activity affecting the environment should terminate the activity if it causes, or would cause, an excessive environmental burden or presents, or would present, an imminent threat to human life or health, or that the person responsible for the activity affecting the environment should be prohibited from starting the activity if there is a high probability that the activity will cause such consequences.”

This Article, individuals and NGOs of any kind can initiate a court procedure (regular court) against anyone (private company, state or local authorities) for acts or omissions that cause harm. There are no other provisions that would set timeframes or other conditions. There have been a few court cases based on this article. One such case, which was won, concerned the Zasavje valley farmers (mentioned in footnote 28). Usually the legal grounds for such a suit would be Article 133 and/or 134 of the Civil Code together with the above-mentioned Article 14 of the Environmental Protection Act. The judges of the courts of general jurisdiction are as well informed about environment protection as their colleagues at the Administrative Court. Other options outside EIA, IED and ELD lie in nature protection: NGOs with the status of “public interest – nature conservation” can defend nature interests in all administrative and administrative disputes in the way determined by the law. Such an NGO has to be a party in an administrative procedure in which a permit is given to be able to appeal and/or file a court claim.

NGOs with the status of “public interest – environmental protection / nature conservation / spatial planning / culture heritage protection” can file an action against some spatial plans with the Administrative Court: any person enjoys the same such right if the spatial plan affects any of this person’s other rights.

There are also some protective instruments in civil law connected with the environment:

Law of Property Code[2] (Articles 75 and 99): Any disturbances from neighbours’ property that exceed the normal level (nuisance) are prohibited. The owner of the disturbed property may bring the action against the owner of property that causes the nuisance. Compensation can be claimed.

Obligations Code[3] (Articles 133): Any person may request that another person removes a source of danger that might cause major damage to them or other persons, and the court shall order appropriate measures to prevent the occurrence of damage or disturbance. This is also the case if the damage arises from activities that are in the public interest and have all permits (though compensation for such damage can be claimed only for the proportion exceeding the customary thresholds). This Article is “connected” with Article 14 of the Environmental Protection Act. In environmental matters, it can sometimes be useful to use Article 134 of the Obligations Code: in the case of violation of individuality, personal or family life or any other personal right, anyone can request that the court orders such action to be prevented or the consequences to be eliminated.

The Administrative Court can also be the court competent for protecting constitutional human rights in the case of violation by acts of state or local authorities where there is no other court competent for such protection (Administrative Dispute Act, Article 4).

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The scope of the administrative procedure and of the administrative dispute covers procedural and substantive legality.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Before filing a court action, there is a 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.?
This condition has to be fulfilled only in the case of challenging a spatial plan at the Administrative Court.

5) Are there some grounds/arguments precluded from the judicial review phase?
In the case of challenging a spatial plan, there are limited aspects of the spatial plan that can be challenged (e.g. provisions related to land use).

6) Fair, equitable - what meaning is given to 'equality of arms in the national jurisdiction'?
There are no specific provisions for environmental cases. There is a general rule about fairness of court proceedings.

7) How is the notion of "timely" implemented by the national legislation?
There are no specific provisions for environmental cases (see explanation under 1.7.1., 4th question).

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?
There are no specific provisions for injunctive relief, only general rules (described under 1.7.2.).

9) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court?
What are the safeguards against the costs being prohibitive, and do these include express statutory reference to a requirement that costs should not be prohibitive?
There are no specific cost rules besides those described under 1.7.3. The 'losing party pays' principle applies together with additional rules explained under point 6 of section 1.7.3. There are no provisions against costs being prohibitive. A party should refer directly to Article 9(4) of the Aarhus Convention and the grounds of Article 8 of the Constitution of the Republic of Slovenia (ratified and published treaties are to be applied directly) to potentially obtain a better position regarding costs in the given procedure.

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?
There are no provisions that would enable NGOs or individuals to have standing for administrative review or challenge in the SEA procedure. But as the Nature Conservation Act enables NGOs with the status of "public interest – nature conservation" to represent nature conservation interests in all administrative and court procedures, one NGO with this status succeeded in becoming a party in an SEA procedure ([5] Administrative Court case II U 145/2016) after being rejected by the Ministry of the Environment and Spatial Planning. After that case, NGOs with the status of "public interest – nature conservation / environmental protection" are allowed to be a party in SEA procedures. There is no procedural timeframe for applying to be a party in the procedure, but after the ministry’s decision that an SEA will be performed, it would be appropriate to participate from the earliest phases of the procedure. For individuals, it could be used as a general rule for being a party according to the General Administrative Procedure Act (Article 43 – explained under the section 1.4., 1st question), since the SEA procedure is an administrative procedure. Against negative SEA screening decisions or omission of decisions in a screening procedure, we do not yet have any practice or court decisions, but some rules could be used:
the rules about standing described above in relation to negative SEA screening decisions;
the rules about standing described above in relation to challenging omissions at the Administrative Court (Article 4 of the Administrative Dispute Act).
If the case comes before the Administrative Court, the court consistently follows the judgments of the CJEU.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?
The scope of the administrative procedure and of the administrative dispute covers procedural and substantive legality.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
Before filing a court action, there is a 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.?
There is no need to participate in the public consultation procedure. However, a person/NGO has to be a party in the SEA procedure to have standing before the Administrative Court.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?
There are no specific provisions for injunctive relief, only general rules (described in section 1.7.2.). But temporary relief would be in place as a result of challenging the final SEA decision.

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 the case of challenging SEA decisions at the Administrative Court, the court fee has to be paid (148 EUR). The amount is returned in the case of success. There is a general rule that the procedure should be carried out at the lowest costs possible (Article 11 of the Contentious Civil Procedure Act). There are no other safeguarding rules against 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 [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 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?
There are provisions for public participation (environmental plans/programmes, spatial plans, nature conservation plans/programmes, water management programmes and others), but no provisions for protecting this right. This is a weakness of the Slovenian legal system with respect to the Aarhus Convention. There is no “direct” way of obtaining an administrative review or challenging the final decision about a plan/programme before a court. There are two possible options:
if the plan or programme is adopted as a general legal act, it could be challenged at the Constitutional Court (conformity with the Constitution);
if not, it could be challenged at the Administrative Court as an act or omission of the state or local authority (Administrative Dispute Act, Article 4, see under 2.1., 1st question). Legal standing can be granted to NGOs with the status of “public interest – nature conservation” and to environmental protection NGOs or
individuals on the basis of Article 43 of the General Administrative Procedure Act if legal interest can be demonstrated; the person should claim to be joining the procedure in order to protect their legal benefits. The legal benefits should be direct personal benefits based on an Act or other regulation.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality? The scope would be only if public consultation was enabled or not, thus if the requests of the Aarhus Convention were met.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? If there is an administrative procedure for the plan, the administrative review procedures should be exhausted.

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 obligation to participate in the prior participation process when using a legal remedy in the spatial planning process (filing a suit with the Administrative Court against a spatial plan) – this is the only provision of such kind in the Spatial Planning Act (Article 58).

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions? There are no specific provisions for injunctive relief, only general rules (described under 1.7.2.). But temporary relief would be in place as a result of challenging the plan or programme.

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? There is no court fee for going to the Constitutional Court. For the Administrative Court, there is a court fee (148 EUR), which is returned in the case of success.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[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 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? It depends on who adopts the decision and in what legal form:

if it is a law (act) or an executive regulation (decree, ordinance, ruling), see explanation in section 2.5., 1st question;
if it is an administrative decision, there are legal remedies in the administrative procedure and then the administrative dispute at the Administrative Court. Legal standing can be granted to NGOs with the status of "public interest – nature conservation" for representing nature conservation interests. For other NGOs and individuals, legal standing can be granted on the basis of Article 43 of the General Administrative Procedure Act if legal interest can be demonstrated (the person should claim to be joining the procedure in order to protect their legal benefits, which should be direct personal benefits based on an Act or other regulation).

CJEU case law contributes much to effective access to national courts and definitely expands the right to access to justice in practice. There can be a situation where a particular plan is adopted by governmental decision (but not as a general legal act) but the plan/programme is not legally binding. There are two options:

- to initiate the court procedure at the regular court to defend the constitutional right to a healthy environment (on the basis of Article 14 of the Environmental Protection Act – see explanation in section 2.1., 1st question);
- less probably, to challenge the decision at the Administrative Court as an act of a national or local authority.

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)? As explained under the 1st question above and under section 2.5.

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? There are no provisions and cases yet.

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? There are no provisions.

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 are no provisions except in the case of spatial plans. To initiate the administrative dispute, the NGO with the status of "public interest – spatial planning / environmental protection / nature conservation / cultural heritage protection" must have previously participated in the procedure with comments.

6) Are there some grounds/arguments precluded from the judicial review phase? There are no provisions. In the case of Article 14 of the Environmental Protection Act, there are no grounds/arguments precluded.

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction? There is only a general rule about fairness of court procedures.

8) How is the notion of "timely" implemented by the national legislation? There are no specific provisions for environmental cases (see explanation under 1.7.1., 4th question).

9) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions? There are no specific provisions for injunctive relief, only general rules (described under 1.7.2.).

10) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive? There are general rules, described in section 1.7.3., 1st question.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[7]

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? There are three options for challenging executive regulations:

Laws and their executive regulations are a general legal act. As such they can be challenged only at the Constitutional Court. According to Article 24 of the Constitutional Court Act (explanation in section 1.4., 3rd question), legal standing is granted to anyone who demonstrates a legal interest in the review of the
constitutonality or legality of regulations. There is no difference in the standing of NGOs, NGOs with public-interest status or other legal or natural persons – all must justify the reasons for direct intervention in executive regulations with their rights, legal interests or legal position. There are other limitations only for executive regulations: a) generally they can be challenged within 1 year after their enforcement or after the day the petitioner learns of the occurrence of harmful consequences; b) all legal remedies should be exhausted (usually meaning challenging the individual act issued on the basis of the executive regulation) – this is a general opinion of the Constitutional Court adopted in many of its decisions.

The general legal act can be challenged also at the Administrative Court if it regulates individual relationships[8]. The 30 day limit for filing the suit to the court should be respected. If there is an individual administrative decision issued on the basis of the executive regulation, the administrative procedure has to be exhausted before going to the Administrative Court.

There is a third, indirect option: if a decision is based on an executive regulation which the claimant considers to be illegal, they can challenge the decision and, if the court agrees, it will refuse to use the illegal regulation as is bound only by the Constitution and the law (excepto illegalis). The decision about illegality is binding only in the actual case, but it sends a strong signal to the administration and more often than not the administrative decision is altered as a result of the decision. The Administrative Court makes use of this relatively often.

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 review of the Constitutional Court is focused on violation of the provisions of the Constitution. Also, the Administrative Court is focused on the legality of the challenged act. This can cover both procedural and substantive legality.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Yes, as explained above under the 1st question.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

In order to have standing before the national courts it is not necessary to participate in the public consultation phase of the administrative procedure.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

A temporary injunction is only possible at the Constitutional Court. At the Administrative Court, a temporary injunction is usually proposed regarding execution regulations. Other injunctive relief is possible (general rules described under 1.7.2.)

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court?

What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

At the Constitutional Court, there are no costs (court fees). At the Administrative Court, there is the court fee (148 EUR), which is returned in the case of success.

7) Is it possible to bring a legal challenge against a national court concerning any related EU regulatory act with a view to a validity reference under Article 267 TFEU, and if so how?[9]

There are no provisions in national legislation regarding such situations and article 267 TFEU. Courts are obliged to take CJEU decisions into consideration and plaintiffs often refer to certain cases. The Supreme Court and the Administrative Court practise preliminary ruling procedures. All courts follow the recommendations for national courts on the use of preliminary ruling procedures. Plaintiffs are free to propose that the court initiate a preliminary ruling procedure.

[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
[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] See findings under ACC/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.
[6] 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 in Commission Notice C/2017 /2616 on access to justice in environmental matters.
[7] 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 Hoeksewaards Landschap, ECLI:EU:C:2017:774
[8] This was the case of challenging the governmental ordinance that ordered the shooting of a certain number of bears and wolves. NGOs with the status of 'public interest – nature conservation / environment protection' challenged the ordinance with regard to wolves at the Constitutional Court. The Constitutional Court rejected the review with the explanation that the disputable annex of the ordinance is so individualised that the court was not competent for such a decision. The ordinance was then annulled at the Administrative Court.
[9] For an example of such a preliminary reference, see Case C-281/16, Vereniging Hoeksewaards Landschap, ECLI:EU:C:2017:774

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Other relevant rules on appeals, remedies and access to justice in environmental matters

National rules on silence of the administration:

According to the Administrative Procedure Act (Article 222), in the event that the competent authority against whose decision an appeal is allowed fails to issue a decision and present it to the party in due time, the party shall have the right of appeal as if their claim had been refused. If the second-instance administrative authority fails to issue a decision, according to the Administrative Dispute Act (Article 28), the administrative dispute can be initiated within 30 days after the administrative authority has failed to issue a decision within 7 days after the future plaintiffs’ special request.

There are no penalties for exceeding time limits of administrative decisions or to provide effective access to justice. Complying with a judgement – there can be two situations:
If the court decision specifies that the defendant should make a payment or perform an action, the execution procedure according to the Claim Enforcement and Security Act applies;

If the court finds that there has been a violation of certain rights or annuls certain individual acts or general acts and orders the competent body to issue the decision within a certain time, there are no penalties for the competent body in the event that it fails to comply with the court decision. A new suit should be filed with the court to challenge this omission/failure.

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Access to justice in environmental matters - Slovenia
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
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. Legal order – sources of environmental law

1) General introduction to the system of protection of the environment and procedural rights of persons (natural, legal, NGOs) in the specific national order

The protection of a healthy environment is a constitutional right, although not in the chapter of human rights, but nevertheless recognised as such. The legislative body is the National Assembly of the Republic of Slovenia, which consists of the elected deputies. The National Council of the Republic of Slovenia (as the lower chamber of the Slovenian Parliament) consists of members who represent local and functional interests. The executive power is exercised through the Government – the president and ministers are elected by the National Assembly. There are 16 ministries. For the environment, the Ministry of the Environment and Spatial Planning and its bodies are competent (bodies under the ministry: the Slovenian Environment Agency[1], the Inspectorate for the Environment and Spatial Planning, the Surveying and Mapping Authority, the Slovenian Nuclear Safety Administration, the Slovenian Water Agency). For nature conservation, there is the Institute of the Republic of Slovenia for Nature Conservation. The Government can adopt decrees and ordinances; the ministers can adopt rulings as binding general legal acts. On the local level, there are 212 local communities (main bodies are the mayor and the community council). There is no regional level in this organisation in Slovenia. Legislation is presented in a legal information system[2].

As a party to the Aarhus convention, Slovenia granted the right to the ombudsman, to affected natural and legal persons, and to NGOs working in the public interest in certain areas (environmental protection, nature conservation, spatial planning). The conditions under which these individuals or organisations have legal standing are defined in environmental legislation. Apart from the subjects mentioned above, anyone can pursue their rights at the Constitutional Court, provided they can demonstrate legal interest.

2) Constitution – presenting main provisions on the environment and access to justice in the national constitution (if applicable) including procedural rights (content of + including references)

The Constitution of the Republic of Slovenia[3] declares that everyone has the right to a healthy living environment in accordance with the law and that the state shall promote a healthy living environment (Article 72). Also, everyone has the right to safe drinking water (Article 70a). The manner in which property is acquired and enjoyed shall be established by law so as to ensure its economic, social, and environmental function (Article 67). Ratified and published treaties shall be applied directly (Article 8) and Slovenia is a party to the Aarhus convention.

3) Acts, Codes, Decrees, etc. - main provisions on environment and access to justice, national codes, acts

Environmental legislation is extensive and frequently changing. Through strategic environmental assessments (SEAs) and environmental impact assessments (EIAs), it is connected with spatial planning and construction permission regulation. All legislation is presented in the legal informational system of the Republic of Slovenia. There is also some legislation translated into English, but mostly it is not fully accurate. Access to justice is defined in the Environmental Protection Act, the Nature Conservation act, the Spatial Planning Act and the Building Act.

The Environmental Protection Act[4] is a basic act for the overall protection of the environment in Slovenia. It regulates horizontal common instruments and principles such as: the basic principles of environmental protection, environmental protection measures, strategic documents for environmental protection, strategic environmental assessment (according to the SEA Directive), environmental impact assessment and environmental consent (according to the EIA Directive), environmental permits (according to the IED), environmental monitoring and environmental information collection, emission trading, liability for environmental damage (according to the ELD), competent bodies in the areas of environmental protection, NGOs and their role in procedures and inspection. Access to justice is defined as a general right to exercise the constitutional right to a healthy environment (Article 14 – right to act against polluters) and as a right for a defined circle of affected persons and NGOs with the status of ‘public interest – environmental protection’ (complaint against negative EIA screening decision, party in EIA procedure, IED procedure and environmental liability procedure). The Government of the Republic of Slovenia determines the thresholds for emissions and most of the executive regulation for administering the areas listed above with decrees.

According to the Environmental Protection Act, the National Programme for Environmental Protection is the national programme constituting the framework for environmental protection in Slovenia and is adopted by the National Assembly[5] for a certain period (it also includes the Nature Conservation Plan as per the Nature Conservation Act and the National Water Plan as per the Waters Act).

The Nature Conservation Act[6] transposed the Convention on Biological Diversity into Slovenian legislation. It establishes biodiversity conservation measures (protection of wild plant and animal species, including their genetic material, their habitats and ecosystems) and the system for the protection of valuable natural features in order to contribute to nature conservation. It regulates:

different types of protected areas: a habitat type, an ecologically important area, an area of special protection (the Natura 2000 areas are determined and regulated by the Decree on special protection areas (Natura 2000 areas)[7]), landscape;

measures for the protection of species and their habitats; the executive regulation is adopted by the government (in the form of decrees, according to the Habitats and Birds Directive);
instruments for assessment of the environmental acceptability of plans and programmes (appropriate assessment for plans is carried out within the strategic environmental impact assessment and appropriate assessment of activities affecting nature is carried out within the environmental impact assessment, if this is carried out, otherwise separately); 

nature conservation permit;

competent bodies for nature conservation;

conditions for NGOs to obtain the status of “public interest – nature conservation” and their rights (the right to represent interests of nature conservation in all administrative procedures and disputes);

inspection.

The Waters Act[8] lays down basic water regulations (it also transposes the Water Framework Directive). It emphasises that water is a public good. The Act introduces the institute of ‘right on water’ (obtaining permission for special use of water, for example, fish farms, irrigation and hydroelectric power plants) and water consent (as a permit for intervention in the area of a certain water by influencing the water regime). In order to protect drinking water, protected water areas are defined, in which the disposal of waste, the use of fertilisers and other actions are prohibited. Water management is defined in more detail by the specific water management plans. The Water Act also defines the basic principles of water management. The highest strategic national water management plan is a national programme (adopted by the National Assembly for a maximum of 12 years). The water management plans include the implementing action plans. There are no special provisions for legal standing for NGOs or individuals in the administrative procedures related to water, therefore the general rules for legal standing in administrative procedure apply.

There are other important acts related to environmental protection, among them: the Act on Forests[9]; the Game and Hunting Act[10], the Animal Protection Act[11], the Underground Cave Protection Act[12], the Mining Act[13], the Ionising Radiation Protection and Nuclear Safety Act[14], the Triglav National Park Act[15], the Management of Genetically Modified Organisms Act[16], the Chemicals Act[17]; and others which fall under the competence of different ministries.

Where spatial planning and construction permission has an impact on the environment, the strategic environmental assessment and environmental impact assessment are carried out within the procedure of spatial planning or construction permission. The Spatial Planning Act[18] provides access to justice regarding spatial plans, and the Building Act[19] does so in the part where the environmental impact assessment is integrated into the building permits procedure.

4) Examples of national case-law and the role of the Supreme Court in environmental cases

The Supreme Court has no special or particular role in environmental matters. It acts as a second-instance court of the Administrative Court, if the complaint is allowed, and for revision in cases of extraordinary appeal. It also decides on jurisdiction matters between the Administrative Court and the courts of general jurisprudence.

The core of case law (on the initiative of the NGOs) is generated by environmental impact assessments (the EIA Directive), appropriate assessments (the Habitats Directive), environmental permits (the IED), environmental liability (the ELD), water permits, nature conservation permits and spatial planning at the Administrative Court.[20] Several cases were initiated not only because of opposition to the content of the administrative decision, but also because of recognition of standing in the administrative procedure for NGOs that was not recognised or rejected. At regular court there are civil claims for compensation and for termination of harmful practices or emissions.[21] There are also many cases concerning review of the constitutionality and legality of regulations and general acts, constitutional complaints for violation of human rights and with individual acts.[22]

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?

According to Article 8 of the Constitution, ratified agreements shall be applied directly, therefore you can also directly rely on international environmental agreements, especially in matters where they are not correctly transposed or transposed at all into national law (besides the national end EU transposing regulation). It is also important that you rely on international agreements in the administrative procedure in order to build up the case for a potential procedure before the Administrative Court, and later the Constitutional Court in the potential case of human rights violation.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

Generally, there are three levels in the Slovenian court system: 44 local and 11 district courts on the first level, 4 higher courts on the second, and the Supreme Court as the third instance. There are also specialised courts: the Labour and Social Court and the Administrative Court. The vast majority of environmental cases are dealt with by the Administrative Court, which has status equal to the second level courts. The rest of the cases are dealt with by the courts of general jurisdiction (on the first level by local or district courts). In the event that appeal against the Administrative Court’s decision is allowed, the second instance is the Supreme Court.

The Constitutional Court is the highest judicial authority for the protection of constitutionality, legality, human rights and fundamental freedoms. Also, there is a State Prosecutor General as part of the general justice system and as an independent state authority.

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)?

The Courts Act[23] defines the jurisdiction of local, district, high courts and the Supreme Court. The Administrative Dispute Act[24] defines jurisdiction of the Administrative Courts, and the Labour and Social Courts Act[25] defines jurisdiction of the Labour and Social Courts. The Administrative Court is competent for judicial protection of the rights and legal interests of individuals and organisations in decisions and actions of state authorities, local community authorities and bearers of public authority - administrative decisions and (legality) of individual acts and actions with which authorities have encroached on the human rights and fundamental freedoms of an individual, unless a different form of judicial protection has been guaranteed (Articles 1 and 4). The core procedural act is the Civil Procedures Act[26] It sets out the rules for resolving conflicts or uncertainties regarding jurisdiction. The addressed court assesses its jurisdiction according to the statements in the suit and its own findings. If it establishes that another body (like arbitration) is competent for the case, or that the case is not of Slovenian court jurisdiction, it dismisses the suit. If it establishes that the case falls within another court’s jurisdiction, it stops the procedure and sends the case to the other court. The high court has jurisdiction for resolving disputes about jurisdiction among (regular) courts, and the Supreme Court resolves disputes about jurisdiction among lower courts.

There is also the Arbitration Act[27] which defines sets out rules on arbitration in Slovenia. The district court in Ljubljana has jurisdiction in relation to some concerns regarding the arbitration agreement: admissibility of the arbitral proceedings, the appointment or exclusion of an arbitrator, the award for the arbiter, the declaration of enforceability of domestic and recognition of foreign arbitral awards. The appeal against the court decision can be lodged with the Supreme Court. But the subject of arbitration agreement can only be pecuniary claims, and other claims only if the parties can agree on them.

3) Specialities as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges
There are no specialised courts for environmental disputes. Most environmental cases are processed by the Administrative Court, since there are a lot of disputes regarding decisions of state institutions in administrative procedures. There are some specialised judges for environmental and spatial planning cases, but not as a separate organisational unit. There are no laypersons contributing; the process is led by the senate of three judges or one judge. A minority of environmental disputes are processed before regular (local or district) courts – these are civil suits against polluters. There are no specialised judges for the legal area of the environment.

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

The Administrative Court is not bound by the legal grounds of the request of the plaintiff, but to the factual claims set out in the lawsuit. Each party proposes evidence for their requests, but the court decides which evidence will be used. The Administrative Court is not bound by the proposals of the parties and may hear any evidence which could contribute to resolution of the case.

If the court grants the claim of the plaintiff, it can decide to:
abolish the administrative decision and return the case to the administrative level (this is the most commonly the case);
abolish the administrative decision and decide about the matter; this occurs if the case has a solid base in facts, and especially if a new administrative procedure would cause irreparable damage to the plaintiff (this is never the case in environmental matters).

1.3. Organisation of justice at administrative and judicial level

1) System of the administrative procedure (ministries and/or specific state authorities)

Administrative bodies, defined by the State Administration Act[28], are: ministries, bodies/institutions within the ministry and administration units. For environmental protection, nature conservation and spatial planning, the following institutions are relevant:
- the Ministry of the Environment and Spatial Planning;
- bodies within the ministry: the Slovenian Environment Agency[29], the Inspectorate for the Environment and Spatial Planning, the Surveying and Mapping Authority, the Slovenian Nuclear Safety Administration, the Slovenian Water Agency;
- the Institute of the Republic of Slovenia for Nature Conservation;
- administrative units, which are the basic building blocks of the administrative system covering geographical areas.

The first level of administrative decision-making can be undertaken by all the institutions above, depending on the type of permit/consent. Usually or most commonly, the first level is covered by administrative units or bodies within the Ministry of the Environment and Spatial Planning, and the second level (appeal instance) is the ministry itself.

2) How can one appeal an administrative decision before court? When can one expect the final ruling?

Against the final decision at administrative level, a suit can be filed with the Administrative Court in accordance with the Administrative Dispute Act[30]. The court can be filed by the plaintiff, and representation by attorney is not a necessary condition. The court fee should be paid (148 EUR), and is returned to the plaintiff if they are successful. There is a possibility for the court to decide without a hearing. The average time for a decision is approximately one year.

The administrative body (a state institution) as a defendant is represented by the State Attorney’s Office.

The procedural rules are set out in the Administrative Dispute Act and in the Contentious Civil Procedures Act.

3) Existence of special environmental courts, main role, competence

There is no special environmental court.

4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)

In administrative procedures, except where the Ministry of the Environment and Spatial Planning decides as first-instance body, complaint is possible (within 15 days) unless it is specifically excluded (for example, in environmental liability proceedings). The Ministry carries out the second-instance administrative procedure regarding the complaint and issue the decision. The administrative procedure is regulated by the General Administrative Procedure Act[31].

Where complaint is not possible, administrative dispute at the Administrative Court is allowed.

Against the final decision (judgment) of the Administrative Court, appeal to the Supreme Court is possible. According to the Administrative Dispute Act, this is the case only where the court determines different facts than the administrative body (defendant) and changes the administrative decision on this ground on its own motion, or finds out that the decision or action of the administrative body is illegal. In the judgment, the Administrative Court defines if appeal is allowed.

Against a decision about temporary injunction, appeal against the decision to the Supreme Court is possible.


Revision, as extraordinary appeal to the Supreme Court, is possible if the Supreme Court allows it. The Supreme Court decides about the proposal of the interested party; the proposal should be filed within 15 days after receiving the judgment. The Supreme Court allows the revision if the decision about important legal question is expected. If the revision is allowed, it can be filed only because of violation of the procedural rules, or if the application of law is wrong. The revision appeal is allowed with the representation of an attorney.

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?

Mediation between parties is always possible on a voluntary basis[32], but it is not used often for environmental cases. In civil disputes, the regular courts offer mediation as part of the court procedure (Act on Alternative Dispute Resolution in Judicial Matters[33]).

The parties could also agree on an arbitration agreement, if the matter concerns a pecuniary or other claim on which the parties can settle. This can be the case only in civil suits regarding compensation claims against polluters. It is not used in practice.

7) How can other actors help (ombudsman (if applicable), public prosecutor), accessible link to the sites?

The Ombudsman has a strong role to play in protecting the constitutional right to a healthy environment.[34] According to the Human Rights Ombudsman Act[35], the Ombudsman acts on the basis of individual initiatives if the state or a local body violates human rights. If the administrative or court procedure is already addressing the matter, the Ombudsman does not intervene unless there is a substantial delay in proceedings or there are signs of obvious abuse of power. The Ombudsman can accept or reject the initiative. If it accepts it, then it begins the inquiry. After receiving the explanation of the competent body, it prepares a report where it expresses an opinion about the violation of human rights and proposes what action should be taken to stop the violation.

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)?

There is no general rule for all cases. There is a status of working in the public interest for NGOs, regulated by the Non-Governmental Organisations Act[36] - this means that the state acknowledges that some NGOs are operating not only in their own interest or in the interest of their members but for common welfare. This is recognised in different areas if NGOs fulfil certain conditions and can present accomplishments defined by the rules of different sectors (culture, sports, environment, etc). The NGO has to apply for the status at the competent ministry and the ministry issues an administrative decision. The NGO has to fulfil the conditions for the status at all times and has to report to the ministry every two years. Sectoral rules/conditions for environmental NGOs are set out in: the Environmental Protection Act and rules on detailed conditions and criteria for acquiring the status of a non-governmental organisation operating in the public interest in the field of environmental protection[37] for NGOs with the status of “public interest – environmental protection”. According to the
Environmental Protection Act, they can be a party in certain administrative procedures (file a complaint against the negative EIA[38] decision, be a party in the EIA[39] and IED procedure and the environmental liability procedure);

the Nature Conservation Act and rules on the criteria determining the significant achievements of an NGO in order to be granted the status of an NGO operating in the public interest in nature conservation[40] for NGOs with the status of “public interest – nature protection”; they have to fulfil some additional criteria (if the NGO is an association, it must have 50 members; if the NGO is an institute, it must have two employees with a certain level of education; if the NGO is a foundation, it must have 10,000 EUR of property); NGOs with this status can participate in administrative procedures or in administrative disputes if they advocate nature protection interests in the way determined by the law;

the Spatial Planning Act and rules on the criteria determining significant achievements of NGOs in order to be granted the status of an NGO operating in the public interest in spatial planning[41] for NGOs with the status of “public interest – spatial planning”. They have the right to file a suit with the Administrative Court against some aspects of spatial plans (like land use).

Natural and legal persons have:

the right to participate (and therefore to use the legal remedies) in certain procedures (environmental impact assessment (EIA), environmental permits (IED)) applicable for those who permanently reside, or are owners or other possessors of real estate, in the impact area (Environmental Protection Act);

the right to be a party in administrative procedures, provided they demonstrate legal interest. Legal interest shall be demonstrated by a person who claims to be joining the procedure in order to protect their legal benefits – these shall be direct personal benefits based on an Act or other regulation. In addition to that general rule, there are some specific rules in lex specialis:

- The Nature Conservation Act – defines the conditions for NGOs to hold the status of “public interest – nature conservation”, and the right of such NGOs to represent nature conservation interests (be a party and use legal remedies) in all administrative procedures and in all administrative disputes in the way determined by the law. Legal remedies involve the administration appeal to a second-instance authority and/or filing a suit with the Administrative Court (administrative dispute).

The Environmental Protection Act defines the conditions for NGOs to hold the status of “public interest – environmental protection” and their right to participate (be a party and use legal remedies) in certain procedures: to appeal against a negative EIA screening decision, to be party in the EIA procedure, the EID procedure and the environmental liability procedure. The defined circle of affected individuals has the right to participate in EIA and IED procedure (be a party and use legal remedies). Legal remedies involve administrative appeal to a second-instance authority and/or filing a suit with the Administrative Court (administrative dispute). There is also a more general right to exercise the constitutional right to a healthy environment: individuals, their societies, associations and organisations can file a request with the court against the polluter to stop harmful activities. The competent courts for such cases are regular first-instance courts (district).

- The Building Act regulates integral building permission procedure (joint building permission and environmental impact assessment – environmental consent) and defines the parties in this procedure. Civil initiatives (groups of 200 inhabitants of the affected local community) are also included in the defined circle of affected persons and NGOs with the status of “public interest – nature conservation / environmental protection”. All have the right to participate in the administrative procedure (be a party and use legal remedies – filing a suit with the Administrative Court).

- The Spatial Planning Act: against the spatial plan, legal remedy is possible (a suit with the Administrative Court) for a defined circle of persons and NGOs with the status of “public interest – environmental protection / nature conservation / spatial planning / cultural heritage conservation”. They can use the legal remedy provided they actively participated in the public discussions in previous stages of the procedure. The State Attorney’s Office has the same right for protection of the public interest. There are limited aspects of the plan that can be challenged.

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.)

The Constitutional Court has the general rule[44] that anyone who demonstrates legal interest may lodge a petition that the procedure for the review of the constitutionality or legality of regulations or general acts issued for the exercise of public authority be initiated. Legal interest is deemed to be demonstrated if a regulation or general act is issued for the exercise of public authority and its review has been requested by the petitioner for reasons of its direct interference with their rights, legal interests or legal position. Constitutional complaint against the violation of human rights by an individual act can be filed after all other legal remedies have been exhausted.

Administrative procedure:

The general rule for all administrative procedures applies for all persons – whether individual or NGOs. This rule is applicable unless a particular Act (e.g. the Nature Conservation Act or the Environmental Protection Act) defines other specific rules. The right to be a party in an administrative procedure is available to those who demonstrate their legal interest (the person should claim to be joining the procedure in order to protect their legal benefits; these shall be direct personal benefits based on an Act or other regulation).

- The Nature Conservation Act – NGOs with the status of “public interest – nature conservation” have the right to represent nature conservation interests (be a party and use the legal remedy) in any administrative procedure and in administrative disputes in the way determined by the law.

- The Environmental Protection Act defines different rights for individuals and NGOs with the status of “public interest – environmental protection”:

 strategic impact assessments: there are no provisions for NGOs to participate in SEA procedures, but (according to the Nature Conservation Act) an association with the status of “public interest – nature conservation” did succeed at the Administrative Court in getting a position in an SEA procedure ([EC case II U 145/2016]; on the basis of this case, the Ministry of the Environment and Spatial Planning allowed 9 NGOs with the status of “public interest – environment protection / nature conservation” to be parties in the SEA procedure for the National Energy and Climate Plan[45]; the legal remedy here is complaint to the Government (semi-administrative procedure) if the authority that prepares the plan is at state level or suit with the Administrative Court if the authority that prepares the plan is at local community level;

 environmental impact assessment screening procedure (Article 51a): NGOs with the status of “public interest – environmental protection” can appeal against negative screening decisions (within 15 days after publishing of the decision on the website of the Slovenian Environment Agency);

 environmental impact assessment (Article 64): the law presumes the existence of legal interest for persons who permanently reside, or are owners or other possessors of real estate, in the impact area, and NGOs with the status of “public interest – environmental protection” shall have a legal interest to enter the
procedure for issuing an environmental consent in order to protect their rights, provided they apply for the procedure within 35 days after publishing of the public consultation documents (but it is recommended that the party in this application also presents all the comments and arguments in the case); a recent decision by the Administrative Court states that this legal assumption of legal interest does not exclude the existence of legal interest according to general rules of administrative procedure, widening the circle of possible parties[46];

environmental permit – IED (Article 73): persons who permanently reside, or are owners or other possessors of real estate, in the impact area of the installation and NGOs with the status of “public interest – environmental protection” have a legal interest in participating in the procedure for issuing an environmental permit, provided they apply for the procedure within 35 days after publishing of the public consultation documents (but it is recommended that the party in this application also presents all the comments and arguments in the case);

other environmental permits, but not SEVESO (Article 84a): the Ministry of the Environment and Spatial Planning will publish the documentation for the procedure if it gets five applications for party status in the procedure. If so, anyone can apply for party status in the procedure within 30 days of public announcement of the procedure;

environmental liability procedure (110g and 110e): legal or natural person who are harmed or could be harmed by environmental damage and NGOs with the status of “public interest – environmental protection” have the right to inform the Slovenian Environment Agency about the environmental damage and demand that the agency acts. They can also be a party in the procedure for determining the remedy measures. There is also the right to the protection of a healthy environment, which is “open” to all individuals and NGOs (not only those with the status of public interest) – Article 14. According to this, citizens may, as individuals or through societies, associations or organisations, file a request at a court that the person responsible for an activity affecting the environment terminates the activity if it causes, or would cause, an excessive environmental burden or presents, or would present, an imminent threat to human life or health, or that the person responsible for the activity affecting the environment be prohibited from starting the activity if there is a high probability that it will cause such consequences. For these cases, the first-instance regular courts are competent.

- The Building Act regulates integral building permission procedure[47] (combined building permit and environmental impact assessment – environmental consent). Parties in the procedure can be (Article 36, 38, 50, 54) persons who can be a party in the regular building permission procedure, persons who permanently reside, or are owners or other possessors of real estate, in the impact area, other persons claiming that building and its environmental burdens would have an impact on their rights and benefits, NGOs with the status of “public interest - environmental protection / nature conservation”, civil initiative (200 signatures of residents in the local community or a neighbouring community). They can be party if they apply after they are invited by the administrative body (namely the Ministry of the Environment and Spatial Planning) or in the procedure according to the Environmental Protection Act if they apply (with their reasons for objection) in the procedure within 35 days after publishing of public consultation documents. NGOs with the status of “public interest – environmental protection / nature conservation” also have the right to legal remedy (suit with the Administrative court) if they were not a party to the procedure within 30 days after publishing on the online platform e-administration (Article 58);

- Spatial Planning Act (Article 58): against the spatial plan, legal remedy is possible (a suit with the Administrative Court within 3 months after enforcement) for persons if the plan determines ground for his rights and in this part significant consequences; NGOs with the status of “public interest – environmental protection / nature conservation / spatial planning / cultural heritage conservation” can participate if they actively participated in the public discussion in the previous stages of the procedure and the State Attorney’s Office has the same right for protection of the public interest. There are limited aspects of the plan that can be challenged: land use, conditions for spatial interventions and choice of the best option.

There are no rules for foreign NGOs.

4) What are the rules for translation and interpretation if foreign parties are involved?

The general rules are set out in the Civil Procedure Act; the procedure at the court takes place in Slovene or a language that is used at the court (for Italian and Hungarian minorities). Parties or other participants can use their own language according to the Act – they can ask for a translator for the hearings and for a translation of the documents used at the hearings. The translators are official translators as per the Court Experts, Certified Appraisers and Court Interpreters Act[48]. All other documents should be in Slovene or another official language of the court. The costs for the translator are part of the costs of the procedure (the burden of the party who caused the cost).

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 procedures, according to the principal of substantive rule the administrative authority is obliged to determine the true facts and all relevant facts so that a lawful and correct decision can be established. It can order the presentation (ex officio) of any evidence if it concludes that this is necessary to clarify the case.

Each party proposes the evidence for their requests, but the court decides which evidence will be used. The Administrative Court is not bound by the proposals of the parties and may hear any evidence which could contribute to resolution of the case.

2) Can one introduce new evidence?

The parties can propose evidence up to the end of the first hearing, except where the party can reasonably justify not presenting it sooner.

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts

In the procedure, experts can be nominated by the court at the proposal of the party. The court shall take evidence from an expert if it is necessary to establish or clarify a fact with expertise (knowledge) which the court does not have at its disposal – the proposal of certain experts is consulted on with the parties. Before the expert begins work, the costs shall be covered in advance – otherwise the court stops the procedure. Usually the expert opinion should be presented as evidence with the filing of a suit or in response to it. In such cases, the expert represents a cost for the party presenting the expert opinion (you can find an expert on the free market) and hiring an expert does not mean that another expert will not be nominated later in the procedure. The court decides which evidence should be used. It can call upon another expert if the parties present substantiated arguments for doing so, and the cost burden lies with the party who proposes or insists on this. Actually, if expertise is presented by a party, it is evaluated according to the principle of free evaluation of the evidence: it can be accepted by the court, but the court may also consider it to be a mere claim by the party and nominate another expert. The main rule is that experts are to be nominated by the sitting court. The court experts are regulated by the Court Experts, Certified Appraisers and Court Interpreters Act. They are listed in a special register for court experts (area of ecology – there are 8 experts). The court is not bound only to court experts; it can also nominate expert institutions or other experts.

3.1) Is the expert opinion binding on judges, Is there a level of discretion?

In evaluating expertise, the judge assesses which facts are considered to be proven on the basis of evaluation of each piece of evidence individually and combined. Since the basic reason for nominating the court expert is that the court does not have the knowledge necessary for establishing all relevant facts in the matter, the discretion is actually limited, as the court will not have the knowledge necessary to differ from it. However, if the court is not persuaded by
the work is divided into different phases and each phase of the work is then divided
register of attorneys
Bar
for NGOs with public-interest status in disputes regarding the pursuit of
 areas of environmental protection, nature conservation and spatial planning, presented by name. NGOs with public-interest status in the areas of environmental protection, nature conservation, spatial planning and cultural heritage protection. The tables below are listed on the list of accredited emission measurement providers listed in the list of court experts, there is no list of such experts, but we can use:
2) Expert registries or publicly available websites of bars or registries that include the contact details of experts

1.3 Who should be addressed by the applicant for pro bono assistance?

Administrative Court. All information about free legal aid, the procedure and application is available on the
the free legal aid can be approved on the basis of application in administrative procedures. Against the decision, the applicant can file a suit with the
the expertise (and is capable of explaining this), there is no obligation to follow it. The parties in the dispute comment on the expertise, and if the arguments are relevant they can also propose another expert. The other expert can be approved by the judge, but the rules are restrictive – it is possible only if the expertise is unclear, incomplete, internally contradictory or in contradiction of other facts and this cannot be eliminated by an additional hearing of the expert.

3.2) Rules for experts being called upon by the court

The court can nominate an expert if the parties in the dispute propose it, or to establish or clarify a fact with expertise (knowledge) which the court does not have at its disposal – but if the costs are not covered in advance by the plaintiff or the party that proposed this evidence, it stops the procedure. If expertise is presented by a party, it is evaluated according to the principle of free evaluation of the evidence: it can be accepted by the court, but the court may also consider it to be a mere claim by the party and nominate another expert.

3.3) Rules for experts called upon by the parties

The nominated court expert is obliged to respond to the invitation of the court, but they can be excused of duty if there are circumstances: concerning what the client (party) has entrusted to them as their attorney or confesses to them as a religious confessor, or concerning the facts that they have learned as their lawyer or doctor or in the exercise of any other profession or activity where there is a duty to maintain secrecy or on the grounds of other excusable arguments. They can also be excluded for the same reasons as are valid for exclusion of the judge from the case. The expert is nominated by court order. The judge decides whether the expert is only invited to the hearing or if he must prepare a written expert opinion (in practice, the judges decide for both). The procedure does not provide for separate complaint against the decision about the expert. If the expert declines to perform the work or does not come to the court without a substantial excuse, the judge can impose on them a penalty of 1,300.00 EUR and costs for delaying the procedure.

3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?
The estimated expert’s fee should be paid in advance by the party which proposed the evidence of the expert, or by the plaintiff if it is proposed by the court. The payment is ordered by court order. If the fee is not paid, the expert evidence is not included. There are no standard expert fees. They are determined by the rules on court experts, certified appraisers and court interpreters[49] - the work is divided into different phases and each phase of the work is then divided up in accordance with the level of complexity. The amounts are then determined using different categories for each phase: pages or hours. For instance, taking into consideration all phases of the procedure, the cost for the simplest expertise would be around 550 EUR and for the most complex around 2,000 EUR. But the upper limit is not fixed, and there are also fees for additional pages and hours.

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

Lawyers are regulated by the Attorneys Act[50] and are part of the general justice system’s independent service. They are organised by the Bar Association, which also holds the register of all attorneys (they can be selected by areas of “specialisation”, but “environment protection” is not included – civil or administrative areas should be selected). In the environmental area, the attorney is compulsory only in extraordinary legal remedies in court procedures. Otherwise, the parties can represent themselves in court procedures (at the regular courts and the Administrative Court). If they do not represent themselves but choose another person to represent them, this latter person should be an attorney or a person who has passed the bar exam. Revision as extraordinary legal remedy at the Supreme Court can only be filed for by an attorney. The representative of the public interest in an administrative dispute is the State Attorney General.

1.1. Existence or not of pro bono assistance

There is the possibility of free legal aid assistance under the Legal Aid Act[51] for NGOs with public-interest status in disputes regarding the pursuit of activities in the public interest for which they were established. For individuals, the condition for free legal aid is low incomes of the member of the family. Another condition is that the case is not clearly unreasonable and/or that the applicant in the case is likely to succeed, such that it is reasonable to initiate the proceedings. The free legal aid can cover the costs of the attorney for legal counselling and representation in court procedures, as well as other costs of procedure (Art. 26/5). The attorney can also provide pro bono legal aid: every year the Bar Chamber organises a pro bono day in December. The attorney decides voluntarily to participate on this day or to provide pro bono aid otherwise. The Code of Professional Ethics for Lawyers of the Bar Association of Slovenia imposes a (moral) duty on a lawyer to provide legal assistance to clients. The client's inability to adequately pay for a lawyer's work is not a reason to refuse legal aid in an emergency. Representing and defending the socially disadvantaged is an honourable task of lawyers in the practice of the legal profession. This task should be performed by a lawyer with special understanding. We should say that some pro bono work has been done for NGOs in environmental matters, but it is not usual. Since 2018, free legal advice has also been available to all from the Green Counsel, provided by an NGO[52].

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.)?
The free legal aid can be approved on the basis of application in administrative procedures. Against the decision, the applicant can file a suit with the Administrative Court. All information about free legal aid, the procedure and application is available on the general webpages of the courts[53]. Other pro bono assistance has no format; it is a personal decision of the individual attorney.

1.3 Who should be addressed by the applicant for pro bono assistance?
The free legal aid is approved by the district court which has jurisdiction for the dispute. It considers the seat of the NGO and the place of residence of individuals. The administrative dispute is decided by the Administrative Court. The court has a special service for free legal aid. Pro bono assistance is a matter for arrangement with the attorney.

2) Expert registries or publicly available websites of bars or registries that include the contact details of experts

There is a Bar Association, which has a register of attorneys, but there is no list with specialisation for environmental law listed. Regarding experts, there is no list of such experts, but we can use: the list of court experts, the list of accredited emission measurement providers listed in the registry of ARSO, experts for environmental impact assessments for projects – those who have participated in already finished environmental impact assessment procedures are listed on the webpage of ARSO.

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible

There is no list of NGOs active in the field, only a register of NGOs with public-interest status in the state business register AJIPES (Legal Entity Identifier)[54]. Regarding participants for procedures in the areas of environmental protection, nature conservation and spatial planning, there are relevant NGOs with public-interest status in the areas of environmental protection, nature conservation, spatial planning and cultural heritage protection. The tables below present the NGOs with public-interest status in areas of environmental protection, nature conservation and spatial planning, presented by name. NGOs with public-interest status in the area of cultural heritage protection are less relevant for environmental protection, though they can have limited access to court procedures against a final spatial planning decision (advocating only cultural heritage interests).[55]
<table>
<thead>
<tr>
<th>Table 1 List of NGOs with the status of &quot;public interest – environmental protection&quot; (on 12.3.2020)</th>
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<tbody>
<tr>
<td>Inštitut za mladinsko participacijo, zdravje in trajnostni razvoj</td>
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<tr>
<td>Lutra, Inštitut za ohranjanje naravne dediščine</td>
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<td>Društvo za ohranitev Udinboršta</td>
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<td>Ribliška zveza Slovenije</td>
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<td>Društvo krajinskih arhitekov Slovenije</td>
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<td>Društvo Planet Zemlja</td>
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<td>Društvo Ekologi brez meja</td>
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<td>Društvo prebivalcev &quot;Ronket&quot;</td>
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<tr>
<td>Inštitut za uporabno ekologijo Maribor</td>
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<td>Slovenska potapljaška zveza</td>
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<tr>
<td>Društvo Proteus, gibanje za naravo in okolje Bela krajina</td>
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<tr>
<td>Focus, društvo za sonaraven razvoj</td>
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<tr>
<td>Umanotera, Slovenska fundacija za trajnostni razvoj</td>
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<tr>
<td>Okoljsko raziskovalni zavod</td>
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<td>Sobivanje - Društvo za trajnostni razvoj</td>
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<td>Lovska zveza Slovenije</td>
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<tr>
<td>Regionalno okoliško združenje okoljevarstvenikov, Združenje ROVO</td>
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<tr>
<td>Društvo za opazovanje in preučevanje ptic Slovenije</td>
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<tr>
<td>Prihodnost, društvo za varovanje in ohranjanje naravnega okolja</td>
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<td>Inštitut za politike prostora</td>
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<tr>
<td>Slovensko združenje za trajnostno gradnjo, Green building council Slovenia</td>
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<td>Vtra, Center za uravnotežen razvoj</td>
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<tr>
<td>Društvo za okoliško vzgojo Evrope v Sloveniji (DOVES - FEE Slovenia)</td>
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<tr>
<td>Društvo Bober - Okoliško gibanje Dolenjska</td>
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<tr>
<td>Inštitut - info-informacijski center nevladnih organizacij - PIC</td>
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<tr>
<td>Eko krog - društvo za naravovarstvo in okoljevarstvo</td>
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<tr>
<td>Alpe Adria Green, Mednarodno društvo za zaščito okolja in narave</td>
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<tr>
<td>Društvo Gibanje za trajnostni razvoj Slovenije - TRS</td>
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<tr>
<td>Zveza ekošolskih gibanj Slovenije - ZEG</td>
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<tr>
<th>Table 2 List of NGOs with the status of &quot;public interest – nature conservation&quot; (as of 12.3.2020)</th>
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<tbody>
<tr>
<td>Društvo za raziskovanje jam Ljubljana</td>
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<tr>
<td>Jamarska zveza Slovenije</td>
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<tr>
<td>Slovensko društvo za zaščito voda</td>
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<td>Jamarski klub Kamnik</td>
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<td>Lutra, Inštitut za ohranjanje naravne dediščine</td>
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<td>Društvo JASA</td>
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<td>Ribliška zveza Slovenije</td>
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<td>Planinska zveza Slovenije</td>
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<tr>
<td>Koroško Šaleški jamarski klub Speleos-Siga Velenje</td>
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<tr>
<td>Društvo za raziskovanje jam Simon Robič Domžale</td>
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<td>Društvo Planet zemlja</td>
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<td>Društvo krajinskih arhitektov Slovenije</td>
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<tr>
<td>Slovensko odonatološko društvo</td>
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<tr>
<td>Forum za Pohorje, združenje za trajnostni razvoj</td>
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<tr>
<td>Turistično okoliško družstvo Slovenj Gradec</td>
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<tr>
<td>Zavod SYMBIOSIS</td>
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<tr>
<td>Društvo Proteus, gibanje za naravo in okolje Bela krajina</td>
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<tr>
<td>Gobarsko miološko društvo Ig</td>
</tr>
<tr>
<td>Društvo za biološko dinamično kmetovanje Podravje</td>
</tr>
<tr>
<td>INTERSO Integracija ekonomije, razvoja, socijalne in okolja, Inštitut za individualno in družbeno odgovornost</td>
</tr>
<tr>
<td>Turistično društvo Barje</td>
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<tr>
<td>VIVAMAR – Društvo društvo za trajnostni razvoj morja</td>
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<tr>
<td>Gobarsko društvo Lisička Maribor</td>
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<td>Lovska zveza Slovenije</td>
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<td>Društvo za preučevanje rib Slovenije</td>
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<tr>
<td>Društvo za opazovanje in preučevanje ptic Slovenije</td>
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<tr>
<td>Prihodnost, društvo za varovanje in ohranjanje naravnega okolja</td>
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<tr>
<td>Društvo ljubiteljev Krščne jame</td>
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<tr>
<td>Društvo za okoliško vzgojo Evrope v Sloveniji (DOVES - FEE Slovenia)</td>
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<tr>
<td>Društvo Bober - Okoliško gibanje Dolenjska</td>
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<td>Herpetološko društvo - Societas herpetologica Slovenica</td>
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<tr>
<td>Dondes, Društvo za ohranjanje naravne dediščine Slovenije</td>
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<tr>
<td>Alpe Adria Green, Mednarodno društvo za zaščito okolja in narave</td>
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<tr>
<td>Gobarsko miološko društvo slovenske Istre</td>
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<tr>
<td>Cipra Slovenija, Društvo za varstvo Alp</td>
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</tbody>
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Društvo Društva polharjev "Polh" na Dolenskem
1.7.2. Interim and precautionary measures, enforcement of judgments

1) When does the appeal challenging an administrative decision have suspensive effect?
Generally, the appeal against an administrative decision by the second-instance authority always has suspensive effect, except when a specific Act stipulates otherwise. An appeal against a final administrative decision (the suit with the Administrative Court) does not have this effect, unless provided for by a (special) law. Only when the specific Act defines that certain decision can be effective only after the final court decision (or after the period for filing the suit stipulates otherwise). An appeal against a final administrative decision (the suit with the Administrative Court) does not have this effect, unless provided for by a (special) law. Only when the specific Act defines that certain decision can be effective only after the final court decision (or after the period for filing the suit and nobody does this).

2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?
Injunctive relief is possible in first-instance administrative procedures. This is implemented in the form of a temporary decision and primarily relates to the time “during” the procedure. There are no specific provisions about injunctive relief in environmental procedures.

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?
In the administrative procedure, a proposal for a temporary injunction is possible during the first-instance procedure. The law does not stipulate specific conditions.

4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?
Immediate execution irrespective of the appeal is possible if a specific Act defines this in regard to a certain decision. The general rule under the General Administrative Procedure Act also allows a verbal decision in the case of measures necessary in the public interest, and the authority can decide that the appeal does not have suspensive effect.

5) Is the administrative decision suspended once challenged before court at the judicial phase?

Table 3 List of NGOs with the status of “public interest – spatial planning” (as of 12.3.2020)

<table>
<thead>
<tr>
<th>NGOs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Friends of the Earth (via the office of Focus Association for Sustainable Development).</td>
</tr>
<tr>
<td>CIPRA – CIPRA Slovenia</td>
</tr>
<tr>
<td>WWF Adria – office in Zagreb also covers Slovenia</td>
</tr>
<tr>
<td>Estetika - Društvo za vzpodobujanje etike v prostoru</td>
</tr>
<tr>
<td>Društvo PaziPark</td>
</tr>
<tr>
<td>Društvo krajinskih arhitektov Slovenije</td>
</tr>
<tr>
<td>Društvo arhitektov Ljubljana</td>
</tr>
<tr>
<td>Zdušenje FIABCI</td>
</tr>
<tr>
<td>Center arhitekture Slovenije</td>
</tr>
<tr>
<td>DESSA Ljubljana</td>
</tr>
<tr>
<td>Kulturno društvo MOTA</td>
</tr>
<tr>
<td>subdued to other parties in the procedure and usually there is no less than 15 days to answer in administrative procedures and 30 days in court procedures.</td>
</tr>
</tbody>
</table>
Generally, challenging the administrative decision before the court does not suspend the decision, but for certain decisions the Act can determine suspensive effect (e.g., environmental consent, environmental permission).

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?

In the administrative procedure, a temporary injunction is not conditional on the financial deposit. The local courts are competent to provide injunctive relief according to the Claim Enforcement and Security Act. Initially the interested party has to pay the costs of the procedure in advance. Appeal against the order on injunction relief is allowed.

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.

When we calculate costs, there is a distinction between whether a person or an NGO is a party in the administrative procedure (and then challenges the administrative decision at the Administrative Court or, in civil procedure, at the regular court (against polluters)).

Free legal aid (described in section 1.6.) is available only for court procedures. It is available for natural persons with low income and for NGOs with public-interest status. If the case is lost, the costs of the opposing party are not covered.

The general framework for calculating costs is as follows:

In administrative procedures (as a party in the procedure) natural persons with low income and NGOs with public-interest status (in matters concerning their area of public interest) are excused of taxes;

In the case of challenging an administrative decision at the Administrative Court, there is a court tax (148 EUR), which is returned if the plaintiff is successful (Court Fees Act[56]). There is no significant risk for the costs of the opposing party, because the procedure at the Administrative Court is mostly without hearing, not long and the State Attorney’s Office is entitled to reimbursement of costs in accordance with the Attorney tariff.

In the case of filing a suit with the regular court, there is an obligation to pay a court tax according to the Court Fees Act[57] and in consideration of the value of each case (rules for determining the value are regulated in the Contentious Civil Procedure Act);

The costs of attorneys are regulated in the Attorney Tariff[58] and calculated case by case, depending also on the timeframe of the procedure (a longer procedure can be expected than in standard civil cases), the number of legal remedies, hearings, filed papers. The different tasks are evaluated with points, each point being 0.6 EUR, and the number of points depends also on the value of the case;

The costs for experts cannot be estimated in advance but only on a case-by-case basis. We can expect that an expert institution should be engaged in a particular case. There are different sums in relation to the complexity or volume of materials to study.

We have to be aware that there is no average environmental case as a basis for calculating the average costs. There is a considerable difference between an administrative dispute (the opposing party is a state body) and an environmental request at the regular (local or district) courts (the opposing party is a polluter). It depends also on the length of the whole procedure up to the final solution. It may be that the same case proceeds two or three times at the Administrative Court in the same administrative procedure. And similarly for cases at the regular courts (one case against polluters lasted 20 years from filing of the suit up to the final decision). We can conclude that middle-income individuals or NGOs can afford the administrative procedure and administrative disputes, but taking an environmental lawsuit to the regular courts would be very risky for the same plaintiffs.

2) Cost of injunctive relief/interim measure, is a deposit necessary?

The court fee should be paid for the procedure (74 EUR); for other deposits, the court decides from case to case. It depends on measures which need to be executed during the process.

3) Is there legal aid available for natural persons?

Free legal aid is available for natural persons with low income.

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?

Free legal aid is available only to NGOs with public-interest status in matters concerning their area of public interest and to legal persons under certain (limited) circumstances. Free legal aid is explained under 1.6.

5) Are there other financial mechanisms available to provide financial assistance?

There are no other financial mechanisms available to provide financial assistance.

6) Does the ‘loser party pays’ principle apply? How is it applied by courts, are there exceptions?

The “loser party pays” principle applies. There are no rules about exceptions in environmental cases. But there are some additional rules for administrative disputes:

Parties shall be billed for costs incurred through their own fault, as well as costs incurred by any chance occurrence affecting the party. If the court granted the action and annulled the administrative act contested in the administrative dispute, or established the illegality of the contested administrative act, the lump sum of costs shall be reimbursed to the plaintiff with respect to the performed procedural actions and the method by which the administrative dispute was processed, in compliance with the rules on the reimbursement of expenses to plaintiffs in administrative disputes.[59] The determined amount shall be paid by the defendant. If shared costs arise in the case the court shall decide what proportion of the costs each party shall bear.

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?

Yes, as explained under the previous question.

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?

There is no official website with rules on environmental access to justice. There is only information about conditions and the process for NGOs with public-interest status. However, the Ministry of the Environment and Spatial Planning encourages NGOs to generate such information. Currently all relevant information is available on the Environmental Defenders website[60].

There is a general rule of free access to all environmental information, and each authority is also obliged to publish basic information about the environment and relevant procedures. The obligation is based on the Public Information Access Act[61] and the Environmental Protection Act. The Information Commissioner ensures free access to information.

2) During different environmental procedures how is this information provided? From whom should the applicant request information?

There is no system for providing procedural information. Anyone can address the competent authority with a request for access to information.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?

There is information on the websites of the Ministry of the Environment and Spatial Planning and the Slovenian Environment Agency, but mostly focused on providing investors with useful information and less on informing members of the public concerned about access to justice. However, the ministry supports NGOs in spreading this information (call for tenders for NGOs). There is no other active dissemination of information on access to justice.
4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment? Every administrative or court decision has instructions about possible legal remedies against it.

5) Is translation, interpretation provided to foreign participants? What are the rules applicable? There are no specific rules about translation for any foreign participants in environmental procedures. There are only general rules for the court procedure (described in section 1.4., 4th question). In administrative procedures, all written documentation and hearings are in Slovene (except in the case of Italian and Hungarian minorities), but if participants do not know the language, they have the right to participate in the procedure with the help of a translator. The authority is obliged to inform them of this, but the costs of the translator must be borne by the party who needs translation.

1.8. Special procedural rules


Country-specific EIA rules related to access to justice

1) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

All applications for screening decisions and the subsequent decisions are published on the website of the Slovenian Environment Agency. There is no public consultation, and there are no provisions that would enable natural or legal persons or NGOs to be party to the procedure. Only NGOs with the status "public interest – environmental protection" can file a complaint against a negative screening decision, within 15 days after the decision is published. However, persons who can demonstrate legal interest are not expressly excluded and it is possible that the court would support their claim for standing (on the basis of CJEU decision C 570-13). The Administrative Court also decided that the NGO can be a party in the screening decision.[62]

2) Rules on standing relating to scoping (conditions, timeframe, public concerned)

There are no provisions for participation in the scoping phase. After the screening decision, the application for environmental consent, the impact assessment report and the draft administrative decision have been published, there is an open public consultation period of 30 days.

3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?

NGOs with the status of "public interest – environmental protection" and those who permanently reside, or are owners or other possessors of real estate, in the impact area can become a party in the procedure if they announce it within 35 days from the beginning of the public consultation (the authority invites them through a public announcement). This means the interested party should send an application for joining the procedure and present its arguments in the matter at the same time. The competent authority decides about the standing of the party – the decision can be challenged. If the decision is positive, then the interested person or NGO has a right to challenge the final EIA decision at the Administrative Court (if EIA is carried out as an integral procedure together with building permission, otherwise there is first a complaint to the second-instance administrative authority and then a challenge at the Administrative Court).

4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO?

Legal or natural persons who permanently reside, or are owners or other possessors of real estate, in the impact area and NGOs with the status of "public interest – environmental protection" have the right to be a party in the procedure and can therefore then challenge the EIA decision (assuming the decision of the authority to accept someone as a party is positive).

5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?

There are no specific rules for EIA judicial review. General rules are applicable (see under 1.3., 4th question), and substantive and procedural legality can be reviewed.

6) At what stage are decisions, acts or omissions challengeable?

When the competent authority adopts the final 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 a 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 the national courts it is not necessary to participate in the public consultation phase of the administrative procedure in the EIA procedure.

9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

There are no specific provisions for environmental cases. There is a general rule about fairness of court procedures.

10) How is the notion of "timely" implemented by the national legislation?

There are no specific provisions for environmental cases (see explanation under 1.7.1., 4th question). The deadline for appealing against a negative EIA screening decision is 15 days from the day the decision is published on the website of the Slovenian Environment Agency. In the EIA procedure, if the Slovenian Environment Agency is the deciding authority, there are also 15 days to appeal against a final EIA decision. If the deciding authority is the Ministry of the Environment and Spatial Planning (integral procedure), there are 30 days after the decision is published on the website to begin the administrative dispute. There is also provision for the Administrative Court to decide within 3 months in EIA cases.

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?

There are no specific provisions for injunctive relief in an EIA procedure. There are only general rules (see under 1.7.2.).

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

The Slovenian Environment Agency, as the competent authority for environmental permits, publishes the application for an environmental permit, BAT reference documents and drafts of the administrative decision for public consultation of 30 days. Within 35 days of public announcement, the parties that have standing can file a request to be a party in the procedure (Article 73 of the Environmental Protection Act).

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?

In accordance with the Environmental Protection Act, legal or natural persons who permanently reside, or are owners or other possessors of real estate, in the impact area and NGOs with the status of "public interest – environmental protection" have the right to be a party in the procedure and can therefore then challenge the environmental permit decision if they do so within 35 days from the beginning of public consultation. Legal standing may be recognised by the Administrative Court if the person demonstrates legal interest according to the general rules of administrative procedure (Article 43 of the General Administrative Procedure Act on protecting personal benefits based on the Act or other regulations).

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

There are no special provisions other than those explained under the previous question.

4) Rules on standing relating to scoping (conditions, timeframe, public concerned)

There are no special provisions other than those explained under question 2.

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?
NGOs with the status of “public interest – environmental protection” and those who permanently reside, or are owners or other possessors of real estate, in the impact area can become a party in the procedure if they announce it within 35 days from the beginning of the public consultation (the authority invites them through the public announcement). This means the interested party should send an application for joining the procedure and present its arguments in the matter at the same time. The competent authority decides whether to allow standing as a party – the decision can be challenged. If the decision is positive, then the interested person or NGO has the right to appeal the final decision about the environmental permit to the Ministry of the Environment and Spatial Planning and to challenge the ministry’s decision at the Administrative Court.

6) Can the public challenge the final authorisation?
Only those referred to under the 2nd question above have standing.

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?
There are no specific rules for the environmental permit judicial review. General rules are applicable (see under 1.3., 4th question), but both substantive and procedural legality can be challenged.

8) At what stage are these challengeable?
It is challengeable at the final stage of the environmental permit decision.

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 a 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 the national courts it is not necessary to participate in the public consultation phase of the administrative procedure in the environmental permit procedure.

11) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
There are no specific provisions for environmental cases. There is a general rule about fairness in the court procedure.

12) How is the notion of "timely" implemented by the national legislation?
There are no specific provisions for environmental cases (see explanation under 1.7.1., 4th question), but there is a provision in the Environmental Protection Act that the Administrative Court should decide within 3 months.

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?
There are no specific provisions for injunctive relief in the IED procedure. There are only general rules (see under 1.7.2.).

14) Is information on access to justice provided to the public in a structured and accessible manner?
It is provided by publishing the documents relating to a particular permit on the website of the Slovenian Environment Agency for public consultation. In the announcement of the public consultation, there are also details of who can apply to join the procedure, and the timeframe for such.

1.8.3. Environmental liability[33]
County-specific legal rules relating to 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?
Legal or natural persons who are or could be affected by the environmental damage and NGOs with the status of “public interest – environmental protection” can be a party in the environmental remediation procedure. In such cases, they can challenge administrative decisions at the Administrative Court.

2) In what deadline does one need to introduce appeals?
30 days after receiving the decision of the Slovenian Environment Agency.

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?
Information about the existence of environmental damage should be presented. The Slovenian Environment Agency initiates the procedure if the probability of environmental damage is proven.

4) Are there specific requirements regarding ‘plausibility’ for showing that environmental damage occurred, and if yes, which ones?
There are no specific requirements.

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)?
If legal or natural persons or NGOs with public-interest status are a party in the procedure of environmental remediation, they receive the decision as a party in the procedure. Otherwise, there is no notification obligation.

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?
The MS applies an extension of the entitlement to request action by competent authority from damage to the environment in cases of imminent threat of such damage.

7) Which are the competent authorities designated by the MS?
The Slovenian Environment Agency.

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?
The administrative decision about the environmental remediation can be directly challenged at the Administrative Court.

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?
Other countries can be involved in the procedure of the strategic environmental assessment and the environmental impact assessment. If the plan or project could significantly impact on other countries, the Ministry of the Environment and Spatial Planning or the Slovenian Environment Agency informs them, as a minimum in the phase of public announcement, of the draft plan or project and the environmental report or environmental impact assessment report, and gives them time to answer whether they are interested in participating. The competent authority of the other country can decide if it wants to participate in the procedure within time limits determined by the national ministry. If it decides to participate, the authorities of both countries agree on the period for opinions and comments, or on other forms of consultation. The Ministry then defines the period for domestic public participation in a timeframe agreed with the other country (if it is longer then 30 days). The Ministry sends the opinions of the other country to the authority that is preparing the plan. In EIA procedure, the Ministry is obliged to explain how it has taken into consideration the opinions of the other country.

2) Notion of public concerned?
There are no provisions about the concerned public. It is assumed that the other country informs their public.

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)?

There are no provisions about NGOs of the affected country.

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)?

There are no specific provisions about individuals. Generally, persons who permanently reside, or are owners or other possessors of real estate, in the impact area can be a party in the procedure for the environmental consent.

5) At what stage is the information provided to the public concerned (including the above parties)?

The information is provided together with the decision of the affected country if it has an interest in participating in the strategic environmental assessment and the environmental impact assessment.

6) What are the timeframes for public involvement including access to justice?

There are no provisions.

7) How is information on access to justice provided to the parties?

There are no provisions.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?

There are no provisions in the Environmental Protection Act. Since these are administrative procedures, the rules on administrative procedures can be applied (see under 1.4., q.4).

9) Any other relevant rules?

There are no other relevant rules.

[1] https://www.gov.si/drzavni-organji/organji-v-sestavlj-agencija-za-okolje/ (there is ongoing transfer of the official websites to a new platform and the process is not complete yet); the old page is [here] here.

[2] http://www.pisrs.si/Pis.web - in the right menu there are also some acts translated into English; in the upper right corner there is an option for translation of the page into different languages.


[26] Official Gazette of RS, 26/09, 96/02, 2/04, 2/04 – ZDSS-1, 52/07, 45/08 – ZAriB, 45/08, 10/17, 16/19 – ZNP-1; http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1212.

[27] Official Gazette of RS, 45/08; http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5288.

[28] Official Gazette od RS, 52/02, 56/03, 11/04, 123/04, 93/05, 126/07 – ZUP-E, 48/09, 8/10 – ZUP-G, 8/12 – ZVRS-F, 21/12, 47/13, 12/14, 90/14, 51/16; http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO3225.

[29] https://www.gov.si/dzavni-organi/organi-v-sestavi/agencija-za-okolje-delovna/ (there is moving the official websites on new platform and the process is not complete yet); the old page is on https://www.arso.gov.si/en/.


[31] Official Gazette RS, 80/99, 70/00, 52/02, 73/04, 119/05, 105/06 – ZUS-1, in English here.


[33] Official Gazette of RS, št. 97/09, 40/12 – ZUJF; http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO5648.

[34] Defined in Article 14 of the Environmental Protection Act.


[38] For example, the case of the extension of operation of nuclear power plants I U 2135/2018-17.

[39] For example, the case of environmental consent for hydro power plants I U 2589/2018-25.


[42] Official Gazette of RS, 80/99, 70/00, 52/02, 73/04, 119/05, 105/06 – ZUS-1, 126/07, 65/08, 8/10, 82/13; http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1603.


[45] Info also here.

[46] I U 1417/2019-10

[47] Some rules for integral procedure were modified up to the end of 2021 as interventional measures by the Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy (Official Gazette RS, 49/20 and 61/20) and the Act Determining the Intervention Measures to Mitigate and Remedy the Consequences of the COVID-19 Epidemic (Official Gazette RS, 80/20), which are being challenged at the Constitutional Court with regard to the new conditions for NGOs with the status of public interest to have the right to participate in integral procedure.


[52] Legal-informational center for NGOs, Slovenia (Pravno-informacijski center nevladnih organizacij – PIC) offers this service on webpage Environmental defenders as project activity financed by the Ministry for the environment and spatial planning and Eko fund.

[53] This is a project activity financed by the Ministry of the Environment and Spatial Planning and the Eco Fund.


[55] There are 114 such NGOs in the register of AJPES as of 12.3.2020.

[56] Official Gazette of RS, 37/08, 97/10, 10/04, 30/16, 40/17 – ZPP-E, 11/18 – ZIZL; http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO4729.


[60] Only in Slovene language for now; the page is managed by the Legal-Informational Centre for NGOs (Pravno-informacijski center nevladnih organizacij – PIC).


[63] See also case G-529/15.

Last update: 05/08/2021

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Access to justice falling outside of the scope of EU Directives

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?

There is a general rule – an article which protects the constitutional right to a healthy environment – Article 14 of the Environmental Protection Act:
In order to exercise the right to a healthy living environment, citizens may, as individuals or through societies, associations and organisations, file a request with a court that the person responsible for an activity affecting the environment should terminate the activity if it causes, or would cause, an excessive environmental burden or presents, or would present, an imminent threat to human life or health, or that the person responsible for the activity affecting the environment should be prohibited from starting the activity if there is a high probability that the activity will cause such consequences.”

According to this Article, individuals and NGOs of any kind can initiate a court procedure (regular court) against anyone (private company, state or local authorities) for acts or omissions that cause harm. There are no other provisions that would set timeframes or other conditions. There have been a few court cases based on this article. One such case, which was won, concerned the Zasavje valley farmers (mentioned in footnote 28). Usually the legal grounds for such a suit would be Article 133 and/or 134 of the Civil Code together with the above-mentioned Article 14 of the Environmental Protection Act. The judges of the courts of general jurisdiction are as well informed about environment protection as their colleagues at the Administrative Court.

Other options outside EIA, IED and ELD lie in nature protection: NGOs with the status of “public interest – nature conservation” can defend nature conservation interests in all administrative and substantive disputes in the way determined by the law. Such an NGO has to be a party in an administrative procedure in which a permit is given to be able to appeal and/or file a court claim. NGOs with the status of “public interest – environmental protection / nature conservation / spatial planning / culture heritage protection” can file an action against some spatial plans with the Administrative Court; any person enjoys the same such right if the spatial plan affects any of this person’s other rights. There are also some protective instruments in civil law connected with the environment:

Law of Property Code[2] (Articles 75 and 99): Any disturbances from neighbours’ property that exceed the normal level (nuisance) are prohibited. The owner of the disturbed property may bring the action against the owner of property that causes the nuisance. Compensation can be claimed.

Obligations Code[3] (Articles 133): Any person may request that another person removes a source of danger that might cause major damage to them or other persons, and the court shall order appropriate measures to prevent the occurrence of damage or disturbance. This is also the case if the damage arises from activities that are in the public interest and have all permits (though compensation for such damage can be claimed only for the proportion exceeding the customary thresholds). This Article is “connected” with Article 14 of the Environmental Protection Act. In environmental matters, it can sometimes be useful to use Article 134 of the Obligations Code: in the case of violation of individuality, personal or family life or any other personal right, anyone can request that the court orders such action to be prevented or the consequences to be eliminated.

The Administrative Court can also be the court competent for protecting constitutional human rights in the case of violation by acts of state or local authorities where there is no other court competent for such protection (Administrative Dispute Act, Article 4).

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The scope of the administrative procedure and of the administrative dispute covers procedural and substantive legality.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Before filing a court action, there is a 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.?

This condition has to be fulfilled only in the case of challenging a spatial plan at the Administrative Court.

5) Are there some grounds/arguments precluded from the judicial review phase?

In the case of challenging a spatial plan, there are limited aspects of the spatial plan that can be challenged (e.g. provisions related to land use).

6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

There are no specific provisions for environmental cases. There is a general rule about fairness of court proceedings.

7) How is the notion of “timely” implemented by the national legislation?

There are no specific provisions for environmental cases (see explanation under 1.7.1., 4th question).

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?

There are no specific provisions for injunctive relief, only general rules (described under 1.7.2.).

9) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court?

What are the safeguards against the costs being prohibitive, and do these include express statutory reference to a requirement that costs should not be prohibitive?

There are no specific cost rules besides those described under 1.7.3. The ‘losing party pays’ principle applies together with additional rules explained under point 6 of section 1.7.3. There are no provisions against costs being prohibitive. A party should refer directly to Article 9(4) of the Aarhus Convention and the grounds of Article 8 of the Constitution of the Republic of Slovenia (ratified and published treaties are to be applied directly) to potentially obtain a better position regarding costs in the given procedure.

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?

There are no provisions that would enable NGOs or individuals to have standing for administrative review or challenge in the SEA procedure. But as the Nature Conservation Act enables NGOs with the status of “public interest – nature conservation” to represent nature conservation interests in all administrative and court procedures, one NGO with this status succeeded in becoming a party in an SEA procedure. After being rejected by the Ministry of the Environment and Spatial Planning. After that case, NGOs with the status of “public interest – nature conservation / environmental protection” are allowed to be a party in SEA procedures. There is no procedural timeframe for applying to be a party in the procedure, but after the ministry’s decision that an SEA will be performed, it would be appropriate to participate from the earliest phases of the procedure. For individuals, it could be used as a general rule for being a party according to the General Administrative Procedure Act (Article 43 – explained under the section 1.4., 1st question), since the SEA procedure is an administrative procedure.

Against negative SEA screening decisions or omission of decisions in a screening procedure, we do not yet have any practice or court decisions, but some rules could be used:

the rules about standing described above in relation to negative SEA screening decisions;
the rules about standing described above in relation to challenging omissions at the Administrative Court (Article 4 of the Administrative Dispute Act).

If the case comes before the Administrative Court, the court consistently follows the judgments of the CJEU.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?
The scope of the administrative procedure and of the administrative dispute covers procedural and substantive legality.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? Before filing a court action, there is a 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.? There is no need to participate in the public consultation procedure. However, a person/NGO has to be a party in the SEA procedure to have standing before the Administrative Court.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions? There are no specific provisions for injunctive relief, only general rules (described in section 1.7.2.). But temporary relief would be in place as a result of challenging the final SEA decision.

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 the case of challenging SEA decisions at the Administrative Court, the court fee has to be paid (148 EUR). The amount is returned in the case of success. There is a general rule that the procedure should be carried out at the lowest costs possible (Article 11 of the Contentious Civil Procedure Act). There are no other safeguarding rules against 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[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? There are provisions for public participation (environmental plans/programmes, spatial plans, nature conservation plans/programmes, water management programmes and others), but no provisions for protecting this right. This is a weakness of the Slovenian legal system with respect to the Aarhus Convention. So there is no “direct” way of obtaining an administrative review or challenging the final decision about a plan/programme before a court. There are two possible options:

- if the plan or programme is adopted as a general legal act, it could be challenged at the Constitutional Court (conformity with the Constitution);
- if not, it could be challenged at the Administrative Court as an act or omission of the state or local authority (Administrative Dispute Act, Article 4, see under 2.1., 1st question). Legal standing can be granted to NGOs with the status of “public interest – nature conservation” and to environmental protection NGOs or individuals on the basis of Article 43 of the General Administrative Procedure Act if legal interest can be demonstrated; the person should claim to be joining the procedure in order to protect their legal benefits. The legal benefits should be direct personal benefits based on an Act or other regulation.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality? The scope would be only if public consultation was enabled or not, thus if the requests of the Aarhus Convention were met.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? If there is an administrative procedure for the plan, the administrative review procedures should be exhausted.

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 obligation to participate in the prior participation process when using a legal remedy in the spatial planning process (filing a suit with the Administrative Court against a spatial plan) – this is the only provision of such kind in the Spatial Planning Act (Article 58).

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions? There are no specific provisions for injunctive relief, only general rules (described under 1.7.2.). But temporary relief would be in place as a result of challenging the plan or programme.

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? There is no court fee for going to the Constitutional Court. For the Administrative Court, there is a court fee (148 EUR), which is returned in the case of success.

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? It depends on who adopts the decision and in what legal form:

- if it is a law (act) or an executive regulation (decree, ordinance, ruling), see explanation in section 2.5., 1st question;
- if it is an administrative decision, there are legal remedies in the administrative procedure and then the administrative dispute at the Administrative Court.

Legal standing can be granted to NGOs with the status of “public interest – nature conservation” for representing nature conservation interests. For other NGOs and individuals, legal standing can be granted on the basis of Article 43 of the General Administrative Procedure Act if legal interest can be demonstrated (the person should claim to be joining the procedure in order to protect their legal benefits, which should be direct personal benefits based on an Act or other regulation). CJEU case law contributes much to effective access to national courts and definitely expands the right to access to justice in practice. There can be a situation where a particular plan is adopted by governmental decision (but not as a general legal act) but the plan/programme is not legally binding. There are two options:

- to initiate the court procedure at the regular court to defend the constitutional right to a healthy environment (on the basis of Article 14 of the Environmental Protection Act – see explanation in section 2.1., 1st question);
- less probably, to challenge the decision at the Administrative Court as an act of a national or local authority.

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)?
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?

There are no provisions and cases yet.

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

There are no provisions.

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 are no provisions except in the case of spatial plans. To initiate the administrative dispute, the NGO with the status of "public interest -- spatial planning / environmental protection / nature conservation / cultural heritage protection" must have previously participated in the procedure with comments.

6) Are there any grounds/arguments precluded from the judicial review phase?

There are no provisions. In the case of Article 14 of the Environmental Protection Act, there are no grounds/arguments precluded.

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

There is only a general rule about fairness of court procedures.

8) How is the notion of "timely" implemented by the national legislation?

There are no specific provisions for environmental cases (see explanation under 1.7.1., 4th question).

9) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

There are no specific provisions for injunctive relief, only general rules (described under 1.7.2.).

10) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court?

What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

There are general rules, described in section 1.7.3., 1st question.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[7]

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?

There are three options for challenging executive regulations:

Laws and their executive regulations are a general legal act. As such they can be challenged only at the Constitutional Court. According to Article 24 of the Constitutional Court Act (explanation in section 1.4., 3rd question), legal standing is granted to anyone who demonstrates a legal interest in the review of the constitutionality or legality of regulations. There is no difference in the standing of NGOs, NGOs with public-interest status or other legal or natural persons – all must justify the reasons for direct intervention in executive regulations with their rights, legal interests or legal position. There are other limitations only for executive regulations: a) generally they can be challenged within 1 year after their enforcement or after the day the petitioner learns of the occurrence of harmful consequences; b) all legal remedies should be exhausted (usually meaning challenging the individual act issued on the basis of the executive regulation) – this is a general opinion of the Constitutional Court adopted in many of its decisions.

The general legal act can be challenged also at the Administrative Court if it regulates individual relationships[8]. The 30 day limit for filing the suit to the court should be respected. If there is an individual administrative decision issued on the basis of the executive regulation, the administrative procedure has to be exhausted before going to the Administrative Court.

There is a third, indirect option: if a decision is based on an executive regulation which the claimant considers to be illegal, they can challenge the decision and, if the court agrees, it will refuse to use the illegal regulation as is bound only by the Constitution and the law (exceptio illegalis). The decision about illegality is binding only in the actual case, but it sends a strong signal to the administration and more often than not the administrative decision is altered as a result of the decision. The Administrative Court makes use of this relatively often.

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 review of the Constitutional Court is focused on violation of the provisions of the Constitution. Also, the Administrative Court is focused on the legality of the challenged act. This can cover both procedural and substantive legality.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Yes, as explained above under the 1st question.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure -- to make comments, participate at hearing, etc.?

In order to have standing before the national courts it is not necessary to participate in the public consultation phase of the administrative procedure.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

A temporary injunction is only possible at the Constitutional Court. At the Administrative Court, a temporary injunction is usually proposed regarding execution regulations. Other injunctive relief is possible (general rules described under 1.7.2.)

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court?

What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

At the Constitutional Court, there are no costs (court fees). At the Administrative Court, there is the court fee (148 EUR), which is returned in the case of success.

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?[9]

There are no provisions in national legislation regarding such situations and article 267 TFEU. Courts are obliged to take CJEU decisions into consideration and plaintiffs often refer to certain cases. The Supreme Court and the Administrative Court practise preliminary ruling procedures. All courts follow the recommendations for national courts on the use of preliminary ruling procedures. Plaintiffs are free to propose that the court initiate a preliminary ruling procedure.
Some competencies in the field of environmental protection are entrusted to municipalities.

The executive power in the field of environment is performed by the Ministry of the Environment and the Ministry of Agriculture.

Sources of Slovak codified law are divided according to their legal force into three levels, namely constitutional laws, ordinary laws and by-laws. The norm of national codified law is to find its source at the level of ordinary laws. These norms are applicable in case of conflict with constitutional laws. If constitutional laws are breached, they may be brought before the Supreme Court or the Constitutional Court, they tend to respect the legal views of these highest courts in similar cases.

National rules on the silence of the administration:

According to the Administrative Procedure Act (Article 222), in the event that the competent authority against whose decision an appeal is allowed fails to issue a decision and present it to the party in due time, the party shall have the right of appeal as if their claim had been refused. If the second-instance administrative authority fails to issue a decision, according to the Administrative Dispute Act (Article 28), the administrative dispute can be initiated within 30 days after the administrative authority has failed to issue a decision within 7 days after the future plaintiffs’ special request.

Complying with a judgement – there can be two situations:

If the court decides that the defendant should make a payment or perform an action, the execution procedure according to the Claim Enforcement and Security Act applies;

If the court finds that there has been a violation of certain rights or annuls certain individual acts or general acts and orders the competent body to issue the decision within a certain time, there are no penalties for the competent body in the event that it fails to comply with the court decision. A new suit should be filed with the court to challenge this omission/failure.

Other relevant rules on appeals, remedies and access to justice in environmental matters

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Access to justice in environmental matters - Slovakia:

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


3. Other relevant rules on appeals, remedies and access to justice in environmental matters

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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

The Slovak legal system belongs to the continental (civil law) legal system, which is based on codified laws adopted by the Parliament. Parliament is the highest legislative body. Courts are obliged to decide according to the constitution, laws and generally binding legal regulations, international treaties, and they are also obliged to apply EU legislation. Judicial decisions of the highest courts (the Constitutional Court, the Supreme Court) are of great importance in the interpretation of law, although they are not formally binding precedents as in common law legal system. Lower courts anticipate that a case may be brought before the Supreme Court or the Constitutional Court, they tend to respect the legal views of these highest courts in similar cases. Sources of Slovak codified law are divided according to their legal force into three levels, namely constitutional laws, ordinary laws and by-laws. The norm of lower legal force must not contradict the norm of higher legal force. The executive power in the field of environment is performed by the Ministry of the Environment and the Ministry of Agriculture.

Other environmental administration bodies (district offices) and special environmental agencies, which perform specific tasks in the field of the environmental protection, are subordinate to the government and ministries. It is, for example, Slovak Environmental Inspectorate (StZP) – a specialized supervisory authority providing for state supervision and imposing fines on matters concerning environment protection, and carrying out public administration and decision making in the field of integrated pollution prevention and control.

Some competencies in the field of environmental protection are entrusted to municipalities.
Natural and legal persons and NGOs can participate in the environmental protection through several types of legal action. They can protect their personal rights including health and privacy and their ownership rights relating to the environment through civil proceedings under the Civil Code. They can participate in administrative proceedings relating to the environment conducted by public authorities and can subsequently bring actions against acts (e.g. decisions) of public authorities within the system of administrative justice in accordance with the Code of Administrative Judicial Procedure. They can initiate criminal proceedings in the case of an environmental crime or other proceedings (carried out by special environmental supervisory authorities) in the case of an infringement of environmental regulations. They can protect their environmental constitutional rights and rights guaranteed by international conventions by filing constitutional complaints with the Constitutional Court.

The basic principle is that in administrative proceedings and in judicial procedures, the legal standing is provided for anyone (natural or legal persons) directly affected by the case (e.g. by proposed project). Judicial protection of the environment was originally based on the view that everyone can only protect their individual right in court and that the right to a favourable environment belongs only to natural persons and not to legal persons or NGOs, and therefore NGOs can only protect their procedural rights in court, and they cannot challenge a violation of a substantive provision of the law. However, as a result of the adoption of the Aarhus Convention and the effect of EU law, the interpretation has finally prevailed that in cases subject to the Aarhus Convention, NGOs can also challenge violations of substantive law (substantive legal provisions) and violations of the right to a favourable environment.

2) Constitution – main (content of + including references) provisions on environment and access to justice in the national constitution (if applicable) including procedural rights

The Constitution of the Slovak Republic explicitly enshrines the rights of everyone to a favourable environment, the right to information about the environment and the right of access to a court, which also applies to cases in environmental matters. According to Article 44 paragraph 1 of the Constitution, everyone has the right to a favourable environment. According to Article 44 paragraph 2, 3, 4 and 5 of the Constitution, everyone is obliged to protect and enhance the environment and no one may endanger or damage the environment and natural resources beyond the extent laid down by law; the state looks after a cautious use of natural resources, protection of agricultural and forest land, ecological balance, and effective environmental care, and provides for the protection of specified species of wild plants and animals, and agricultural and forest land are non-renewable natural resources and enjoy special protection by the state and society. According to Article 44 paragraph 6 of the Constitution, the details on the rights and duties set out in Article 44 must be laid down by a law.

The Constitution also enshrines the “general” right of access to information and, consequently, the special right of access to environmental information. According to Article 26 paragraph 5 of the Constitution, public authority bodies are obliged to provide information on their activities in an appropriate manner and in the state language. This paragraph also stipulates, that conditions and manner of execution of this obligation shall be laid down by law. According to Article 45 of the Constitution, everyone has the right to timely and complete information about the state of the environment and about the causes and consequences of its condition.

However, according to Article 51 par. 1 of the Constitution, the direct application of environmental constitutional provisions is problematic. This provision stipulates that the right to environmental protection as well as the access to justice may be claimed only within the scope of the laws implementing these provisions.

Constitutional right of access to court (access to justice) is guaranteed in Article 46 of the Constitution. This right covers access to justice in environmental matters as well. According to Article 46 paragraph 1 of the Constitution, everyone may claim his or her right by procedures laid down by a law at an independent and impartial court.

The right to judicial review of administrative decisions is explicitly guaranteed in the next paragraph. According to Article 46 paragraph 2 of the Constitution, anyone who claims to have been deprived of his rights by a decision of a public administration body may turn to the court to have the lawfulness of such decision reviewed. The Constitution explicitly stipulates that the review of decisions concerning basic rights and freedoms may not be excluded from the jurisdiction of courts.

Citizens can, in principle, invoke the constitutional right to a favourable environment in administrative proceedings and in proceedings within the administrative judiciary. However, as individual implementing laws specify this constitutional right, the citizens in administrative or judicial procedures must also invoke specific rights set forth in the implementing laws or applicable provisions of international law.

Slovak courts recognize that the Aarhus Convention is an international convention which takes precedence over national laws. The Constitutional Court has explicitly stated that it is also reviewing the compliance of national laws with the Aarhus Convention. The Aarhus Convention is therefore explicitly recognized as a binding human rights law concerning access to justice in environmental matters.

The amendment to the Act concerning the acceleration of the construction of motorways (Act No. 669/2007 Coll.), adopted in 2017, excluded the power of the administrative court to grant the suspensive effect of administrative actions against a zoning decision for construction of motorways and building permits for the construction of motorways. The Constitutional Court, by its decision of PL. US 18 / 2017-152 of 4 November 2020, decided that this law is in conflict with Art. 9 par. 4 of the Aarhus Convention, which enshrines the right of the public for an administrative court to order an “injunctive relief” following an administrative action against a project authorization decision. The Constitutional Court stated in the decision: “Part of the right to judicial protection in environmental matters is (also) the possibility of the administrative court to effectively verify the compliance of the zoning decision for highway construction or building permit for highway construction with the conclusions of the environmental impact assessment process. Here, too, the Constitutional Court notes that the possible suspensive effect of an administrative action does not occur ex lege, but only by a decision of the administrative court based on a judicious assessment. ... The Constitutional Court has therefore ruled that the provision of ... the law ... in relation to a zoning decision for the construction of a motorway and a building permit for the construction of a motorway is not in accordance with Article 9 § 4 of the Aarhus Convention.”

Following the ruling of the Court of Justice of the EU in the Slovak brown bear case (C-240/09, Lesoschobranske zoskupenie VLK), the Slovak administrative courts recognize that the Aarhus Convention must be taken into account when applying national law and that they are obliged to interpret provisions of national law in accordance with the Aarhus Convention. Reference is often made to Article 9 para. 3 of the Aarhus Convention. The Supreme Court has stated in several judgments that relevant procedural legislation must be interpreted in order to guarantee environmental organisation access to justice in environmental administrative cases (see the judgments below).

According to the ruling of the Court of Justice of the EU in Krüll case (C-416/10) national courts must interpret the procedural rules concerning the integrated permitting of operations with a significant impact on the environment under the Integrated Pollution Prevention and Control Act (IPPC) in accordance with the Aarhus Convention and EU law. According to the CJEU ruling, a national court is obliged, of its own motion, to make a request for a preliminary ruling to the Court of Justice of the European Union even though it is ruling on a referral back to it after its first decision was set aside by the Constitutional court and even though a national rule obliges it to resolve the dispute by following the legal opinion of that latter court. According to the CJEU ruling, national authorities are obliged to interpret procedural law in such a way that the public concerned have access to an urban planning decision procedure from the beginning of the authorization procedure for the installation. According to the CJEU ruling, the competent national authorities are not entitled to refuse the public concerned access to such a decision by relying on the protection of the confidentiality of commercial or industrial information.
According to the CJEU ruling, procedural law must be interpreted as meaning that members of the public concerned must be able to ask the court to order interim measures such as temporarily to suspend the application of a permit, pending the final decision of the administrative court.

3) Acts, Codes, Decrees, etc. - main provisions on environment and access to justice, national codes, acts
Act No. 71/1967 Coll. on administrative procedure (Administrative Procedure Code)
Act No. 40/1964 Coll. Civil Code
Act No. 71/1992 Coll. on court fees
Act No. 211/2000 Coll. on free access to information (Freedom of Information Act)
Act No. 24/2006 Coll. on environmental impact assessment (EIA Act)
Act No. 39/2013 Coll. on integrated environmental pollution prevention and control (IPPC Act)
Act No. 359/2007 Coll. on prevention and remedy of environmental damages (Environmental Liability Act)
Act No. 569/2007 Coll on geological works (Geological Act)
Act No. 543/2002 Coll. on nature and landscape protection (Nature Conservation Act)
Act No. 50/1976 Coll. on land-use planning and building rules (Building Act)
Act No. 44/1988 Coll. on the protection and use of mineral resources (Mining Act)
Act No. 541/2004 Coll. on peaceful use of nuclear energy (Atomic Act)
Act No. 326/2005 Coll. on forests
Act No. 137/2010 Coll. on air
Act No. 364/2004 Coll. on water
Act No. 79/2015 Coll. on waste

4) Examples of national case-law, role of the Supreme Court in environmental cases
The Supreme Court reviews the decisions of lower courts in administrative, civil and criminal cases. In administrative cases the Supreme Court acts on the basis of a cassation complaint and has cassation power. There are however exemptions from this rule. When reviewing the decisions imposing administrative penalties (fines), the courts may, in addition to cancelling the decision, also moderate the penalty. If the court annuls the administrative decision on refusing the information, it can also order the administrative authority to disclose the information. In the case of different legal opinions and disagreement between the panels (chambers) of the Supreme Court, the Grand Panel (Chamber) of the Supreme Court must issue a unifying decision for sake of uniform judicial decision-making. This also applies to administrative cases and environmental cases. According to the Code of the Administrative Judicial Procedure, the legal opinion expressed in the decision of the Grand Chamber is binding on the chambers of the Supreme Court. If the chamber of the Supreme Court wishes to deviate from the legal opinion expressed in the decision of the Grand Chamber, it must refer the case to the Grand Chamber for consideration and decision. Decisions of the Supreme Court in cases similar to those dealt with by lower courts are not formally binding on those lower courts. However, as lower courts anticipate that a case may be brought before the Supreme Court, they tend to respect the Supreme Court's legal views in similar cases. Examples of application of the Aarhus Convention by the Supreme Court with regard to standing of environmental non-governmental organizations: Judgment of the Supreme Court No. 5 Szp 41/2009, of 12 April 2011: In the opinion of the Supreme Court, international legal obligations (i.e. the Aarhus Convention) “ultimately have the effect of undermining the classical concept of standing of individuals in proceedings before administrative authorities by granting the status of party to proceedings to the public or in some cases to the public concerned with environmental protection.” The Supreme Court then stated as follows: “...only such an interpretation of procedural law (...) that enables an environmental organization such as the applicant to challenge a decision taken in an administrative procedure, which may be contrary to Community law in the field of the environment, in the court (...) will take account of the objectives of Article 9(3) of the Aarhus Convention, as well as the objective of effective judicial protection of the rights conferred by Community law.”
Judgment of the Supreme Court No. 3 Szp 30/2009, of 2 June 2011: “In the light of the judgment of the Court of Justice of the European Union C-240/09 of 08.03.2011, the panel of the appellate court [the Supreme Court], by an extensive euro-conform interpretation (...) assumed that the applicant (...) had the same scope of rights as he would have had in a position of a party to the proceedings. The party to the proceedings pursuant to § 14 par. 1 of the Administrative Procedure Code is the person who is the bearer of a legal right, legally protected interest or obligation (which results from a substantive law) and such a right, legally protected interest or obligation is a matter for the administrative authority to decide. The national authority must always strive for a euro-conform interpretation of national law (interpretation in conformity with Community law). The national court may, by means of a euro-conform interpretation, fill in the gaps in national law. However, the Court of Justice of the European Union stated that Article 9 para. 3 of the Aarhus Convention has no direct effect in European Union law. It was necessary to broaden the above definition of a party to the proceeding by a broad interpretation, and the same range of rights as a party to the proceeding is required to be granted to other persons (in particular the right to bring an action designed to ensure the protection of rights) in order to ensure effective protection of the environment.”
Example of application of the Aarhus Convention by the Supreme Court with regard to access to information: Judgment of the Supreme Court No. 3 Sël 22/2014, of 9 June 2015: “The Supreme Court of the Slovak Republic points out that in the case under review the applicability of the provisions of the Aarhus Convention to the present case cannot be ruled out, as the Slovak Republic has recognized its precedence over laws (the Aarhus Convention was published in the Collection of Laws under No. 43/2006 and in the “priority clause” was referred to as an international agreement, which in accordance with Article 7 par. 5 of the Constitution of the Slovak Republic takes precedence over laws). The Aarhus Convention enshrines in Art. 4 par. 3 and 4, the possibility of refusing access to information when, after the evaluation of individual points, the required information cannot be excluded according to any of the above. At the end of Art. 4 of the Aarhus Convention it is stipulated that the grounds for refusal must be interpreted in a restrictive way, taking into account the public interest served by disclosure and taking into account whether the information requested relates to emissions into the environment. According to Art. 2 par. 3 of the Aarhus Convention, the content of information (publication of a document from the preliminary safety report) is precisely information on the impact of Mochovce nuclear power plant activities on individual components of the environment, i.e. water, soil, landscape, landscape, energy, emissions. According to Art. 4 par. 4 letter D second sentence of the Aarhus Convention, information on emissions that is important from the point of view of environmental protection must be made available. The defendant refused to provide all the requested information and also confirmed the non-disclosure of information regarding emissions. In the contested administrative decisions, the defendant did not state the reason why the requested information was not provided in its entirety and did not state the reason why there was not the possibility of its partial disclosure, which is also envisaged by the Aarhus Convention in Art 4 par. 6. The principle of confidentiality of this specific information, the disclosure of which could indeed jeopardize established interests, is enshrined here, but the remaining information is to be disclosed. The analysis of the Aarhus Convention shows no reason, on the one hand, to reject the application of the Aarhus Convention itself and, on the other hand, to refuse to disclose environmental information relating to the interim safety report.”
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 to the administrative procedure can directly rely on international environmental agreements.

According to Article 7 paragraph 2 of the Constitution the legally binding acts of the European Union shall have priority over the laws of the Slovak Republic.

According to Article 7 paragraph 5 of the Constitution the international treaties on human rights and international treaties for whose exercise a law is not necessary, and international treaties which directly confer rights or impose duties on natural persons or legal persons and which are ratified and promulgated in the way laid down by a law shall have precedence over laws.

The Parliament of the Slovak Republic agreed to the Aarhus Convention and the convention became valid for the Slovak Republic on 5 March 2006. The Aarhus Convention became part of the national legal system as an international treaty on human rights which has precedence over laws by being published in the Collection of Acts of the Slovak Republic under No. 43/2006 Coll.

According to the case law of the Court of Justice of the European Union the Aarhus Convention is an integral part of the legal order of the European Union. National courts must also take into account the provisions of the Aarhus Convention, which do not have "direct effect" and are not sufficiently specific and precise. National courts are required to interpret the national law "to the fullest extent possible" in accordance with "the objective of effective judicial protection of the rights conferred by EU law" (Case C-240/09, Lesoochranárske zoskupenie VLK).

There are several decisions of the Supreme Court (see above) and lower courts in which courts interpreted provisions of national law in accordance with the Aarhus Convention in order to achieve the objectives of the Aarhus Convention – e.g. access to environmental information or access to justice of the members of public (e.g. non-governmental organizations). Based on these court decisions, the public authorities subsequently applied the Aarhus Convention in administrative proceedings, interpreted the national law in conformity with the Aarhus Convention and EU law and granted the rights arising from the Aarhus Convention to non-governmental organizations.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

The Slovak court system consists of:

- 54 district courts (okresné súdy),
- 8 regional courts (krajské súdy),
- Specialised Criminal Court (Špecializovaný trestný súd),
- Supreme Court (Najvyšší súd),
- Constitutional Court (Ústavný súd).

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)?

The court agenda can be divided into civil and commercial matters, criminal matters and administrative matters.

The courts rule on civil and criminal matters and review the legality of decisions made by administrative bodies. Judges sit on panels (chambers) unless the law prescribes that the matter is to be decided by a single judge.

In civil matters courts decide on rights and disputes arising from Civil Code, Commercial Code and other legal regulations in the sphere of private law – e.g. cases concerning personality rights, privacy or ownership rights and cases when someone infringes these rights (these typically concerns emissions of noise, chemical substances etc.).

In criminal matters courts decide on guilt and punishment for criminal offences defined in the Criminal Code.

In administrative cases, courts review the legality of decisions or measures of public authorities or they can order the public authority to issue a decision when the public authority remains inactive.

The Constitutional Court has the power to review the constitutionality of any legislation. In addition, the Constitutional Court can hear individual complaints against violations of constitutional rights by any other public authorities (including other courts), subject to exhaustion of other remedies. When the Constitutional Court finds that a particular piece of legislation was adopted in violation of the constitution, it has the power to annul such legislation. After the exhaustion of all legal remedies, the Constitutional Court can review the lower court’s decision – a party has to file a constitutional complaint invoking infringement of a specific constitutional right by the court decision. If the Constitutional Court finds that the constitutional right was violated by decision of other court (or a public authority), it has the power to annul such a decision.

3) Specialities as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges

There are no special courts, tribunals or expert judges to decide environmental cases in Slovakia. Administrative cases related to environmental matters are decided by administrative panels (chambers) of regional courts and panels (chambers) of the administrative division of the Supreme Court.

In environmental cases, specific expert knowledge from the environmental field is often needed. In civil cases, for example cases concerning infringement of property rights by emissions (imisie), expert opinions are used, which are often decisive for the case.

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

Administrative courts have cassation powers. They can annul a decision of public authority and send the case back for a new proceeding.

However, there are two exceptions. In access to information cases, in addition to annulling the decision, the courts have a discretionary power to order disclosure of the information requested. When reviewing the decisions imposing administrative sanctions (e.g. penalties), the courts may, in addition to cancelling the decision, also moderate the sanction. The courts may change the type or amount of the sanction (e.g. amount of penalty), if this sanction is disproportionate to the nature of the act or would be of a liquidating nature for the plaintiff, or refrain from imposing a sanction if the purpose of administrative punishment can also be achieved by the hearing of the case itself.

In environmental matters the court may act only on the basis of a motion - a petition (complaint). The court may not initiate court proceedings in environmental matters on its own motion.

However, courts have discretion in assessing evidence. According to the procedural codes, the court evaluates the evidence at its discretion, each piece of evidence individually and all pieces of evidence in their mutual connection. The expert opinion is not binding on the judge. It is considered as part of the evidence. The court evaluates all the evidence including the expert opinion at its discretion.

The courts also have a certain discretion in awarding costs. For example, the administrative court may decide not to reimburse all or part of the costs if there are “grounds for special consideration”. The administrative court must grant the defendant the right to reimbursement of the costs of the administrative court proceedings against the plaintiff according to the proportion of his success only if it can be “reasonably demanded”.

1.3. Organisation of justice at administrative and judicial level

1) System of the administrative procedure (ministries and/or specific state authorities)
The system of administrative procedure in Slovakia is generally regulated by the Administrative Procedure Code (Act No. 71/1967 Coll.) and specific acts in various areas of public administration, including environmental protection and its specific branches (nature and landscape protection, water protection, air protection, waste management, forest protection, EIA and IPPC procedures etc).

The Act No. 525/2003 Coll. on the state administration of environmental care sets out the structure and competences of environmental authorities. According to this act the state administration bodies for the protection of the environment are:

- Ministry of the Environment,
- District Offices in the seat of the region,
- Slovak Environmental Inspectorate,
- municipalities (perform state administration to the extent stipulated by special laws).

The Ministry of the Environment manages and controls the performance of the state administration, which is performed by the district offices in the seat of the region and the Slovak Environmental Inspectorate, performs public administration to the extent provided by special regulations (e.g. in EIA cases subject to mandatory assessment), decides on an appeal against the decision of the district office in the seat of the region etc.

The district office acts as territorial environmental authorities in most environmental administrative cases.

The district office in the seat of the region is the appellate body in matters on which the district office or municipality decides in the first instance.

The Slovak Environmental Inspectorate is generally a specialized supervisory body performing state supervision in matters of environmental protection, but it also performs public administration and decision-making in the field of integrated pollution prevention and control.

Municipalities perform certain powers in the field of air protection, waste management, tree protection, etc.

According to the Forest Act, state administration in the field of forestry is performed by the Ministry of Agriculture, the district office in the seat of the region, the district office and the Slovak Forestry and Wood Inspectorate.

2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?

Administrative environmental decisions can be taken to court after the administrative appeal has been exhausted and a decision on the appeal has been taken. As a general principle of Slovak administrative law, it is possible to file an appeal against administrative decisions to a superior administrative body. The administrative appeal to a superior administrative body must be exhausted before the administrative decision can be further appealed before the court. But there is an exception. The plaintiff is not obliged to exhaust the administrative appeal in a situation where there is no possibility of administrative appeal, because of an explicit regulation by law. According to § 7a of the Code of the Administrative Judicial Procedure, the obligation to exhaust the administrative appeal does not also apply to the “interested public”, if it was not entitled to file an administrative appeal. This applies to cases where the “interested public” does not have the status of a “party to the proceedings”, but another status in the proceedings that does not include the right to file an administrative appeal (e.g. “participating person”).

Similarly, the administrative remedies have to be exhausted before taking a case to administrative court, also in case of omissions (illegal inaction) of the administrative authorities. The plaintiff must exhaust a “complaint of inaction” pursuant to a special law or a complaint to the prosecutor’s office.

The final ruling of the administrative court is usually issued 1 – 2 years after the case was taken to court. The ruling of the first instance (regional) administrative court can be further reviewed on the basis of a cassation complaint by the Supreme Court. The procedure before the Supreme Court usually lasts about 1 year.

3) Existence of special environmental courts, main role, competence

There are no special environmental courts. The regional courts (administrative division) review all administrative decisions, including administrative decisions related to the environment. There is a possibility to file a cassation complaint against their decision to the Supreme Court.

4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)

It is generally possible to file an appeal against administrative decisions, including the environmental ones, to a superior administrative body (§ 53 of the Administrative Procedure Code).

The district office in the seat of the region decides on the appeal against the decisions of the district office. The Ministry of the Environment decides on appeals against decisions of the district office in the seat of the region.

Administrative decisions can be taken to court only after the appeal has been decided (with above mentioned exceptions).

Courts review both the procedural and the substantive legality of administrative decisions.

The judgments of regional courts can be reviewed, on the basis of cassation complaint, by the Supreme Court. The cassation complaint is considered to be an extraordinary remedy, as it does not postpone the legal force of the first instance decision.

The Supreme Court may, on the motion of the complainant, grant a cassation complaint the suspensive effect, if the legal consequences of the decision of the regional court would pose a threat of serious harm and the granting of a suspensive effect is not contrary to the public interest (§ 447 of the Code of the Administrative Judicial Procedure).

5) Extraordinary ways of appeal. Rules in the environmental area. Rules for introducing preliminary references

In addition to the administrative appeal against the administrative decision, there are some extraordinary remedies under administrative law.

If the decision of the administrative body is illegal, anyone (including the party to the proceedings) may initiate extra-appellate proceedings (mimo-odvolacie konanie) by applying for the extra-appellate review of an administrative decision after the expiry of the time limit for a proper appeal. Upon this application, the superior administrative body may annul the illegal decision of the subordinate administrative body.

Administrative proceedings terminated by a decision which is valid can be renewed (obnova) at the request of a party to the proceedings if new facts or evidence have emerged which could have had a significant effect on the decision;

the decision depended on the assessment of a preliminary question decided otherwise by the competent authority;
due to maladministration by an administrative authority, a party was deprived of the opportunity to participate in the proceedings, if this could have had a material effect on the decision;
the decision was issued by the excluded (e.g. biased) authority
the decision is based on evidence which has been shown to be false or the decision has been obtained through a criminal offence.

The administrative authority must order the renewal of the proceedings for the reasons set out above if there is a general interest in doing so.

According to the Code of the Administrative Judicial Procedure a party to the administrative court proceedings may bring an action for renewal of the proceedings (záloha na obnovu konania) against a valid decision of the administrative court if a decision has been rendered against a party to the proceedings as a result of a criminal offence by a judge, another party to the proceedings or a person participating in the proceedings.

The European Court of Human Rights ruled that the decision of the Administrative Court had violated the fundamental human rights of the party to the proceedings and that the serious consequences of this violation had not been remedied by satisfaction,
the decision of the administrative court is contrary to the decision of the Court of Justice of the European Union, the Council of the European Union or the Commission, which is binding on the parties.

Slovak national courts have the possibility, and in some cases obligation, to ask the Court of Justice of the European Union under Article 267 of the Treaty on the Functioning of the European Union questions on the interpretation or validity of European law (introduce a preliminary reference). The article states that if such a question arises in proceedings before a court of a Member State whose decision cannot be challenged under national law, that court must refer the matter to the Court of Justice of the European Union. The only exceptions are situations where the interpretation of European Union law does not create problems in its context (acte clair) or where the uncertainty of interpretation has already been overcome by the case-law of the Court (acte éclairé).

According to § 100/1/a of the Code of the Administrative Judicial Procedure the administrative court must suspend the proceedings the preliminary reference to the Court of Justice of the European Union has been made. If a party to the court proceedings requests that the court suspend the proceedings and refer the matter to the European Court of Justice, the court must state why the application has been rejected if the application is rejected.

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?

Mediation is a voluntary, confidential process in which a neutral mediator helps the disputing parties to negotiate a settlement. The mediation process is regulated by Act No. 420/2004 Coll. on mediation. Mediation is suitable for resolving disputes and is mostly used in civil matters. No one can force the other party to take part in the mediation, but in some cases the mediation can be initiated by a court - the court can inform the parties about the mediation, call on the parties to try mediation, or even order the first meeting with the mediator. Once the parties have agreed in the mediation, they conclude an agreement. The agreement which arose as a result of mediation is in writing and is binding on the persons involved in mediation. On the basis of the agreement, the creditor may file a motion for judicial enforcement, if this agreement is written in the form of a notarial record or approved as a settlement before a court or an arbitration tribunal. However, mediation is practically never used in environmental matters.

7) How can other actors help (ombudsperson if applicable, public prosecutor), accessible link to the sites?

A person may file a motion for the administrative section of the public prosecutor's office, in which he/she asks the public prosecutor to file the “objection” (protest) against an illegal administrative decision. On the basis of this motion the public prosecutor can file a protest against the illegal administrative decision and propose to the authority which issued the decision to annul it. If neither this body nor the superior body accepts the protest, the prosecutor may file a lawsuit against the illegal administrative decision. It is however fully in the discretion of the prosecutor whether he/she will do so.

The prosecutor is also entitled to file an action against the illegal inaction (omission) if the public administration body has remained inactive even after the prosecutor has informed the public administration body of its illegal inaction.

The Ombudsperson deals with all cases where administrative bodies act or omit to act in breach of the law, principles of the democratic state of law, or principles of good government. This also covers environmental cases. The Ombudsperson examines citizens' petitions alleging that their rights have been violated. If the petition concerns a valid administrative decision of a public authority that is considered illegal by the Ombudsperson, he/she may refer the case to the Public Prosecutor's Office, which may lodge a protest against the illegal decision.

The Ombudsperson may initiate its inquiry ex officio. In 2016, the Ombudsperson conducted an inquiry and published a report on compliance with environmental protection in the permitting of small hydropower plants in Slovakia. The report indicates errors in the permission processes for the construction of small hydropower plants in Slovakia.

However, even if the Ombudsperson concludes that the administrative authority has violated the law, he/she may only recommend to the authority to take corrective measures, not impose them. These bodies are obliged to inform the Ombudsperson on the measures undertaken. If not respected, the Ombudsperson may contact a superior authority or the government and inform the general public. The Ombudsperson cannot interfere with the decision-making activities of the courts.

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)?

The general concept for standing in the administrative judiciary is generally based on the impairment of right theory.

According to § 178/1 of the Code of the Administrative Judicial Procedure the plaintiff who has a standing in the administrative judiciary is a natural person or legal entity who claims that, as a party to an administrative proceeding, he has been deprived of his rights or legally protected interests by a decision of a public administration body or a measure of a public administration body.

However, based on the effects of the Aarhus Convention and EU law, national law established a special standing for the "interested public".

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?

The EIA process is not finalized by a development consent (permit) in the Slovak legal system, but by an "EIA statement", which represents a binding basis for subsequent development consent. However, decisions issued in the EIA procedure can be challenged and reviewed separately in the administrative court.

Act No. 24/2006 Coll. on Environmental Impact Assessment (EIA Act) regulates the procedure of environmental impact assessment. The projects listed in Annex no. 8 of the EIA Act are subject to EIA procedure and are divided into those that are subject to obligatory EIA assessment and those that are subject to the screening procedure. The outcome of the screening procedure is a decision as to whether the proposed project will be subject to obligatory EIA assessment or not.

The EIA procedure is an administrative proceeding regulated by the Administrative Procedure Code.

In the EIA procedure, the parties to the administrative proceedings are those whose rights, obligations or legally protected interests may be affected in the proceedings.

The status of a party to the proceedings also belongs to the “public concerned”, if it meets the legal conditions (set out in § 24 par. 2 to 5 of the EIA Act).

The public concerned has the status of a party to the obligatory EIA assessment procedure and to the screening procedure (and subsequently the status of a participant in the permitting procedure for the proposed project) if it submits a reasoned written opinion during one of the stages of the EIA procedure (project proposal, scoping phase, evaluation report) and attaches document formalities (statute in the case of NGOs).

The public concerned can also become a party to the proceedings by lodging an appeal against an administrative decision in the EIA procedure.

Anyone (including natural persons or NGOs) can become the "public concerned" and party to the proceedings if they meet the above mentioned conditions.

The party to the proceedings may file an administrative appeal against the decision from the EIA procedure, which is decided by the superior administrative body. An administrative appeal may be lodged against the decision in the screening procedure as well as against the decision in obligatory EIA assessment procedure – so called "final EIA statement".

The public concerned, which has participated in the EIA procedure (in the screening procedure or in obligatory EIA assessment procedure) and has exhausted an administrative appeal against the administrative decision, may bring an administrative action within the administrative judiciary against the valid decision in the screening procedure as well as against the decision in obligatory EIA assessment procedure (final EIA statement).

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.)
Legal standing in administrative proceedings:

Legal standing (right to be a party to the proceedings) in the administrative proceedings is generally regulated by the Administrative Procedure Code. However, some special environmental laws regulate the standing in administrative proceedings (and define the status of a party to the administrative proceedings) in a different way from the general regulation in the Administrative Procedure Code. These laws include, for example, the Building Act, the Nature Conservation Act, the IPPC Act or the EIA Act.

In administrative proceedings, the basic principle of "standing" is that the rights or obligations of a party to the proceedings may be possibly directly affected by an administrative decision.

According to § 14 par. 1 of the Administrative Procedure Code the party to the proceedings is the person whose rights, legally protected interests or obligations are to be decided on, who claims that he/she may be directly affected by the decision in his/her rights, legally protected interests or obligations, until the contrary is proved.

This general rule is modified by some sectoral acts, e.g.:

Act no. 50/1976 Coll. Building Act, which regulates the issuing of permits for many projects with significant impact on the environment, includes autonomous definitions of parties to the administrative proceedings for issuing the land use and building permits. According to the Building Act, natural and legal persons whose ownership or other rights to land or buildings, as well as to neighbouring land and buildings, including flats, may be directly affected by the decision are also parties to the proceedings. The provision of § 140c par. 8 of the Building Act stipulates that the person who was not a party to the proceedings also has the right to appeal against a permit on the location of a building, a permit on the use of land, a building permit and a permit on the use of a building, which was preceded by a screening procedure or an obligatory EIA assessment procedure under the EIA Act. By filing an appeal, the person becomes a party to the proceedings (and subsequently may bring an action against the permit in court). But this person can only object in the appeal that the permit is inconsistent with the content of the screening decision or with the content of the final EIA statement.

Act no. 543/2002 Coll. on nature and landscape protection (Nature Conservation Act) regulates, inter alia, permitting interventions in protected parts of nature or in the conditions for the protection of protected species of animals and plants. In addition to the applicant for a permit, the party to the proceedings is also an association (NGO), whose subject of activity for at least one year is nature and landscape protection and which has submitted a preliminary and general application for participation in the proceedings is a party to the proceedings if it has confirmed its interest in being a party to the individual administrative proceedings initiated.

Act no. 39/2013 Coll. on integrated environmental pollution prevention and control regulates integrated permitting of projects with a significant impact on the environment. In addition to the parties to the proceedings pursuant to the Administrative Procedure Code (i.e. persons whose rights may be directly affected or who claim that their rights may be directly affected), the party to the proceedings is also the municipality in which the permitted operation is located or is to be located, and the public concerned. The public concerned is, inter alia, defined as a legal person (including NGO) supporting the protection of the environment that was established at least two years before applying as a party to the proceedings. The law explicitly stipulates that this organization is considered to be a person whose right to a favourable environment may be affected by the administrative decision on permit. The public concerned must become a party to the proceedings on the day of delivery of the written application to the Slovak Environmental Inspectorate submitted after the publication of the application for a project permit.

Act No. 24/2006 Coll. on environmental impact assessment (EIA Act) is very important for access to justice, because by participating in the EIA procedure the public becomes the "public concerned" and thus becomes a party to all subsequent administrative proceedings on project authorization (i.e. permit proceeding under the Building Act, IPPC Act, Atomic Act, Mining Act, Act on Forests, Nature Conservation Act etc.).

In particular, by submitting a reasoned written opinion during one of the stages of the EIA procedure (project proposal, scoping phase, evaluation report) or by lodging an appeal against a decision in a screening procedure or against final EIA statement, the public (which means "anyone" - any natural or legal person including NGO) expresses its interest in the project and thus becomes a "public concerned" that has the status of a party to the proceedings under the EIA Act (EIA procedures, i.e. screening procedure and obligatory EIA assessment procedure) and also the status of a party in the subsequent administrative proceedings on project authorization regulated by sectoral laws (e.g. permit proceeding under the Building Act, IPPC Act, Atomic Act, Mining Act, Act on Forests, Nature Conservation Act etc.).

In particular, the term "public concerned" is defined by the EIA Act as the public (which means anyone - any natural or legal person including NGO) affected or likely to be affected by environmental proceedings, or having an interest in environmental proceedings.

According to § 24 par. 3 of the EIA Act, the public has an interest in the project and in the proceeding for authorization of the project if it submits reasoned written opinion during one of the stages of the EIA procedure (project proposal, scoping phase, evaluation report). The EIA Act further expressly provides that a non-governmental organization promoting the protection of the environment and meeting the requirements laid down in the EIA Act (i.e. submitting a reasoned written opinion during one of the stages of the EIA procedure and submitting of a statute of NGO) has an interest in such proceedings and thus is a public concerned.

Individuals can also join in a citizens' initiative and submit a joint opinion. According to § 24 par. 6 of the EIA Act, a citizens' initiative is at least three natural persons over the age of 18 who sign a joint opinion on project. The citizens' initiative must submit a list of its members, which must include the names and surnames, permanent residence, year of birth and signatures of the persons supporting the joint position and who is the representative of the citizens' initiative.

According to § 24 par. 2 of the EIA Act, the right of the public concerned to a favourable environment may be directly affected by the authorization of the proposed activity or its amendment or the subsequent implementation of the proposed activity or its change. This provision guarantees that the public concerned may, in administrative or judicial proceedings, also challenge a breach of substantive law, not just a breach of procedural law.

There is no special provision concerning the possibility of the foreign NGOs to participate in the environmental administrative proceedings. Foreign NGOs should be able take part in these administrative proceedings when they meet the same requirements as the Slovak ones.

Legal standing in court proceedings:

The Code of the Administrative Judicial Procedure ensures the right of access to the court for "the interested public". The term "interested public" may have a different meaning than the term "public concerned" mentioned above.

According to § 42 par. 1 of the Code of the Administrative Judicial Procedure, if the "interested public" has the right under a special regulation to participate in administrative proceedings in environmental matters, it is entitled to bring an action before the court against administrative decision or administrative measure to bring an action before the court against illegal inactivity of the public authority, to bring an action before the court against a generally binding regulation (e.g. zoning plan regulating land use and building permissions).

This means that according to the Code of the Administrative Judicial Procedure, the "interested public" is a person who has the "right to participate in administrative proceedings" concerning environmental matters under specific environmental laws.
The “interested public” may be a natural person, legal entity, local civic association, or environmental non-governmental organization. In practice, there are also cases where both the municipality and the foreign legal entity (foreign environmental NGO) have become “interested public”.

In this context, it is important how the “interested public” is defined in the sector-specific laws governing administrative proceedings in the field of the environment.

In order for a member of the public to be the “interested public” within the meaning of the Code of Judicial Administrative Procedure and to have the right to bring an action before the court, he/she must satisfy the conditions laid down. In particular, the fulfillment of the condition that a member of the public has a “right to participate in administrative proceedings pursuant to a special regulation” is essential. The “right to participate in administrative proceedings” is a broader concept than a status of a “party to the administrative proceedings”. It is a difference compared to the previous legislation, where legal standing in proceedings before the administrative court was limited exclusively to a “party to the administrative proceedings”.

The “right to participate in administrative proceedings” thus includes the right to be “a party to the proceedings” (e.g. § 82 of Act No. 543/2002 Coll. on nature and landscape protection, § 24 of Act No. 24/2006 Coll. on environmental impact assessment, § 9 of Act No. 39/2013 Coll. on integrated pollution prevention and control), the right to be a “participating person”, which has a narrower scope of rights than a “party to the proceedings” (Section 67 of Act No. 326/2005 Coll. on forests in conjunction with the provisions of Section 15a of the Administrative Procedure Code), the right of “other participation” (e.g. participation in approving of land use plans (zoning plans) according to § 12 to 18 of the Building Act, participation in approving of the air protection plan according to § 10 of Act No. 137/210 Coll. on air, participation in approving of the river basin management plan according to § 13 of Act No. 354/2004 Coll. on water).

According to § 7 letter (a) of the Code of the Administrative Judicial Procedure, the party to the proceedings must exhaust ordinary remedies against the challenged administrative decision (i.e. administrative appeal) before bringing an action before the court. However, the law explicitly states that the obligation to exhaust all ordinary remedies will not apply to the “interested public” if the interested public has not been entitled to an ordinary remedy (appeal). In cases where the “interested public” does not have the status of a “party to the proceedings” according to a special regulation, but “another form” of participation in the proceedings (e.g. a “participating person”), it cannot fulfil the requirement to exhaust ordinary remedies (appeal). The requirement to exhaust the ordinary remedies (appeals) therefore does not apply to the “interested public” in this case.

According to § 178 par. 3 of the Code of the Administrative Judicial Procedure, the “interested public” is entitled to bring an administrative action before a court against a decision of a public authority or a measure of a public authority if it claims that the public interest in the field of the environment has been violated.

4) What are the rules for translation and interpretation if foreign parties are involved?

According to the Constitution, everyone has the right to legal assistance in court proceedings, or proceedings before other state or public administration bodies from the start of the proceedings, under conditions laid down by law. Anyone who declares that he does not have a command of the language in which the proceedings are conducted has the right to an interpreter (Article 47 par. 2 and 4).

In the opinion of the Constitutional Court, the right to an interpreter does not guarantee the interpretation exclusively into the mother tongue. It is sufficient if the interpretation is in a language in which the person is able to communicate. A necessary condition for the right to an interpreter is a declaration by the person that he or she does not speak the language of the proceedings.

According to the Code of the Administrative Judicial Procedure the parties to the proceedings have the same rights and obligations in proceedings before the administrative court (§ 53). Everyone has the right to act before an administrative court in his or her mother tongue or in a language he or she understands. The administrative court is obliged to ensure that the parties to the proceedings have equal opportunities to exercise their rights. Taking into account the nature and circumstances of the case, the administrative court will provide an interpreter (§ 54 par. 1). The costs of the party acting in his mother tongue or in a language which he understands will be borne by the state (§ 54 par. 2).

1.5. Evidence and experts in the procedures

Overview of specific rules in administrative environmental matters, control of the 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?

According to the Code of the Administrative Judicial Procedure, the parties are required to indicate the evidence in support of their allegations. The court must decide which proposed evidence to take.

The court does not have to accept unnecessary or irrelevant motions. In this case, however, the court is obliged to state the reasons for which evidence was not taken.

The court may also take evidence other than that proposed if it considers it necessary for a decision in the case.

The court is not bound by the facts established by the public authority and may itself take evidence it considers necessary for a decision on the case or to decide on administrative sanctions, on actions against inaction of a public authority or on actions against unlawful intervention of a public authority.

The court evaluates the evidence at its discretion, each piece of evidence individually and all pieces of evidence in their mutual connection.

2) Can one introduce new evidence?

In administrative judicial procedure there is no limited period of time for introducing new evidence, until the end of the court proceedings. However, in the case of action against administrative decision all the claims must be formulated within the two-month period that is reserved for bringing an action.

3) How can one get expert opinions in the procedures? Publicly available lists and registers of experts.

The parties and the court can ask an expert for expert opinions. The expert can be appointed by the court or hired by the party. Parties may submit expert opinions to the court. The rules for experts are set out in the Act No. 382/2004 Coll. on experts, interpreters and translators.

There is publicly available list of experts on the website of the Ministry of Justice.

3.1) Is the expert opinion binding on judges, is there a level of discretion?

The expert opinion is not binding on the judge. It is considered as part of the evidence. The court evaluates all evidence including the expert opinion at its discretion.

The expert can only express an opinion on issues related to his area of expertise, not on legal issues. Legal issues are considered by the court.

According to the law, the expert must describe in the expert opinion how he came to the conclusions. The expert opinion must make it possible to examine its content and verify its validity.

According to the Code of the Administrative Judicial Procedure, the credibility of any evidence taken may be questioned. If the court does not respect the expert opinion, it has to give due reasons for it in the court decision.

3.2) Rules for experts being called upon by the court

The court calls upon the experts on the proposal of the parties to the proceedings or on its own initiative. The parties may comment on the selection of the expert and on the questions to be answered in the expert's opinion. If the expert's report contains inconsistencies, the parties may request that another expert's report be drawn up to verify the conclusions of the original report. According to the law, the expert is excluded if, due to his relationship to the matter,
to the party to the proceeding or to another person to whom the expert opinion relates, it is possible to have doubts about his impartiality. If there is a reason to exclude an expert, the expert opinion cannot be used as evidence.

3.3) Rules for experts called upon by the parties
The expert opinion submitted by the parties is of the same relevance as the opinion requested by the court. Each party may select an expert from the official lists of experts and ask him to draw up an expert opinion.

3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?
The expert is entitled to a fee for the provision of an expert opinion. If the expert has been appointed by a court, the rules for the fee and the amount of the fee are set by the Regulation of the Ministry of Justice No. 491/2004 Coll. on the remuneration, reimbursement of expenses and compensation for loss of time for experts, interpreters and translators. If the expert opinion was ordered by a party to the proceedings, the expert’s fee is determined by a contract between the expert and the party to the proceedings.

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
According to the Code of the Administrative Judicial Procedure, the plaintiff must be represented by an attorney in court proceedings within the administrative judiciary, including cassation complaint proceedings (before regional courts and the Supreme Court).

But there are several exceptions to this general rule. The plaintiff does not have to be represented by an attorney if he/she, or his/her employee, or the member representing him/her in court, has a university degree in law. Additionally, the plaintiff does not have to be represented by a lawyer, for example, in proceedings concerning administrative sanctions (e.g. fines), actions against unlawful inaction by a public authority or in proceedings concerning access to information (§49 of the Code of the Administrative Judicial Procedure).

The plaintiff must not have to be represented by a lawyer in most of civil court proceedings, e.g. proceedings concerning the protection of property rights and rights of neighbours under the Civil Code.

According to the Code of the Civil Judicial Procedure in the civil court proceedings on the appeal on the points of law (dovolanie) the appellant must be represented by an attorney.

The applicant must be represented by an attorney in proceedings before the Constitutional Court.

A list of attorneys and their contact details is published on the website of the Slovak Bar Association. Here, anyone can search for an attorney according to his/her name, legal specialisation (including environmental law), his/her place of residence, language, registration number etc. When choosing an attorney, all the data needed is displayed, including phone contact, e-mail address, contact on law firm etc.

Anyone can contact an attorney on the list and ask him or her for legal assistance.

Lawyers specializing in environmental law often work with environmental NGOs. Thus, environmental NGOs can provide people with contacts of environmental lawyers.

There are only several lawyers in Slovakia dealing with environmental public interest law cases and their capacities are limited. There are one or two NGOs that also deal with environmental public interest law cases, but their capacities are also limited.

1.1. Existence or not of pro bono assistance
There are several non-governmental organizations in Slovakia that deal with environmental public interest law cases and can arrange and pay for legal assistance pro bono in these cases (e.g. VIA IURIS, Lesoochránske zoskupenie VLK).

There is a Pro Bono Lawyers programme run by the Pontis Foundation, that connects lawyers with NGOs that need legal assistance. Under this programme, it is also possible to provide free legal assistance in environmental cases.

In addition to the above-mentioned pro bono legal aid, free legal aid in civil, administrative and other matters (including environmental cases) is provided by the state Legal Aid Center – please see the chapter 1.7.3 below.

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.?)
The above-mentioned organizations assess cases at their own discretion, on the basis of which they decide to provide pro bono legal aid.

1.3 Who should be addressed by the applicant for pro bono assistance?
As follows from the previous answers, the applicant for pro bono assistance can address the Legal Aid Center, some NGOs or the Pro Bono Programme.

2) Expert registries or publicly available websites of bars or registries that include the contact details of experts
As mentioned above, the list of experts is published on the website of the Ministry of Justice.

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible

VIA IURIS
Lesoochránske zoskupenie VLK
Združenie Slatinka
Pristelka Zeme – CEPA
Slovenská ornitologická spoločnosť/BirdLife Slovensko
Greenpeace Slovensko

4) List of International NGOs, who are active in the Member State

Greenpeace
Friends of the Earth
ClientEarth
CEE Bankwatch Network
Justice and Environment

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 Administrative Procedure Code provides a 15-day time limit to challenge administrative decisions by an administrative appeal, which can be filed by a party to the administrative proceeding (§ 54 par. 2).

According to the Administrative Procedure Code (§ 65), a decision which is legally valid may, on its own or other initiative, be reviewed by an administrative authority superior to the administrative authority which issued the decision. This is called an “extra-appellate” review procedure. Superior administrative authority may annul or amend the decision within 3 years of its validity.

2) Time limit to deliver decision by an administrative organ
Generally, the administrative authority is obliged to deliver administrative decisions within 30 days from the beginning of the proceedings; in particularly complex cases within 60 days at the latest. If, in view of the nature of the case, it is not possible to deliver administrative decisions within that period either, the period may be extended by the appellate authority as appropriate (§ 49 par. 2 of the Administrative Procedure Code).

It is not possible to sanction the administrative authority for delivering a decision late. A person may, however, claim financial compensation for loss caused by delays of the administrative authority in administrative proceeding.

3) Is it possible to challenge the first-level administrative decision directly before court?
The appeal to a superior administrative body must be exhausted before the administrative decision can be challenged before the court. The only exception is a situation where there is no possibility of administrative appeal, because of an explicit regulation by law.

4) Is there a deadline set for the national court to deliver its judgment?
There are generally no specific deadlines for the courts to deliver their judgments. However, according to the Code of the Administrative Judicial Procedure if the administrative court has granted a suspensive effect to the administrative action, it is obliged to decide on it within six months from the granting of the suspensive effect (§ 187).

A judgment must be drawn up and sent to the parties within 30 days of the date of its delivery, unless the president of the court decides otherwise for serious reasons. This period may be extended by the president of the court for serious reasons, but for a maximum of two months.

5) Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)

Time limits in administrative proceedings:
The administrative appeal must be filed within 15 days of the date of notification of the administrative decision of the public authority.

The request for renewal of the administrative proceedings must be submitted within 3 months from the day when the participant learned of the reasons for the renewal, but no later than within 3 years from the validity of the administrative decision. Within the same period, the administrative authority may order a renewal of the administrative proceeding on its own motion.

Three years after the decision has become valid, a request for renewal of the proceedings may be filed or renewal may be ordered only if the decision has been obtained through a criminal offence.

Time limits in judicial proceedings:
According to the Code of the Administrative Judicial Procedure, a natural or legal person must bring an administrative action against an administrative decision or measure within 2 months of the notification (delivery) of the decision of the public authority or the measure of the public authority. The “interested public” must bring an administrative action within two months of the validity of the decision of the public authority or the date a measure was issued by the public authority.

The cassation complaint against the first-instance decision of the regional administrative court must be filed within 1 month from the delivery of the decision of the regional court.

An action for renewal of administrative court proceedings must be brought within 3 months of the date on which the person bringing the action for renewal became aware of the reason for the renewal.

In civil court proceedings, an appeal on the points of law against the decision of an appellate court can be lodged within 2 months of the delivery of the decision of the appellate court.

In civil court proceedings, a person must file an action within the specified time limits from the origin of the legal claim, otherwise the action may be dismissed on the grounds of limitation.

According to the Civil Code, personality rights and right to privacy cannot be time-barred. Property rights cannot be time-barred and therefore an action can be brought at any time to protect them against unlawful denial or infringement. The right to compensation expires after two years from the day when the injured party became aware of the damage and of the person who is to be liable. The right to compensation is time-barred no later than 3 years (or 10 years if the damage was caused intentionally) after its occurrence. A constitutional complaint must be filed with the Constitutional Court within two months of the validity of the challenged decision.

1.7.2. Interim and precautionary measures, enforcement of judgments

1) When does the appeal challenging an administrative decision have suspensive effect?
An appeal against an administrative decision has suspensive effect. However, the public authority may exclude the suspensive effect of the appeal.

According to the Administrative Procedure Code, if the public interest urgently requests or if irreparable damage may occur to one of the parties to the proceedings if the decision is not implemented immediately, the public authority may exclude the suspending effect of the appeal.

An application for review of a decision in an extra-appellate procedure has no suspensive effect.

2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?
In addition to the automatic suspensive effect of the administrative appeal, the administrative authority may, at the request of a party to the proceedings or ex officio, order preliminary injunctive relief (interim measure). According to § 43 Administrative Procedure Code, the administrative authority may, before the end of the proceedings, order the parties to the proceedings to do something, to refrain from something or to tolerate something in order to ensure the purpose of the proceeding.

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 for a party to submit a request for preliminary injunctive relief during the proceedings - until the end of the proceedings. There is no deadline for such a request.

4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?
As the appeal has suspensive effect, the administrative decision cannot be executed until the appeal body has decided on the appeal. It can only be executed if the suspensive effect of the appeal has been excluded.

5) Is the administrative decision suspended once challenged before court at the judicial phase?
The filing of an action against a decision of an administrative authority has no suspensive effect. Once the decision has been approved by the superior (appellate) administrative authority, it can be executed regardless of the action brought against it. However, the court may grant suspensory effect to the action and then execution of the administrative decision is not possible.

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?
The court may, on the application of the plaintiff, grant the suspensive effect to the action – i.e. order suspension of validity of the challenged administrative decision (§ 185 of the Code of the Administrative Judicial Procedure). The court cannot order suspension of validity of the challenged administrative decision on its own motion. The court may grant the suspensive effect to the action under the following conditions:
if there is a threat of serious harm, considerable economic loss or financial loss, serious environmental damage or other serious irreparable consequence due to immediate execution or other legal consequences of the challenged decision of the public authority or measure of the public authority, and granting the suspensive effect is not in conflict with the public interest, if the challenged decision of the public authority or measure of the public authority is based on the legally binding act of the European Union, about the validity of which there are serious doubts, and there would otherwise be a threat of serious and irreparable harm to the plaintiff, and granting the suspensive effect is not in conflict with the interest of the European Union. The court must decide on the plaintiff's application to grant suspensive effect within 30 days of receiving the defendant's statement on this application. If the administrative court does not uphold the plaintiff's application to grant the suspensive effect, it must dismiss it by a resolution. A cassation complaint is not admissible against the court resolution concerning the suspensive effect of the action.

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.

Generally, no fees are connected with the participation in administrative procedures in environmental matters. But there are fees for extraordinary remedies. There is a fee for an application for renewal of administrative proceedings or for a motion to review a decision in the “extra-appellate” proceedings (a natural person: EUR 16.50, a legal person or a natural person entitled to conduct business: EUR 165.50). This fee will be reimbursed if the renewal of proceedings is granted or if the initiative to review the decision in the “extra-appellate” proceedings has been fully successful.

Court fees are regulated by Act No. 71/1992 on court fees. The plaintiff’s action in court is linked to the following fees:

- the fee for initiating legal proceedings
- the fee for an appeal or cassation complaint
- the fee for an application for suspensory effect or for injunction relief

The court fees for administrative lawsuits are based on a flat rate regardless of the value of the case. The court fee for filing an administrative action against a decision or a measure of a public administration body is EUR 70. The court fee for submitting a cassation complaint is EUR 140. The court fee for filing an administrative action against a general binding regulation of a municipality (e.g. land use plan) is EUR 70. The court fee for submitting a cassation complaint is 100 EUR.

The court fee for filing a civil action to protect one’s property rights against emissions is EUR 99.50. The court fee for filing a civil action concerning claim to damages (connected to environmental pollution or devastation) is 6% from the sum that is being claimed, which is a minimum of EUR 16.5 and a maximum of EUR 16,596.50. The court fee for filing an appeal is the same.

The court fee for filing an “appeal on the points of law” is twice the fee of a legal action.

The court fee will be refunded if the court proceedings have been discontinued, if the administrative action, cassation complaint or action for renewal of the court proceedings has been dismissed or withdrawn before the case is heard.

Generally, there is no court fee for filing a constitutional complaint with the Constitutional Court. However, in legally and factually similar cases previously decided by the Constitutional Court in which the complainant, who had submitted the constitutional complaint, was not successful, the Constitutional Court orders the complainant to pay court fee of EUR 30 for the eleventh and each subsequent complaint filed by the same complainant in the same year.

If in, the proceedings before the administrative court, a party proposes the taking of evidence to which the costs relate, the administrative court may oblige him to pay a deposit. If the party to the proceedings does not pay a deposit within the time limit set by the administrative court, the administrative court will not execute the proposed evidence.

Attorneys' fees can vary significantly. There is usually an hourly fee agreed with the client, which can range from EUR 50 to 300. However, there are other options for setting a fee - a fee for full representation or a fee calculated on the basis of a lawyers' tariff (a fixed fee for each legal service provided).

Experts' fees may vary and the amount may be determined as a tariff fee (a fixed fee for each service, an hourly rate, or a percentage depending on the subject matter of the expert’s services) or a contract fee.

2) Cost of Injunctive relief/interim measure, is a deposit necessary?

The court fee for application for injunctive relief or interim measure in civil matters is EUR 33. There is no fee for an application for granting the suspensive effect of the administrative action and no deposit to cover any compensation is required.

3) Is there legal aid available for natural persons?

Free legal aid to natural persons in civil, administrative and other matters (including environmental cases) is provided by the Legal Aid Center. The Legal Aid Center is an organization established by the Ministry of Justice. The Legal Aid Center provides free legal assistance to natural persons, subject to certain conditions, for example in civil and administrative matters (including environmental matters, administrative court proceedings and proceedings before the Constitutional Court). The Legal Aid Center does not provide legal assistance in criminal matters.

If a person meets the conditions for the provision of legal aid, the Legal Aid Center will issue a decision on the granting of legal aid and determine its form. Legal aid can take the form of:

- legal advice,
- representation before a court by an attorney or a lawyer of the Legal Aid Center.

Free legal aid is only available to natural persons in material need or to persons whose income does not exceed 1.4 times the subsistence level (i.e. a standard of living or wage that provides only the bare necessities of life) and therefore cannot afford legal aid.

If a person’s income is higher than 1.4 times the subsistence level but does not exceed 1.6 times the subsistence level, the person is obliged to pay only 20% of the costs of legal aid and legal aid will be provided by the Legal Aid Center. Environmental NGOs are not entitled to legal aid provided by the Legal Aid Center.

All information about the Legal Aid Center including contact information can be found here. The application for legal assistance is available here.

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?

Associations, legal persons and NGOs are not entitled to legal aid provided by the Legal Aid Center.

5) Are there other financial mechanisms available to provide financial assistance?
There are several non-governmental organizations in Slovakia that deal with environmental public interest law cases and can arrange and pay legal assistance pro bono in these cases (e.g. VIA IURIS, Pro Bono Lawyers programme run by the Pontis Foundation, that connects lawyers with NGOs that need legal assistance. Under this programme, it is also possible to free provide legal assistance in environmental cases.

As mentioned above, free legal aid to natural persons in civil, administrative and other matters (including environmental cases) is provided by the state Legal Center.

6) Does the “loser party pays” principle apply? How is it applied by courts, are there exceptions?

The general rule that the “loser party pays” applies. The losing party is therefore normally obliged to pay for the cost of the successful party as well as the cost of expert opinions and other costs of the procedure.

In the civil court proceedings, if a party succeeds on some and fails on other claims, the court will order that the costs be shared or that neither party is entitled to the costs. Exceptionally, the court in the civil court proceedings will not award costs to the successful (winning) party in the proceedings if there are “grounds for special consideration”. According to the finding of the Constitutional Court I. US 168/2018 the court should apply this rule only in exceptional cases. If the court chooses to do so, neither party (successful or unsuccessful) can be ordered to pay the costs. Why the court considered the case worthy of special consideration must be sufficiently substantiated.

In proceedings within the administrative judiciary, the administrative court will award the plaintiff the right to full or partial reimbursement of the costs if the plaintiff has been successful in whole or in part. But the administrative court may also decide not to reimburse all or part of the costs if there are “grounds for special consideration”. The administrative court will grant the defendant the right to reimbursement of the costs of the administrative court proceedings against the plaintiff according to the proportion of his success only if it can be “reasonably demanded”. However, the Code of the Administrative Judicial Procedure explicitly stipulates that the reimbursement of legal representation costs may be granted to a public authority only “exceptionally” (as they should have their own employees – lawyers, who can represent them in the dispute).

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?

The Act on Court Fees stipulates that certain court proceedings and certain persons in the position of plaintiffs are exempt from the court fee (the fee for bringing the action).

The court proceedings on an action against inaction of a public administration body are, inter alia, exempt from the court fee.

Foundations and charities, humanitarian organizations, environmental organizations and associations active in consumer protection, as well as municipalities and regions in proceedings in the public and social interest, are exempt from the court fee.

Municipalities in court proceedings in matters of public interest and socially beneficial interest are also exempt from the court fee.

The administrative court will, on application, grant an exemption from the court fee if the circumstances of the party to the proceedings so require.

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?

All laws and regulations are freely available here.

A summary about the rules and possibilities of access to justice in environmental matters can be found here and here.

2) During different environmental procedures how is this information provided? From whom should the applicant request information?

In many situations, the law requires the administrative authority to inform the public or the parties to the proceedings about facts relevant to access to justice – i.e. the initiation of the proceedings, taking of the evidence, the right to access to the files, the course or termination of the proceedings. Every administrative decision must contain instructions as to whether the decision is final or can be appealed and whether the decision can be reviewed by a court. The public may also request information relevant to access to justice from administrative authorities under the Access to Information Act (Act No. 211/2000 Coll.).

The administrative court will, on application, grant an exemption from the court fee if the circumstances of the party to the proceedings so require.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?

Information about EIA procedures and all documents related to projects, plans and programmes are available online here.

Information about IPPC procedures are available online here.

4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment?

Each administrative decision must contain instructions as to whether the decision is final or whether it can be appealed, within what period, to which authority and where an appeal can be lodged. The instruction also contains an indication of whether the decision can be reviewed by a court.

The decision of the court must contain instructions on the admissibility of the cassation complaint, on the time limit for filing a cassation complaint, on the requisites of the cassation complaint, on the mandatory representation of lawyers in the cassation proceedings or on the inadmissibility of a remedy.

5) Is translation, interpretation provided to foreign participants? What are the rules applicable?

According to the Constitution, anyone who declares that he does not have a command of the language in which the proceedings before public authorities are conducted has the right to an interpreter (Article 47 par. 2 and 4).

The general rule for the administrative procedure is that all documents and hearings are in Slovak. Documents in languages other than Slovak have to be submitted in the original and parties have to submit officially certified translation as well.

According to the Code of the Administrative Judicial Procedure, everyone has the right to act before an administrative court in his or her mother tongue or in a language he or she understands. Taking into account the nature and circumstances of the case, the administrative court will provide an interpreter (§ 54 par. 1). The costs of the party acting in his mother tongue or in a language which he understands will be borne by the state (§ 54 par. 2).
The party to the proceedings may file an administrative appeal against the screening decision (against both decisions to initiate obligatory EIA assessment as well as to not initiate it), which is decided by the superior administrative body.

The public concerned, which has participated in the screening procedure and has exhausted an administrative appeal against the screening decision, may bring an administrative action within the administrative judiciary against the valid decision in the screening procedure.

2) Rules on standing relating to scoping (conditions, timeframe, public concerned)

According to the Administrative Procedure Code, the law does not apply to the scoping procedure and thus there is no administrative proceeding for the scoping. Therefore, the scoping decision cannot be appealed or reviewed by courts independently (directly). The scoping will be subject to administrative or judicial review only together with the EIA final statement. The EIA final statement can be appealed or reviewed by courts independently.

3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?

As mentioned above, the public concerned may file an administrative appeal against the screening decision, which is decided by the superior administrative body. Subsequently, the public concerned may bring an action in administrative court against the valid decision in the screening procedure.

By participating in the EIA procedure (screening procedure or obligatory EIA assessment procedure), the public becomes the "public concerned" and thus becomes a party to all subsequent administrative proceedings on project authorization (i.e. permit proceeding under the Building Act, IPPC Act, Atomic Act, Mining Act, Act on Forests, Nature Conservation Act etc.).

The administrative appeal must be filed within 15 days of the date of notification of the administrative decision of the public authority (screening decision, EIA final statement, project permit).

Parties to the administrative proceedings or the "interested public" (which includes the public concerned) must bring an administrative action in court within two months of the validity of the administrative decision of the public authority.

As mentioned above, the scoping decision cannot be appealed or reviewed by courts independently (directly). The scoping will be subject to administrative or judicial review only together with the EIA final statement.

4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO?

As mentioned above, the parties to the administrative proceedings or the "interested public" (which includes the public concerned) may bring an administrative action in court against the final project authorization (project permit, development consent) within two months of the validity of the administrative decision of the public authority.

Parties to the administrative proceedings or the "interested public" may include an individual, an NGO, or a foreign NGO.

There is no special provision concerning the possibility of the foreign NGOs to participate in the environmental administrative procedures. Foreign NGOs should be able to take part in these administrative procedures when meeting the same requirements as the Slovak ones.

Judgment of the Supreme Court No. 3 Sžp 18/2012, of 12 March 2013:

In judgment No. 3 Sžp 18/2012, the Supreme Court upheld the judgment of the Regional Court in Banská Bystrica No. 23 S/113/2011, by which the Regional Court upheld the legal action of the civic association, which challenged the administrative decision not to grant the status of a party to the proceedings on the determination of the mining area (pursuant to the Mining Act) to this association. The dispute concerned whether the administrative proceeding for determining the mining area was subject to Art. 6 and Art. 9 of the Aarhus Convention, whether the decision on determination of the mining area is "development consent" or "project permit" within the meaning of Art. 6 of the Aarhus Convention and whether the civic association should also be a party to the proceedings for the determination of the mining area, or only a party to the subsequent proceedings to permit mining activities. The civic association argued that the decision on determination of the mining area was also a decision to permit activities within the meaning of Art. 6 and Art. 9 of the Aarhus Convention and must therefore also be a party to this administrative proceeding.

The Supreme Court justified its decision with reference to Art. 6 par. 4 and Art. 9 par. 3 of the Aarhus Convention, stating: "It is necessary to allow public participation within the meaning of Art. 6 par. 4 of the Aarhus Convention, even at a stage in the proceedings where all possibilities are open and the final outcome of the proceedings can be influenced. The determination of the mining area represents the first phase in the permitting of mining activities ... access to the proceedings only in connection with the subsequent possible decision on the mining activity would be in conflict with Art. 6 par. 4 of the Aarhus Convention. In its judgment in Case C-240/09 of 08 March 2011, the Court of Justice of the European Union set out the procedure for interpreting procedural law relating to an appeal or an action before a court in order to comply with Article 9 par. 3 of the Convention in question. There is no reason to exclude the decision on the determination of the mining area from the scope of environmental proceedings. The decision on the determination of the mining area becomes a party to the administrative proceedings.

5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?

The courts must review both the substantive and procedural legality of the EIA screening decision, EIA final statement or the development consent (project permit).

If, in the administrative procedure, a procedural rule was infringed to such an extent that it could affect the legality of the final decision, the court must annul such decision.

Examination and verification of scientific accuracy in court proceedings is limited. According to the Code of the Administrative Judicial Procedure the courts do not review decisions of public authorities, the issuance of which depends solely on an assessment of the state of health of persons or the technical state of affairs. In the case of a decision issued by a public authority on the basis of an administrative discretion permitted by law, the administrative court will only examine whether such a decision has deviated from the limits and aspects established by law. The administrative Court does not assess the effectiveness, economy and appropriateness of a decision of a public authority (with the exception of the review of administrative sanctions).

But the court can review expert and technical findings to the extent that there is no conflict between these findings and the conclusions and reasoning of the administrative authorities.

There are no judicial procedures concerning environmental matters which the courts could start on their own motion. The courts can act solely on the basis of a motion, never on their own initiative.

6) At what stage are decisions, acts or omissions challengeable?

The public can challenge before the court the valid screening decision, valid final EIA statement as well as valid development consent (project permit), e.g. the land use permit, building permit, IPPC permit, mining permit etc.

A party to the proceedings or the "interested public" (see above) may bring an action before the court if a public authority is inactive in an administrative proceeding concerning environmental matters. An action may be filed if a complaint of inaction under a special regulation or a complaint to the public prosecutor's office has been unsuccessfully exhausted. The defendant is a public authority which is obliged to issue a decision or measure, to perform an act or to initiate administrative proceedings ex officio.

7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
An administrative appeal to a superior administrative authority must be exhausted before a decision can be challenged in court. The only exception is when an administrative appeal is not possible due to explicit regulation.

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?
Active participation in the EIA consultation phase of the procedure (comments, participation in the hearing) does not constitute a precondition for the right to appeal or a precondition for bringing an action in court - if a person may be directly affected by an administrative decision, he/she becomes a party to the administrative proceedings and the plaintiff without participating in the EIA consultation phase. However, by participating in the EIA consultation phase, any person (e.g. natural person, NGO) can become “public concerned” and thus also a party to the proceedings under the EIA Act or a party to subsequent permit proceedings and can subsequently bring an action against administrative decisions in court. This means that by participating in the consultation phase, persons who would not otherwise be parties to the proceedings and plaintiffs also become parties to the administrative proceedings and subsequently plaintiffs.

9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
According to the Administrative Procedure Code, all parties have the same procedural rights and obligations in the proceedings. According to the Code of the Administrative Judicial Procedure, the parties have equal status in proceedings before the administrative court.

10) How is the notion of "timely" implemented by the national legislation?
According to the Administrative Procedure Code, the administrative authorities are obliged to deal with each case responsibly, to handle it in a timely manner and without undue delay, and to use the most appropriate means that lead to the correct handling of the case.

The Administrative Procedure Code sets deadlines for issuing an administrative decision (see above). The administrative court may grant suspensive effect to the action so that the execution of the challenged decision does not render the judicial review of the decision useless.

If the administrative court has granted the administrative action a suspensive effect (pursuant to § 185 letter a)), it is obliged to decide on the administrative action within six months from the date on which the resolution on granting suspensory effect was issued (§ 187 par. 1 of the Code of the Administrative Judicial Procedure).

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?
The general rules concerning the possibility for a court to grant the suspensive effect to an action against an administrative decision apply here (see above).

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
The public (including NGOs) may, under certain conditions, have the status of a party to proceedings under the IPPC Act. First-instance permit decision issued pursuant to the IPPC Act may be appealed. The final valid IPPC permit decision can be challenged before the administrative court.

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?
As mentioned above, in addition to the parties to the proceedings pursuant to the Administrative Procedure Code (i.e. persons whose rights may be directly affected or who claim that their rights may be directly affected), the party to the IPPC permit proceedings is also the municipality in which the permitted operation is located or is to be located, and the public concerned.

The public concerned is a person or several persons, their associations or groups who are or may be affected by the procedure for issuing a permit for a new establishment or by the procedure for issuing a permit for a substantial change in the activity of the establishment or by acting in the process of reviewing and updating permit conditions, or which has or may have an interest in such proceedings.

The public concerned is also a legal person (including NGO) supporting the protection of the environment that was established at least two years before applying as a party to the proceedings.

The law explicitly stipulates that this organization is considered to be a person whose right to a favourable environment may be affected by the administrative decision on permit.

The public concerned will become a party to the proceedings on the day of delivery of the written application to the Slovak Environmental Inspectorate submitted after the publication of the application for a project permit.

As mentioned above, by submitting a reasoned written opinion during one of the stages of the EIA procedure (project proposal, scoping phase, evaluation report) or by lodging an appeal against a decision in a screening procedure or against final EIA statement, the public (which means “anyone" - any natural or legal person including NGO) expresses its interest in the project and thus becomes a “public concerned" that has a status of a party in the subsequent administrative proceedings on project authorization regulated by the IPPC Act (and by other laws as well – the Building Act, the Atomic Act, the Mining Act, the Act on Forests, the Nature Conservation Act etc.).

A final and valid IPPC permit decision can be challenged before the administrative court, as mentioned above.

There are no special rules for foreign NGOs.

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)
According to the IPPC Act any substantial change of the activity requires permission. If the Slovak Environmental Inspectorate, on the basis of the operator’s notification or on the basis of the performed inspection, finds that the change is substantial, the proceeding for issuing a permit for change of activity will begin.

As mentioned above, the party to the proceeding concerning the change of activity is also the public concerned.

The public concerned in the proceeding relating to a change of activity is a person, their associations or groups who are or may be affected by the proceeding for issuing a permit for a substantial change in the activity, or which has or may have an interest in such proceedings.

The public concerned is also a legal person (including NGO) supporting the protection of the environment that was established at least two years before applying as a party to the proceedings.

The public concerned will become a party to the proceedings on the day of delivery of the written application to the Slovak Environmental Inspectorate submitted after the publication of the application for a project permit.

Following an appeal against a decision of first instance and a decision of a superior authority on an appeal, the public concerned may bring an action against administrative decisions in court. This means that by participating in the consultation phase, persons who would not otherwise be parties to the proceedings and plaintiffs also become parties to the administrative proceedings and subsequently plaintiffs.

4) Rules on standing relating to scoping (conditions, timeframe, public concerned)
There is no “scoping stage" in the IPPC procedure.

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?
The public can challenge a valid IPPC permit decision before a court after an administrative appeal has been filed and after the superior authority has decided on the appeal.
6) Can the public challenge the final authorisation?
The public can challenge the final and valid IPPC permit decision (see above).

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 courts must review both the substantive and procedural legality of the IPPC permit decision. If, in the administrative procedure, a procedural rule was infringed to such an extent that it could affect the legality of the final decision, the court must annul a permit decision.

Examination and verification of scientific accuracy in court proceedings is limited. According to the Code of the Administrative Judicial Procedure the courts do not review decisions of public authorities, the issuance of which depends solely on an assessment of the state of health of persons or the technical state of affairs. In the case of a decision issued by a public authority on the basis of an administrative discretion permitted by law, the administrative court will only examine whether such a decision has deviated from the limits and aspects established by law. The administrative Court does not assess the effectiveness, economy and appropriateness of a decision of a public authority (with the exception of the review of administrative sanctions).

But the court can review expert and technical findings to the extent if there is not a conflict between these findings and the conclusions and reasoning of the administrative authorities. There are no judicial procedures concerning environmental matters which the courts could start on their own motion. The courts can act solely on the basis of motion, never on their own initiative.

8) At what stage are these challengeable?
The public can challenge the final valid IPPC permit before the court. A party to the proceedings (or the “interested public” - see above) may bring an action before the court if a public authority is inactive in an administrative proceeding concerning environmental matters. An action may be filed if a complaint of inaction under a special regulation or a complaint to the public prosecutor's office has been unsuccessfully exhausted. The defendant is a public authority which is obliged to issue a decision or measure, to perform an act or to initiate administrative proceedings ex officio.

9) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
An administrative appeal to a superior administrative authority must be exhausted before a decision can be challenged before in court. The only exception is when an administrative appeal is not possible due to explicit regulation.

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?
Active participation in the public consultation phase of the administrative procedure (comments, participation in the hearing) does not constitute a precondition for the right to appeal or a precondition for bringing an action in court - if a person may be directly affected by an IPPC permit decision, he/she becomes a party to the administrative proceeding and may bring an action before the court without participating in the consultation phase.

However, as mentioned above, the public concerned (including environmental NGOs) will become a party to the proceedings on the day of delivery of the written application to the Slovak Environmental Inspectorate submitted after the publication of the application for a project permit.

Moreover, by submitting a reasoned written opinion during one of the stages of the EIA procedure (project proposal, scoping phase, evaluation report) or by lodging an appeal against a decision in a screening procedure or against final EIA statement, the public (which means “anyone” - any natural or legal person including NGO) expresses its interest in the project and thus becomes a “public concerned” that has a status of a party in the subsequent administrative proceedings on project authorization regulated by the IPPC Act.

A final and valid IPPC permit decision can be challenged before the administrative court, as mentioned above.

11) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
According to the Administrative Procedure Code, all parties have the same procedural rights and obligations in the proceedings. According to the Code of the Administrative Judicial Procedure, the parties have equal status in proceedings before the administrative court.

12) How is the notion of “timely” implemented by the national legislation?
According to the Administrative Procedure Code, the administrative authorities are obliged to deal with each case responsibly, to handle it in a timely manner and without undue delay, and to use the most appropriate means that lead to the correct handling of the case.

The Administrative Procedure Code sets deadlines for issuing an administrative decision (see above).

The administrative court may grant suspensive effect to the action so that the execution of the challenged decision does not render the judicial review of the decision useless.

If the administrative court has granted the administrative action a suspensive effect (pursuant to § 185 letter a)), it is obliged to decide on the administrative action within six months from the date on which the resolution on granting suspensory effect was issued (§ 187 par. 1 of the Code of the Administrative Judicial Procedure).

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?
According to the IPPC Act, as a precautionary measure, the Slovak Environmental Inspectorate may, to the extent strictly necessary, require the operator to restrict or suspend the operation of the activity which has a significant negative impact on the environment or any of its components until the end of the proceedings.

The general rules concerning the possibility for a court to grant the suspensive effect to an action against an administrative decision apply here (see above). The Court of Justice of the EU stated in its judgment C416/10 (Križan) concerning the permit under the IPPC Act issued in Slovakia: ‘...exercise of the right to bring an action provided for by Article 15a of Directive 96/61 would not make possible effective prevention of that pollution if it were impossible to prevent an installation which may have benefited from a permit awarded in infringement of that directive from continuing to function pending a definitive decision on the lawfulness of that permit. It follows that the guarantee of effectiveness of the right to bring an action provided for in that Article 15a requires that the members of the public concerned should have the right to ask the court or competent independent and impartial body to order interim measures such as to prevent that pollution, including, where necessary, by the temporary suspension of the disputed permit. In the light of the foregoing, the answer to the fourth question is that Article 15a of Directive 96/61 must be interpreted as meaning that members of the public concerned must be able, in the context of the action provided for by that provision, to ask the court or competent independent and impartial body established by law to order interim measures such as temporarily to suspend the application of a permit, within the meaning of Article 4 of that directive, pending the final decision.’

14) Is information on access to justice provided to the public in a structured and accessible manner?
All laws and regulations are freely available [here].

As mentioned above, a summary about the possibilities of access to justice in environmental matters can be found [here]. 1.8.3. Environmental liability[1]
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?

According to § 25 of the Environmental Liability Act, a party to the proceedings for the imposition of preventive measures or remedial measures is, in addition to the operator of the activity, also the owner, manager or lessee of a property which is affected by environmental damage or on which preventive or remedial measures will be taken and implemented, a natural person or legal person whose rights or obligations may be directly affected by the environmental damage, a non-governmental organization (civic association or other organization) whose goal according to the statutes valid for at least one year is environmental protection, which has notified that an environmental damage has occurred and subsequently notified in writing its interest in taking part in the proceedings (within 7 days of receipt of the notice of initiation of the proceedings).

The right to be a party to administrative proceedings guarantees the right to bring a case before a court.

2) In what deadline does one need to introduce appeals?

An administrative appeal may be filed within 15 days from delivery of the decision and an action in court within 2 months from the date of delivery of the decision on the appeal.

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?

According to § 26 of the Environmental Liability Act, the owner, manager or lessee of a property that is or may be affected by environmental damage, a legal person or a natural person whose rights or obligations may be directly affected by environmental damage, or an environmental non-governmental organization (whose goal according to the statutes valid for at least one year is environmental protection) is entitled to notify the competent authority of the facts indicating that environmental damage has occurred.

The notification must be made in writing and must include in particular:
- the name of the operator whose activity caused the environmental damage, if known to the notifier,
- the place where the environmental damage occurred,
- a description of the findings,
- evidence confirming the content of the notification.

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 competent authority must examine the notification, request further information from the notifier, if necessary, request opinions from other authorities and request the operator to comment on the notification.

If, on examination of the notification, it is established that no environmental damage has occurred, the competent authority will “set aside” the notification and notify the notifier, accordingly, stating the reasons.

If, on examination of the notification, it is established that environmental damage has occurred, the competent authority will proceed with the procedure, notifying the notifier in writing of its reasons.

The decision must be delivered to the party to the proceedings (including the entitled environmental NGO) in accordance with the provisions of the Administrative Procedure Code.

There is no time limit set directly regarding to the notification of the decision by the competent authority to the entitled natural or legal persons (including the entitled environmental NGOs). The general deadlines for issuing the decision set out in the Administrative Procedure Code (30 days, with the option to extend it up to 60 days) apply.

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?

No extension of the entitlement to request action by competent authority is applied in cases of imminent threat.

7) Which are the competent authorities designated by the MS?

The competent authority is the district office (environmental department) or the Slovak Environmental Inspectorate.

The Slovak Environmental Inspectorate is the competent authority if the environmental damage or the imminent threat of environmental damage occurred in the operations subject to the IPPC Act.

The Slovak Environmental Inspectorate also imposes fines for breach of legal obligations.

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?

Before bringing an action in court, an administrative appeal against the decision must be exhausted.

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?

According to the EIA Act, the subject of transboundary impact assessments are strategic documents proposed on the territory of the Slovak Republic, which may have a significant impact on the environment beyond state borders, activities (projects) proposed in the territory of the Slovak Republic listed in Annex no. 13 and the proposed activities (projects) listed in Annex no. 8 of the EIA Act, including their changes, which may have a significant impact on the environment beyond national borders, strategic documents and proposed actions referred to in points (a) and (b), if requested by the Party concerned, strategic documents and proposed activities carried out on the territory of another state, which may have a significant impact on the environment of the Slovak Republic.

Another strategic documents and proposed action which may have a significant adverse transboundary impact if agreed between the Party of origin and the Party concerned.

The public of the affected foreign country (including foreign natural persons or foreign NGOs) can also become the “public concerned” under the EIA Act.

By participating in the EIA procedure by submitting a reasoned written opinion the public of the affected foreign country can become the “public concerned” and thus becomes a party to the EIA proceedings and a party to all subsequent administrative proceedings on project authorization (i.e. permit proceeding under the Building Act, IPPC Act, Atomic Act, Mining Act, Act on Forests, Nature Conservation Act etc.).

The party to the proceedings may file an administrative appeal against the decision within 15 days from the date of notification of the administrative decision (screening decision, EIA final statement, project permit).
Parties to the administrative proceedings may bring an administrative action in court against the valid administrative decision.

In addition, the "interested public" that participated in administrative proceedings in environmental matters (e.g. foreign environmental NGO that participated in transboundary impact assessment proceeding) is entitled to bring an administrative action in court also against a measure of a public administration body or general binding regulation of a municipality, if it claims that the public interest in the field of the environment has been violated.

The "interested public" is a person (natural person, legal entity, local civic association, or environmental non-governmental organization including foreign environmental NGO) who has the "right to participate in administrative proceedings" concerning environmental matters under specific environmental laws (e.g. in transboundary impact assessment proceeding).

It follows that if strategic documents that are the subject of transboundary impact assessments take the form of a measure of a public administration body or a generally binding regulation of a municipality, they may be challenged in court by the public of the affected foreign country (including foreign natural persons or foreign NGOs).

2) Notion of public concerned?
There is no specific notion of the public concerned in the transboundary context.

But the term a "public of the affected country" is included in the EIA Act (see below).

The "public of the affected country" can become the "public concerned" under the EIA Act.

In the transboundary context, the concept of "affected country" also applies to transboundary EIA procedures.

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)?
There is no special and explicit provision regulating the possibility of the foreign NGOs to participate in the environmental administrative procedures.

But foreign NGOs can become the "public concerned" and "interested public" and may bring an administrative action in court against the valid administrative decision, against a measure of a public administration body or general binding regulation of a municipality.

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)?
There are no special rules for individuals of the affected country. Individuals of the affected country must meet the same requirements as the Slovak ones to participate in administrative procedures. Individuals of the affected country can become the "public concerned" under the conditions laid down by the EIA Act and subsequently parties to the administrative proceedings (see above).

5) At what stage is the information provided to the public concerned (including the above parties)?
Most information on projects and procedural rights is provided when notifying the initiation of a procedure.

Information about EIA procedures and all documents related to projects, plans and programmes is available online here.

Information about IPPC procedures is available online here.

Transboundary impact assessment of proposed activities (projects):
According to the EIA Act, the Ministry of the Environment must notify the "affected country" without undue delay of information on a proposed activity that is subject to transboundary assessment or an activity that may have a significant transboundary environmental impact. The information on the proposed activity must include, in particular, basic information on the proposed activity, including available data on the expected transboundary environmental impact, information on the type of permit and the time limit for the response from the "affected country". The "affected country" must indicate whether it is interested in participating in the assessment.

If the "affected country" expresses an interest in participating in the assessment, the Ministry of the Environment must, without undue delay, send the "affected country" a project proposal and a project evaluation report.

According to the EIA Act, the Ministry of the Environment must send information on the assessment procedure, including the time limit for submitting comments, together with the name of the national authority and its address to which the public of the "affected country" and the competent authorities of the "affected country" may send comments.

According to the EIA Act, the comments of the "affected country" must be taken into account in determining the scope of the EIA assessment.

The Ministry of the Environment must send a project evaluation report to the "affected country" and ask it to express its interest in carrying out consultations.

The competent authorities must comply with the party concerned if they express an interest in the consultations.

According to the EIA Act, the final EIA statement must also include an evaluation of the comments of the "affected country", the comments of the public of the "affected country" and an evaluation of the results of the consultations.

Transboundary impact assessment of strategic documents (plans, programmes):
If the strategic document is likely to have a significant transboundary impact, or if the "affected country" so requests, the Ministry of Environment must inform the "affected country" of these effects before the strategic document is adopted.

The Ministry must inform the "affected country" of the approval process, set a reasonable time limit for the submission of comments, and ask whether the "affected country" will participate in the assessment.

If the "affected country" announces that it will take part in the assessment, the Ministry must request from the "affected country" information on the state of the environment in the territory concerned, and offer consultations to the "affected country".

The Ministry must notify the "affected country" of the place and date of the public hearing in the Slovak Republic and must allow its participation in the public hearing, including the public of the "affected country", if the "affected country" so requests.

The opinions and comments of the "affected country" and the public of the "affected country" and conclusions of the consultations will be taken into account by the Ministry in the preparation of the final statement from the assessment of the strategic document. The Ministry must send the final statement on the assessment of the strategic document to the "affected country" within 14 days of the date it was issued. The Ministry must send one copy of the approved strategic document to the "affected country".

6) What are the timeframes for public involvement including access to justice?
As mentioned above, the Ministry of the Environment will set a reasonable time limit for submitting comments, and must inform the "affected country" about the time limit together with the name of the national authority to which the public of the "affected country" and the competent authorities of the "affected country" may send comments.

Individuals and NGOs of the affected country must meet the same requirements as the Slovak ones to participate in administrative proceedings (see above).

Individuals and NGOs of the affected country can become the "public concerned" under the conditions laid down by the EIA Act and subsequently can become parties to the administrative proceedings.

Individuals and NGOs of the "affected country" can challenge the decisions with transboundary effects as follows:
Individuals and NGOs of the affected country which are the parties to the administrative proceedings may appeal against the administrative decision. The administrative appeal must be filed within 15 days of the date of notification of the administrative decision of the public authority. The appeal to a superior administrative body must be exhausted before the administrative decision can be challenged before the court.

Individuals and NGOs of the affected country which are the parties to the administrative proceedings must bring an administrative action against an administrative decision or measure within 2 months from the notification (delivery) of the decision of the public authority or the measure of the public authority. Individuals and NGOs of the affected country that participated in transboundary impact assessment proceeding and thus became the “interested public” are entitled to bring an administrative action in court also against a measure of a public administration body or general binding regulation of a municipality, if they claim that the public interest in the field of the environment has been violated. So if strategic documents that are the subject of transboundary impact assessments take the form of a measure of a public administration body or a generally binding regulation of a municipality, they may be challenged in court by individuals and NGOs of the affected country. The “interested public” must bring an administrative action within two months from the date a measure by the public authority was issued.

The cassation complaint against the first-instance decision of the regional administrative court must be filed within 1 month from the delivery of the decision of the first-instance administrative court (Regional Court).

A constitutional complaint must be filed with the Constitutional Court within two months of the validity of the challenged decision of the Supreme Court on the cassation complaint.

7) How is information on access to justice provided to the parties?
As mentioned above, each administrative decision must contain instructions as to whether the decision is final or whether it can be appealed, within what period, to which authority and where an appeal can be lodged. The instruction also contains an indication of whether the decision can be reviewed by a court. The decision of the court must contain instructions on the admissibility of the cassation complaint, on the time limit for filing a cassation complaint, on the requisites of the cassation complaint, on the mandatory representation of lawyers in the cassation proceedings or on the inadmissibility of a remedy.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?
According to the Constitution, anyone who declares that he does not have a command of the language in which the proceedings before public authorities are conducted has the right to an interpreter (Article 47 par. 2 and 4).

The general rule for the administrative procedure is that all documents and hearings are in Slovak. Documents in languages other than Slovak have to be submitted in the original and parties have to submit officially certified translation as well.

According to the Code of the Administrative Judicial Procedure everyone has the right to act before an administrative court in his or her mother tongue or in a language he or she understands. Taking into account the nature and circumstances of the case, the administrative court will provide an interpreter (§ 54 par. 1). The costs of the party acting in his mother tongue or in a language which he understands will be borne by the state (§ 54 par. 2).

According to the agreement between the Government of the Slovak Republic and the Government of the Republic of Austria on the implementation of the Convention on Environmental Impact Assessment in a Transboundary Context, the Slovak Republic will provide the following information in German (translation of documents must be provided by the proposer of the activity):
- basic data on the proposed activity - name of the activity, name and registered office of the proposer, purpose, character, place of performance of the activity, brief description of the technical and technological solution, expected transboundary impacts, graphic annex
- information on the type of authorization of the proposed activity
- information on the impact assessment process in the Slovak Republic
- parts of the evaluation report that are necessary to identify environmental impacts
- parts of the evaluation report, applications for authorization, assessment, final environmental impact assessment and other expert opinions necessary to identify the environmental impacts in the affected country
- minutes of the public hearing
- conclusions, opinion, measures and, for the affected country, the essential parts of the reasoning of the final EIA statement, the decision authorizing the activity and the decision of the court on the matter.

9) Any other relevant rules?

[1] See also case C-529/15.

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Access to justice falling outside of the scope of EU environmental legislation outside the scope of the EIA and IED Directives

1.1. Decisions, acts or omissions concerning specific activities falling within the scope of EU environmental legislation outside the scope of the EIA and IED Directives

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission and its content (in particular, the conditions to be fulfilled and any time-limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

Many decisions, acts or omissions concerning specific activities that fall within the scope of EU environmental law outside the scope of the EIA and IED directives may be challenged in administrative and judicial proceedings. The right to administrative review or access to judicial review is regulated by several sector-specific laws and by the Code of the Administrative Judicial Procedure.

Some laws grant the public (individuals or NGOs) the status of a “party to administrative proceedings”, some laws grant the public the status of a “participating person”, and other laws grant members of the public a different special status and other opportunities to participate in administrative proceedings.

The fundamental difference between these statuses is that the “party to the proceedings” has the right to file an administrative appeal against a decision which has the suspensive effect and, consequently, the right to bring the legal action against the administrative decision in court. Only the “party to the proceedings” has the right to initiate an administrative review. The party to the proceedings, having regard to the possibility of filing an administrative appeal, has the greatest possibility of influencing the administrative decision within the administrative proceeding.
Others (e.g. participating person) do not have the right to file an appeal against the administrative decision but can only challenge a valid administrative decision in court.

Legal standing in administrative proceedings:
The legal standing (right to be a party to the proceedings) in the administrative proceedings is generally regulated by the Administrative Procedure Code. The basic rule is that in administrative proceedings, the party to the proceedings is the person (natural or legal) whose rights or obligations of a party to the proceedings may be possibly directly affected by an administrative decision or who claims that he/she may be directly affected by the decision in his/her rights, legally protected interests or obligations, unless the contrary is proved (§ 14 par. 1 of the Administrative Procedure Code).

However, some sector-specific environmental laws regulate the standing in administrative proceedings (and define the status of a party to the administrative proceedings) in a different way from the general regulation in the Administrative Procedure Code. These laws include, for example, the Building Act, the Nature Conservation Act, Act on water, Mining Act, Atomic Act.

Act no. 50/1976 Coll. Building Act, which regulates the issuing of permits for many projects with significant impact on the environment, includes autonomous definitions of parties to the administrative proceedings for issuing the land use and building permits. According to the Building Act, natural and legal persons whose ownership or other rights to land or buildings, as well as to neighbouring land and buildings, including flats, may be directly affected by the decision are also parties to the proceedings.

Act no. 543/2002 Coll. on nature and landscape protection (Nature Conservation Act) regulates, inter alia, permitting interventions in protected parts of nature or in the conditions for the protection of protected species of animals and plants. In addition to the applicant for a permit, the party to the proceedings is also an association (NGO), whose subject of activity for at least one year is nature and landscape protection and which has submitted a preliminary and general application for participation in the proceedings, if it has confirmed its interest in being a party to the individual administrative proceedings initiated. Administrative decisions under the Nature Conservation Act are the most frequently challenged decisions in court by the public (e.g. decisions to grant an exemption for the killing of a protected animal).

Act No. 364/2004 Coll. on water: According to the Act on water, the public may have the status of a party to a special proceeding concerning interventions in surface water and groundwater if it submits a written opinion on the project documentation for the proposed activity or on the expert opinion of the state water administration body.

Act No. 541/2004 Coll. on peaceful use of nuclear energy (Atomic Act): According to the Atomic Act, a natural or legal person whose status of the party to the proceedings derives from a special law is also a party to the permit procedure - referring to the Aarhus Convention as that special law. (Members of the public can also become a party to the permit proceedings subject to the EIA procedure.)

Act No. 44/1988 Coll. on the protection and use of mineral resources (Mining Act): The party to the proceeding on determining the mining area is a natural or legal person whose ownership and other rights to land or buildings may be directly affected by the determination of the mining area, the municipality in whose territory the mining area is located (and a natural person or legal person whose status as a party to the proceedings follows from the EIA Act - members of the public can also become a party to the permit proceedings subject to the EIA procedure).

Following an appeal against a decision of a public authority of first instance and a decision of a superior body on appeal, the public mentioned above may bring an action against the decision on permit in court.

Legal standing in court proceedings:
As mentioned above, the general concept for standing in the administrative judiciary is generally based on the impairment of right theory. According to § 178/1 of the Code of the Administrative Judicial Procedure, the plaintiff who has standing in the administrative judiciary is a natural person or legal entity who claims that, as a party to an administrative proceeding, has been deprived of his rights or legally protected interests by a decision of a public administration body or a measure of a public administration body.

However, based on the effects of the Aarhus Convention and EU law, national law established a special standing for the “interested public”. The Code of the Administrative Judicial Procedure ensures the right of access to the court for “the interested public”. The term “interested public” may have a different meaning than the term “public concerned” mentioned above.

According to § 42 par. 1 of the Code of the Administrative Judicial Procedure, if the “interested public” has the right under a special regulation to “participate” in administrative proceedings in environmental matters, it is entitled to bring an action before the court against administrative decision or administrative measure, to bring an action before the court against illegal inactivity of the public authority, to bring an action before the court against a generally binding regulation (e.g. zoning plan regulating land use and building permissions).

This means that according to the Code of the Administrative Judicial Procedure the “interested public” is a person who has the “right to participate in administrative proceedings” concerning environmental matters under specific environmental laws. The “interested public” may be a natural person, legal entity, local civic association, or environmental non-governmental organization. In practice, there are also cases where both the municipality and the foreign legal entity (foreign environmental NGO) have become “interested public”. In this context, it is important how the “interested public” is defined in the sector-specific laws governing administrative proceedings in the field of the environment.

In order for a member of the public to be the “interested public” within the meaning of the Code of Judicial Administrative Procedure and to have the right to bring an action before the court, he/she must satisfy the conditions laid down. In particular, the fulfllment of the condition that a member of the public has a “right to participate in administrative proceedings pursuant to a special regulation” is essential. The “right to participate in administrative proceedings” is a broader concept than a status of a “party to the administrative proceedings”. It is a difference compared to the previous legislation, where legal standing in proceedings before the administrative court was limited exclusively to a “party to the administrative proceedings”.

The “right to participate in administrative proceedings” thus includes:
the right to be “a party to the proceedings” (e.g. § 82 of Act No. 543/2002 Coll. on nature and landscape protection, § 24 of Act No. 24/2006 Coll. on environmental impact assessment, § 9 of Act No. 39/2013 Coll. on integrated pollution prevention and control),
the right to be a “participating person”, which has a narrower scope of rights than a “party to the proceedings” and does not have a right to file an administrative appeal against the decision (Section 67 of Act No. 326/2005 Coll. on forests in conjunction with the provisions of Section 15a of the Administrative Procedure Code: the association, including non-governmental organizations, is a “participating person” in proceedings under the Act on forests, if its activities are related to the use and protection of forest property and if it announces its participation in the proceedings no later than 7 days after notification of proceedings),
the right of “other participation” (e.g. participation in approving of land use plans (zoning plans) according to § 12 to 18 of the Building Act, participation in approving of the air protection plan according to § 10 of Act No. 137/210 Coll. on air, participation in approving of the river basin management plan according to § 13 of Act No. 354/2004 Coll. on water).
According to § 178 par. 3 of the Code of the Administrative Judicial Procedure the “interested public” is entitled to bring an administrative action before a court against a decision of a public authority or a measure of a public authority if it claims that the public interest in the field of the environment has been violated.

The level of access to national courts has increased significantly thanks to the case law of the Court of Justice of the European Union and the subsequent case law of the Supreme Court. Decisions of the Court of Justice of the European Union have had a very positive effect on the interpretation of the procedural rules concerning the status of a party to administrative and judicial proceedings (rules of standing).

The Judgment of the Court of Justice of the European Union of 8 March 2011 Lesoochranárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky (Slovak brown bear case, C-240/09) is very significant, where the court ruled: “Article 9(3) of the Convention on access to information, public participation in decision-making and access to justice in environmental matters approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 does not have direct effect in European Union law. It is, however, for the referring court to interpret, to the fullest extent possible, the procedural rules relating to the conditions to be met in order to bring administrative or judicial proceedings in accordance with the objectives of Article 9(3) of that convention and the objective of effective judicial protection of the rights conferred by European Union law, in order to enable an environmental protection organisation, such as the Lesoochranárske zoskupenie, to challenge before a court a decision taken following administrative proceedings liable to be contrary to European Union environmental law.”

Based on the judgment of the Court of Justice of the EU C-240/09, judgments of the Supreme Court were issued granting environmental NGOs the status of a party to the proceedings in order to have access to the court.

Judgment of the Supreme Court No. 5 Sžp 41/2009, of 12 April 2011:

In the opinion of the Supreme Court, international legal obligations (i.e. the Aarhus Convention) “ultimately have the effect of undermining the classical concept of standing of individuals in proceedings before administrative authorities by granting the status of party to proceedings to the public or in some cases to the public concerned with environmental protection.” The Supreme Court then stated as follows: “…only such an interpretation of procedural law (…) that enables an environmental organization such as the applicant to challenge a decision taken in an administrative procedure, which may be contrary to Community law in the field of the environment, in the court (…) will take the account of the objectives of Article 9(3) of the Aarhus Convention, as well as the objective of effective judicial protection of the rights conferred by Community law.”

Judgment of the Supreme Court No. 3Szp 30/2009, of 2 June 2011: “In the light of the judgment of the Court of Justice of the European Union C-240/09 of 08.03.2011, the panel of the appellate court [the Supreme Court], by an extensive euro-conform interpretation (…) assumed that the applicant (…) had the same scope of rights as he would have had in a position of a party to the proceedings. The party to the proceedings pursuant to § 14 par. 1 of the Administrative Procedure Code is the person who is the bearer of a legal right, legally protected interest or obligation (which results from a substantive law) and such a right, legally protected interest or obligation is a matter for the administrative authority to decide. The national authority must always strive for a euro-conform interpretation of national law (interpretation in conformity with Community law). The national court may, by means of a euro-conform interpretation, fill in the gaps in national law. However, the Court of Justice of the European Union stated that Article 9 para. 3 of the Aarhus Convention has no direct effect in European Union law. It was necessary to broaden the above definition of a party to the proceeding by a broad interpretation, and the same range of rights as a party to the proceeding is required to be granted to other persons (in particular the right to bring an action designed to ensure the protection of rights) in order to ensure effective protection of the environment.” However, in addition to these positive developments, shortcomings remain regarding the delays in court proceedings before administrative courts and the insufficient use of the power of administrative courts to grant suspensory effect to an action against an administrative decision.

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?

Pursuant to Art. 9 par. 3 of the Aarhus Convention and the judgments of the Court of Justice of the EU, the courts are obliged to interpret procedural rules in such a way that the public can challenge both procedural and substantive legality of decisions, acts or omissions. This was confirmed, for example, by a judgment of the Supreme Court No. 5 Sžp 41/2009, of 12 April 2011: “…only such an interpretation of procedural law (…) that enables an environmental organization … to challenge a decision taken in an administrative procedure, which may be contrary to Community law in the field of the environment, in the court (…) will take account of the objectives of Article 9(3) of the Aarhus Convention, as well as the objective of effective judicial protection of the rights conferred by Community law.”

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

According to § 7 letter (a) of the Code of the Administrative Judicial Procedure the party to the proceedings must exhaust ordinary remedies against the challenged administrative decision (i.e. administrative appeal) before bringing an action before the court. However, the law explicitly states that the obligation to exhaust all ordinary remedies do not apply to the “interested public” if the interested public has not been entitled to an ordinary remedy (appeal).

In cases where the “interested public” does not have the status of a “party to the proceedings” according to a special regulation, but “another form” of participation in the proceedings (e.g. a “participating person”), it cannot fulfill the requirement to exhaust ordinary remedies (appeal). The requirement to exhaust the ordinary remedies (appeals) therefore does not apply to the “interested public” in this case.

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.?

It is generally acknowledged that in order for members of the public to become “interested public” and have legal standing under the Code of the Administrative Judicial Procedure, they must in some way participate in the public consultation phase of the administrative proceedings.

5) Are there some grounds/arguments precluded from the judicial review phase?

As mentioned above, the examination and verification of scientific accuracy in court proceedings within administrative judiciary is limited. According to the Code of the Administrative Judicial Procedure, the courts do not review decisions of public authorities, the issuance of which depends solely on an assessment of the state of health of persons or the technical state of affairs. In the case of a decision issued by a public authority on the basis of an administrative discretion permitted by law, the administrative court will only examine whether such a decision has deviated from the limits and aspects established by law. The administrative Court does not assess the effectiveness, economy and appropriateness of a decision of a public authority (with the exception of the review of administrative sanctions).

This means that the use of arguments relating to the assessment of a person’s state of health or technical condition, efficiency, economy and proportionality of a decision of a public authority is limited in court proceedings within the administrative judiciary. But the court can review expert and technical findings to the extent that there is no conflict between these findings and the conclusions and reasoning of the administrative authorities.

6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

According to the Administrative Procedure Code, all parties have the same procedural rights and obligations in the proceedings. According to the Code of the Administrative Judicial Procedure, the parties have equal status in proceedings before the administrative court.

7) How is the notion of “timely” implemented by the national legislation?
According to the Administrative Procedure Code, the administrative authorities are obliged to deal with each case responsibly, to handle it in a timely manner and without undue delay, and to use the most appropriate means that lead to the correct handling of the case. The Administrative Procedure Code sets deadlines for issuing an administrative decision (see above). The administrative court may grant suspensive effect to the action so that the execution of the challenged decision does not render the judicial review of the decision useless. If the administrative court has granted the administrative action a suspensive effect (pursuant to § 185 letter a)), is obliged to decide on the administrative action it within six months from the date on which the resolution on granting suspensory effect was issued (§ 187 par. 1 of the Code of the Administrative Judicial 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 concerning the possibility for a court to grant the suspensive effect to an action against an administrative decision apply here. The court may, on the application of the plaintiff, grant the suspensive effect to the action – i.e. to order suspension of validity of the challenged administrative decision (§ 185 of the Code of the Administrative Judicial Procedure). The court cannot order suspension of validity of the challenged administrative decision on its own motion. The court may grant the suspensive effect to the action under the following conditions:

- if there is a threat of serious harm, considerable economic loss or financial loss, serious environmental damage or other serious irreparable consequence due to immediate execution or other legal consequences of the challenged decision of the public authority or measure of the public authority, and granting the suspensive effect is not in conflict with the public interest,
- if the challenged decision of the public authority or measure of the public authority is based on the legally binding act of the European Union, about the validity of which there are serious doubts, and there would otherwise be a threat of serious and irreparable harm to the plaintiff, and granting the suspensive effect is not in conflict with the interest of the European Union.

The court must decide on the plaintiff's application to grant suspensive effect within 30 days of receiving the defendant's statement on this application. If the administrative court does not uphold the plaintiff's application to grant the suspensive effect, it must dismiss it by a resolution.

A cassation complaint is not admissible against the court resolution concerning the suspensive effect of the action.

**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?**

The court fees for individual kinds of actions within the administrative judiciary are based on a flat rate regardless of the value of the case (see the Act No. 71/1992 Coll. On court fees).

The court fee for filing an administrative action against a measure of a public administration body is EUR 70.

The court fee for filing an administrative action against a general binding regulation of a municipality is EUR 50.

Foundations and charities, humanitarian organizations, environmental organizations and associations active in consumer protection, as well as municipalities and regions in proceedings in the public and social interest, are exempt from the court fee.

The administrative court must, on application, grant an exemption from the court fee if the circumstances of the party to the proceedings so require.

The court fee will be refunded if the court proceedings have been discontinued; if the administrative action, cassation complaint or action for renewal of the court proceedings has been dismissed or withdrawn before the case is heard.

In proceedings within the administrative judiciary, the administrative court will award the plaintiff the right to full or partial reimbursement of the costs if the plaintiff has been successful in whole or in part. But the administrative court may also decide not to reimburse all or part of the costs if there are "grounds for special consideration". The administrative court will grant the defendant the right to reimbursement of the costs of the administrative court proceedings against the plaintiff according to the proportion of his success only if it can be "reasonably demanded". However, the Code of the Administrative Judicial Procedure explicitly stipulates that the reimbursement of legal representation costs may be granted to a public authority only "exceptionally" (as they should have their own employees – lawyers, who can represent them in the dispute).

**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?

There is no provision in Slovak legislation that explicitly gives individuals or NGOs the access to justice with regard to "concepts, plans or programmes" covered by the SEA Directive or related to the environment.

However, the Code of Administrative Judicial Procedure expressly allows the "interested public" to bring an action against a "measure taken by a public administration body" and against a "general binding regulation".

In order to be challenged in court, "concepts, plans or programmes" must either be a measure of a public administration body or be adopted in the form of a "general binding regulation of a municipality".

A person whose rights have been violated or an "interested public" may challenge in court not only a decision but also a measure of a public administration body.

According to § 178 par. 1 of the Code of the Administrative Judicial Procedure, the plaintiff who has a standing in the administrative judiciary is a natural person or legal entity who claims that, as a party to an administrative proceeding, he has been deprived of his rights or legally protected interests by a decision of a public administration body or a measure of a public administration body.

According to § 178 par. 3 and § 359 par. 2 of the Code of the Administrative Judicial Procedure, the "interested public" is entitled to bring an administrative action before a court against a decision of a public authority, a measure of a public administration body or general binding regulation of a municipality, if it claims that the public interest in the field of the environment has been violated.

According to § 42 par. 1 of the Code of the Administrative Judicial Procedure, if the "interested public" has the right under a special regulation to "participate" in administrative proceedings in environmental matters, it is entitled to bring an action before the court against administrative decision or administrative measure, to bring an action before the court against illegal inactivity of the public authority, to bring an action before the court against a general binding regulation of a municipality (e.g. zoning plan regulating land use and building permissions are enacted by general binding regulation of a municipality).
The administrative court must, on application, grant an exemption from the court fee if the circumstances of the party to the proceedings so require.

Foundations and charities, humanitarian organizations, environmental organizations and associations active in consumer protection, as well as municipalities and cities, pay the court fee for filing an administrative action against a general binding regulation of a municipality.

The court fee for filing an administrative action is EUR 50.

The court fees for individual kinds of actions within the administrative judiciary are based on a flat rate regardless of the value of the case (see the Act No. 71/1992 Coll. on court fees).

As regards "concepts, plans or programmes", the "right to participate in administrative proceedings" includes, for example, the participation of members of public (i.e. the participation is open to anyone) in approving land use plans (zoning plans) according to § 12 to 18 of the Building Act (the plan is enacted by the general binding regulation of a municipality), approving the air protection plan according to § 10 of Act No. 137/210 Coll. on air, approving the river basin management plan according to § 13 of Act No. 354/2004 Coll. on water).

Thus, if a member of the public (individual or NGO) has participated, for example, in the preparation of a land use plan (zoning plan), air protection plan or river basin management plan, it becomes the "interested public" and has the right to bring an action against these acts in court.

The effectiveness of access to justice before national courts has increased significantly thanks to the case law of the Court of Justice of the European Union and the subsequent case law of the Supreme Court. Specifically, decisions of the Court of Justice of the European Union have had a very positive effect on the interpretation of the rules of standing in the administrative and court proceedings. First of all, the effectivity of the access to justice to national courts was significantly increased by the Judgment of the Court of Justice of the EU Lesoohranárske zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky (Slovak brown bear case, C-240/09) which declared the indirect effect of Art. 9 par. 3 of the Aarhus Convention and the obligation of national courts to interpret national procedural law in accordance with the objective of Art. 9 par. 3 of the Aarhus Convention.

Based on a lawsuit by several non-governmental organizations and residents of the city of Bratislava and their arguments referring to the Art. 9 par. 3 of the Aarhus Convention and the case law of the Court of Justice of the European Union, the Regional Court in Bratislava recognized their standing before the administrative court and annulled the measure "Integrated air quality improvement programme for pollutants PM10, NO2, Benzopyrene and ozone in the field of air quality management".

There are no other similar cases known at present, but there is a chance that courts could also rule in this way in other cases concerning "concepts, plans or programmes" which are adopted in the form of a "measure of a public administration body" or in the form of a "general binding regulation of a municipality". However, in addition to these positive developments, shortcomings remain regarding the delays in court proceedings before administrative courts and the insufficient use of the power of administrative courts to grant suspensory effect to an action against the challenged administrative decision or measure of a public administration body.

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?

Pursuant to Art. 9 par. 3 of the Aarhus Convention and the judgments of the Court of Justice of the EU, the courts are obliged to interpret procedural rules in such a way that the public can challenge both procedural and substantive legality of decisions, acts or omissions.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

According to the Code of the Administrative Judicial Procedure, the plaintiff must exhaust ordinary remedies against the challenged administrative decision or measure (i.e. administrative appeal) before bringing an action in the court.

As there is no administrative review procedure and no administrative appeal can be filed against the approval of the plan, programme or general binding regulation of a municipality, 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.?

According to the Code of Administrative Judicial Procedure, a person who has the "right to participate in administrative proceedings" ("interested public") may file an action in court. It follows from the principle of subsidiarity of the administrative judiciary that a person ("interested public") must exercise this right and participate in the administrative proceedings (make comments, participate at the hearing) to have standing before the court.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

As mentioned above, the court may, on the application of the plaintiff, grant the suspensive effect to the action (§ 185 of the Code of the Administrative Judicial Procedure). The court may grant the suspensive effect to the action if there is a threat of serious harm, considerable economic loss or financial loss, serious environmental damage or other serious irreparable consequence due to immediate execution or other legal consequences of the challenged decision of the public authority or measure of the public authority, and granting the suspensive effect is not in conflict with the public interest.

The administrative court may, at the request of the plaintiff, temporarily suspend a generally binding regulation of the municipality or one of its provisions if there is a threat of serious harm, considerable economic loss or financial loss, serious environmental damage or other serious irreparable consequence due to immediate execution or other legal consequences of the challenged decision of the public authority or measure of the public authority, and granting the suspensive effect is not in conflict with the public interest.

The administrative court may, at the request of the plaintiff, temporarily suspend a generally binding regulation of the municipality or one of its provisions if there is a threat of serious harm, considerable economic loss or financial loss, serious environmental damage or other serious irreparable consequence due to immediate execution or other legal consequences of the challenged decision of the public authority or measure of the public authority, and granting the suspensive effect is not in conflict with the public interest.

Thus, it is theoretically possible to grant the suspensive effect to the action against a plan or programme subject to SEA, but it may be difficult for the applicant to show that there is a threat of serious harm, considerable economic loss or financial loss, serious environmental damage or other serious irreparable consequence – for the absence of immediate direct effect of plan or programme.

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?

The administrative court must, on application, grant an exemption from the court fee if the circumstances of the party to the proceedings so require.
The court fee will be refunded if the court proceedings have been discontinued, if the administrative action, cassation complaint or action for renewal of the court proceedings has been dismissed or withdrawn before the case is heard.

In proceedings within the administrative judiciary, the administrative court will award the plaintiff the right to full or partial reimbursement of the costs if the plaintiff has been successful in whole or in part. But the administrative court may also decide not to reimburse all or part of the costs if there are “grounds for special consideration”. The administrative court will grant the defendant the right to reimbursement of the costs of the administrative court proceedings against the plaintiff according to the proportion of his success only if it can be “reasonably demanded”. However, the Code of the Administrative Judicial Procedure explicitly stipulates that the reimbursement of legal representation costs may be granted to a public authority only “exceptionally” (as they should have their own employees – lawyers, who can represent them in the dispute).

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?

There is no provision in Slovak legislation that explicitly gives individuals or NGOs the access to justice with regard to “concepts, plans or programmes” related to the environment.

However, the Code of Administrative Judicial Procedure expressly allows the “interested public” to bring an action against a “measure taken by a public administration body” and against a “general binding regulation of a municipality”. In order to be challenged in court, “concepts, plans or programmes” must either be a measure of a public authority or be adopted in the form of a general binding regulation of a municipality.

A person whose rights have been violated or an “interested public” may challenge in court not only a decision but also a measure of a public administration body.

According to § 178 par. 1 of the Code of the Administrative Judicial Procedure, the plaintiff who has standing in the administrative judiciary is a natural person or legal entity who claims that, as a party to an administrative proceeding, he has been deprived of his rights or legally protected interests by a decision of a public administration body or a measure of a public administration body.

According to § 178 par. 3 and § 359 par. 2 of the Code of the Administrative Judicial Procedure, the “interested public” is entitled to bring an administrative action before a court against a decision of a public authority. a measure of a public administration body or general binding regulation of a municipality, if it claims that the public interest in the field of the environment has been violated.

According to § 42 par. 1 of the Code of the Administrative Judicial Procedure, if the “interested public” has the right under a special regulation to “participate” in administrative proceedings in environmental matters, it is entitled to bring an action before the court against administrative decision or administrative measure,

or to bring an action before the court against illegal inactivity of the public authority,

or to bring an action before the court against a general binding regulation of a municipality (e.g. zoning plan regulating land use and building permissions are enacted by general binding regulation of a municipality).

This means that according to the Code of the Administrative Judicial Procedure, the “interested public” is a person who has the “right to participate in administrative proceedings” concerning environmental matters under specific environmental laws.

The “interested public” may be a natural person, legal entity, local civic association, or environmental non-governmental organization. In practice, there are also cases where both the municipality and the foreign legal entity (foreign environmental NGO) have become “interested public”.

In this context, it is important how the “interested public” is defined in the sector-specific laws governing administrative proceedings in the field of the environment.

In order for a member of the public to be the “interested public” within the meaning of the Code of Judicial Administrative Procedure and to have the right to bring an action before the court, he/she must satisfy the conditions laid down. In particular, the fulfilment of the condition that a member of the public has a “right to participate in administrative proceedings pursuant to a special regulation” is essential. The “right to participate in administrative proceedings” is a broader concept than a status of a “party to the administrative proceedings”.

As regards “concepts, plans or programmes”, the “right to participate in administrative proceedings” includes, for example, the participation of members of public in approving of land use plans (zoning plans) according to § 12 to 18 of the Building Act (the plan is enacted by the general binding regulation of a municipality), approving of the river basin management plan according to § 13 of Act No. 354/2004 Coll. on water).

Thus, if a member of the public (individual or NGO) has participated, for example, in the preparation of a land use plan (zoning plan), it becomes the “interested public” and has the right to bring an action against these acts in court.

The effectivity of access to justice before national courts has increased significantly thanks to the case law of the Court of Justice of the European Union and the subsequent case law of the Supreme Court. Specifically, decisions of the Court of Justice of the European Union have had a very positive effect on the interpretation of the rules of standing in the administrative and court proceedings. First of all, the effectivity of the access to justice to national courts was significantly increased by the judgment of the Court of Justice of the EU Lesocchranárské zoskupenie VLK v Ministerstvo životného prostredia Slovenskej republiky (Slovak brown bear case, C-240/09) which declared the indirect effect of Article 9 par. 3 of the Aarhus Convention and the obligation of national courts to interpret national procedural law in accordance with the objective of Art. 9 par. 3 of the Aarhus Convention.

Based on a lawsuit by several non-governmental organizations and residents of the city of Bratislava and their arguments referring to the Art. 9 par. 3 of the Aarhus Convention and the obligation of national courts to interpret national procedural law in accordance with the objective of Art. 9 par. 3 of the Aarhus Convention and annulled the measure “Integrated air quality improvement programme for pollutants PM10, NO2, Benzopyrene and ozone in the field of air quality management”.

There are no other similar cases known at present, but there is a chance that courts could also rule in this way in other cases concerning “concepts, plans or programmes” which are adopted in the form of a “measure of a public administration body” or in the form of a “general binding regulation of a municipality”.

However, in addition to these positive developments, shortcomings remain regarding the delays in court proceedings before administrative courts and the insufficient use of the power of administrative courts to grant suspensory effect to an action against the administrative decision or measure of a public administration body.

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?
Pursuant to Art. 9 par. 3 of the Aarhus Convention and the judgments of the Court of Justice of the EU, the courts are obliged to interpret procedural rules in such a way that the public can challenge both procedural and substantive legality of decisions, acts or omissions.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

According to the Code of the Administrative Judicial Procedure the plaintiff must exhaust ordinary remedies against the challenged administrative decision or measure (i.e. administrative appeal) before bringing an action in the court.

As there is no administrative review procedure and no administrative appeal can be filed against the approval of the plan, programme or general binding regulation of a municipality, 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.?

According to the Code of Administrative Judicial Procedure, a person who has the “right to participate in administrative proceedings” (“interested public”) may file an action in court. It follows from the principle of subsidiarity of the administrative judiciary that a person (“interested public”) must exercise this right and participate in the administrative proceedings (make comments, participate at the hearing) to have standing before the court.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

As mentioned above, the court may, on the application of the plaintiff, grant the suspensive effect to the action (§ 185 of the Code of the Administrative Judicial Procedure). The court may grant the suspensive effect to the action if there is a threat of serious harm, considerable economic loss or financial loss, serious environmental damage or other serious irreparable consequence due to immediate execution or other legal consequences of the challenged decision of the public authority or measure of the public authority, and granting the suspensive effect is not in conflict with the public interest.

The administrative court may, at the request of the plaintiff, temporarily suspend a generally binding regulation of the municipality or one of its provisions if their application may jeopardize fundamental rights and freedoms, if there is a risk of significant economic damage or serious damage to the environment or any other serious irreparable consequence (§ 362 par. 1 of the Code of Administrative Judicial Procedure).

Thus, it is theoretically possible to grant the suspensive effect to the action against a plan or programme, but it may be difficult for the applicant to show that there is a risk of serious harm, considerable economic or financial loss, serious environmental damage or other serious irreparable consequence - for the absence of immediate direct effect of plan or programme.

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 court fees for individual kinds of actions within the administrative judiciary are based on a flat rate regardless of the value of the case (see the Act No. 71/1992 Coll. On court fees).

The court fee for filing an administrative action against a measure of a public administration body is EUR 70.

The court fee for filing an administrative action against a general binding regulation of a municipality is EUR 50.

Foundations and charities, humanitarian organizations, environmental organizations and associations active in consumer protection, as well as municipalities and regions in proceedings in the public and social interest, are exempt from the court fee.

The administrative court must, on application, grant an exemption from the court fee if the circumstances of the party to the proceedings so require.

The court fee will be refunded if the court proceedings have been discontinued; if the administrative action, cassation complaint or action for renewal of the court proceedings has been dismissed or withdrawn before the case is heard.

In proceedings within the administrative judiciary, the administrative court will award the plaintiff the right to full or partial reimbursement of the costs if the plaintiff has been successful in whole or in part. But the administrative court may also decide not to reimburse all or part of the costs if there are “grounds for special consideration”. The administrative court will grant the defendant the right to reimbursement of the costs of the administrative court proceedings against the plaintiff according to the proportion of his success only if it can be “reasonably demanded”. However, the Code of the Administrative Judicial Procedure explicitly stipulates that the reimbursement of legal representation costs may be granted to a public authority only “exceptionally” (as they should have their own employees – lawyers, who can represent them in the dispute).

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation

The plans covered by this section include:

Air Quality Improvement Programmes (required by Directive No. 2008/50/EC on Ambient Air Quality and Cleaner Air for Europe)


The Areas within the system of Natura 2000 (required by Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora).

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 no provision in Slovak legislation that explicitly gives individuals or NGOs the access to justice with regard to “concepts, plans or programmes” related to the environment.

However, the Code of Administrative Judicial Procedure expressly allows the “interested public” to bring an action against a “measure taken by a public administration body” and against a “general binding regulation” of a municipality.

In order to be challenged in court, “concepts, plans or programmes” must either be a measure of a public authority or be adopted in the form of a general binding regulation of a municipality.

A person whose rights have been violated or an “interested public” may challenge in court not only a decision but also a measure of a public administration body.

According to the § 178 par. 1 of the Code of the Administrative Judicial Procedure, the plaintiff who has standing in the administrative judiciary is a natural person or legal entity who claims that, as a party to an administrative proceeding, he has been deprived of his rights or legally protected interests by a decision of a public administration body or a measure of a public administration body.

According to § 178 par. 3 and § 359 par. 2 of the Code of the Administrative Judicial Procedure, the “interested public” is entitled to bring an administrative action before a court against a decision of a public authority, a measure of a public administration body or general binding regulation of a municipality, if it claims that the public interest in the field of the environment has been violated.

According to § 42 par. 1 of the Code of the Administrative Judicial Procedure, if the “interested public” has the right under a special regulation to “participate” in administrative proceedings in environmental matters, it is entitled
to bring an action before the court against administrative decision or administrative measure, to bring an action before the court against illegal inactivity of the public authority, to bring an action before the court against a general binding regulation of a municipality.

This means that according to the Code of the Administrative Judicial Procedure, the “interested public” is a person who has the “right to participate in administrative proceedings” concerning environmental matters under specific environmental laws.

The “interested public” may be a natural person, legal entity, local civic association, or environmental non-governmental organization. In practice, there are also cases where both the municipality and the foreign legal entity (foreign environmental NGO) have become “interested public”.

In this context, it is important how the “interested public” is defined in the sector-specific laws governing administrative proceedings in the field of the environment.

In order for a member of the public to be the “interested public” within the meaning of the Code of Judicial Administrative Procedure and to have the right to bring an action before the court, he/she must satisfy the conditions laid down. In particular, the fulfillment of the condition that a member of the public has a “right to participate in administrative proceedings pursuant to a special regulation” is essential. The “right to participate in administrative proceedings” is a broader concept than a status of a “party to the administrative proceedings”.

As regards “concepts, plans or programmes”, the “right to participate in administrative proceedings” includes, for example, the participation of members of the public in the approval of the air protection plan according to § 10 of Act No. 137/210 Coll. on air.

Thus, if a member of the public (individual or NGO) has participated, for example, in the preparation of an air protection plan, they become the “interested public” and have the right to bring an action against this plan in court.

Based on a lawsuit by several non-governmental organizations and residents of the city of Bratislava, the Regional Court in Bratislava annulled the measure of the Bratislava District Office “Integrated air quality improvement programme for pollutants PM10, NO2, Benzopyrene and ozone in the field of air quality management in the territory of the Capital of the Slovak Republic, Bratislava”, by judgment 55/31/2017 of 13 November 2018.

The Regional Court annulled the Integrated Programme on the grounds that the procedural conditions were not observed when publishing the draft Integrated Programme, the notice of public hearing on the draft Integrated Programme was not published on the defendant's website, the Integrated Programme was published on the website without information on the reasons for adopting the programme and information on public participation in its preparation, non-compliance with the requirements laid down in the Act No 137/2010 Coll. on Climate and Article 13 of the Directive 2008/50/ES, the measures taken and included in the Integrated Programme were not measurable, controllable and time-bound (so that the period in which the amount of pollution is exceeded is shortened as much as possible).

The Regional court annulled the Integrated Programme because it did not meet legal requirements, in particular it did not contain the required particulars and the District Office had not complied with the procedural conditions for approval of the programme and prevented public participation in its creation.

The Regional Court referred to the judgment of the Court of Justice of the EU C-237/07 Janecek, in which the Court of Justice ruled on the obligation to draw up action plan to improve air quality.

The Regional Court also referred to the judgment of the Court of Justice of the EU C-404/13 ClientEarth, in which the Court of Justice stated that the national courts were required to examine the content of the programmes to improve air quality and assess whether the measures contained will lead to the achievement of the limits in the shortest possible time.

The case law of the Court of Justice of the EU has thus made it possible to successfully challenge such plans in court and has made a significant contribution to the effectiveness of judicial protection in this case.

However, in addition to these positive developments, shortcomings remain regarding the delays in court proceedings before administrative courts and the insufficient use of the power of administrative courts to grant suspensory effect to an action against the administrative decision or measure of a public administration body.

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)?

If a plan or programme is adopted by decision or measure, it may be reviewed in accordance with the above mentioned provisions of the Code of the Administrative Judicial Procedure.

If a plan or programme is adopted in the form of a legal regulation (legislation), it can be challenged only in the Constitutional Court. Only certain entities are entitled to file a motion to initiate proceedings before the Constitutional Court (at least one-fifth of the members of parliament - i.e. at least 30 members of parliament, the President of the Slovak Republic, the Government of the Slovak Republic, the court, the General Prosecutor, the Public Defender of Rights).

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?

Pursuant to Art. 9 par. 3 of the Aarhus Convention and the judgments of the Court of Justice of the EU, the courts are obliged to interpret procedural rules in such a way that the public can challenge both procedural and substantive legality of decisions, acts or omissions.

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

According to the Code of the Administrative Judicial Procedure, the plaintiff must exhaust ordinary remedies against the challenged administrative decision or measure (i.e. administrative appeal) before bringing an action in the court.

As there is no administrative review procedure and no administrative appeal can be filed against the approval of the plan, programme or general binding regulation of a municipality, 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.?

According to the Code of Administrative Judicial Procedure, a person who has the “right to participate in administrative proceedings” (“interested public”) may file an action in court. It follows from the principle of subsidiarity of the administrative judiciary that a person (“interested public”) must exercise this right and participate in the administrative proceedings (make comments, participate at the hearing) to have standing before the court.

However, the “interested public” may also bring an action if the public authority prevents the public from participating in drawing up the plan or programme (see above the judgment of Regional Court in Bratislava 55/31/2017 of 13 November 2018).

6) Are there some grounds/arguments precluded from the judicial review phase?

As mentioned above, the examination and verification of scientific accuracy in court proceedings within administrative judiciary is limited. According to the Code of the Administrative Judicial Procedure, the courts do not review decisions or measures of public authorities, the issuance of which depends solely on an assessment of the state of health of persons or the technical state of affairs. In the case of a decision or a measure issued or taken by a public authority on the basis of an administrative discretion permitted by law, the administrative court will only examine whether such a decision or measure has deviated from the limits and aspects established by law. The administrative Court does not assess the effectiveness, economy and appropriateness of a decision or a measure of a public authority (with the exception of the review of administrative sanctions).
This means that the use of arguments relating to the assessment of a person's state of health or technical condition, efficiency, economy and proportionality of a decision or a measure of a public authority is limited in court proceedings within the administrative judiciary.

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
According to the Administrative Procedure Code, all parties have the same procedural rights and obligations in the proceedings. According to the Code of the Administrative Judicial Procedure, the parties have equal status in proceedings before the administrative court.

8) How is the notion of "timely" implemented by the national legislation?
According to the Administrative Procedure Code, the administrative authorities are obliged to deal with each case responsibly, to handle it in a timely manner and without undue delay, and to use the most appropriate means that lead to the correct handling of the case.

The Administrative Procedure Code sets deadlines for issuing an administrative decision (see above). The administrative court may grant suspensive effect to the action so that the execution of the challenged decision does not render the judicial review of the decision useless. If the administrative court has granted the administrative action a suspensive effect (pursuant to § 185 letter a)), it is obliged to decide on the administrative action within six months from the date on which the resolution on granting suspensory effect was issued (§ 187 par. 1 of the Code of the Administrative Judicial Procedure).

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?
As mentioned above, the court may, on the application of the plaintiff, grant the suspensive effect to the action (§ 185 of the Code of the Administrative Judicial Procedure). The court may grant the suspensive effect to the action if there is a threat of serious harm, considerable economic loss or financial loss, serious environmental damage or other serious irreparable consequence threatens due to immediate execution or other legal consequences of the challenged decision of the public authority or measure of the public authority, and granting the suspensive effect is not in conflict with the public interest. The administrative court may, at the request of the plaintiff, temporarily suspend a generally binding regulation of the municipality or one of its provisions if their application may jeopardize fundamental rights and freedoms, if there is a risk of significant economic damage or serious damage to the environment or any other serious irreparable consequence (§ 362 par. 1 of the Code of Administrative Judicial Procedure).

Thus, it is theoretically possible to grant the suspensive effect to the action against a plan or programme, but it may be difficult for the applicant to show that there is a risk of serious harm, considerable economic loss or financial loss, serious environmental damage or other serious irreparable consequence.

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 court fees for individual kinds of actions within the administrative judiciary are based on a flat rate regardless of the value of the case (see the Act No. 71 /1992 Coll. On court fees). The court fee for filing an administrative action against a measure of a public administration body is EUR 70. The court fee for filing an administrative action against a general binding regulation of a municipality is EUR 50.

Foundations and charities, humanitarian organizations, environmental organizations and associations active in consumer protection, as well as municipalities and regions in proceedings in the public and social interest, are exempt from the court fee. The administrative court must, on application, grant an exemption from the court fee if the circumstances of the party to the proceedings so require. The court fee will be refunded if the court proceedings have been discontinued, if the administrative action, cassation complaint or action for renewal of the court proceedings has been dismissed or withdrawn before the case is heard. In proceedings within the administrative judiciary, the court will award the plaintiff the right to full or partial reimbursement of the costs if the plaintiff has been successful in whole or in part. But the administrative court may also decide not to reimburse all or part of the costs if there are "grounds for special consideration". The administrative court will grant the defendant the right to reimbursement of the costs of the administrative court proceedings against the plaintiff according to the proportion of his success only if it can be "reasonably demanded". However, the Code of the Administrative Judicial Procedure explicitly stipulates that the reimbursement of legal representation costs may be granted to a public authority only "exceptionally" (as they should have their own employees - lawyers, who can represent them in the dispute).

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts [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 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 the act is adopted in form of legal regulation (normative instrument), the only possibility of its direct judicial review is a review before the Constitutional Court.
According to the Article 125 par. 1 of the Constitution the Constitutional Court decides, for example, on the compatibility of laws with the Constitution and international treaties, government ordinances, generally binding legal regulations issued by ministries and other central bodies of the state administration with the Constitution and with laws, and generally binding legal regulations issued by local state administration bodies with the Constitution and with laws.

Only specific parties (e.g. at least one-fifth of Members of Parliament, the President of the Slovak Republic, the Government, the court, the general prosecutor, the public defender of rights) are entitled to initiate this review. If the district court, the regional court or the Supreme Court is of the opinion that generally binding legal regulation or a particular provision related to the subject-matter of the proceeding contravenes the Constitution, constitutional laws, international treaties or laws, it will interrupt the court proceeding and submit a motion to the Constitutional Court. The finding of the Constitutional Court is binding for all courts. (Article 144 par. 2 of the Constitution).
For the public (both individuals and NGOs), it is not possible to suggest annulment of a legal regulation together with a constitutional complaint against a specific decision in cases where the regulation was applied. However, in the proceedings before the district court, the regional court or the Supreme Court, the public (individuals or NGOs) may propose that the court interrupt the proceedings and submit a motion to the Constitutional Court on the grounds that a legal regulation contravenes the Constitution, international treaty or law.

However, as mentioned above, if the act is adopted in form of the “general binding regulation of a municipality”, the “interested public” is entitled to bring an action before the court against a “general binding regulation of a municipality” (§ 42 par. 1 of the Code of the Administrative Judicial Procedure).
The Constitutional Court has explicitly stated that it is reviewing the compliance of national laws with the Aarhus Convention. The Aarhus Convention is explicitly recognized as an international convention which takes precedence over national laws and as a binding human rights law concerning access to justice in environmental matters.

As mentioned above, the amendment to the Act concerning the acceleration of the construction of motorways (Act No. 669/2007 Coll.) adopted in 2017 excluded the power of the administrative court to grant the suspensive effect of administrative actions against a zoning decision for construction of motorways and building permits for the construction of motorways. The Constitutional Court by decision of PL. ÚS 18 / 2017-152 of 4 November 2020 decided that this law is in conflict with Art. 9 par. 4 of the Aarhus Convention, which enshrines the right of the public for an administrative court to order an “injunctive relief” following an administrative action against a project authorization decision.

The requirements of the effectiveness of access to national courts in environmental matters formulated in the case law of the CJEU were not directly applied by the Constitutional Court in review of normative acts. As mentioned above, the Constitutional Court referred directly to the Aarhus Convention and reviewed the compliance of the national legislative act with the Aarhus Convention.

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 Constitutional Court reviews both substantive and procedural legality of the legal regulation. The Constitutional Court examines whether the regulation was adopted within the limits of the competence of the respective authority and in a manner prescribed by law.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
Specific entities authorized to initiate a review of legislation before the Constitutional Court (at least one-fifth of the Members of Parliament, the President of the Slovak Republic, government, the court, General Prosecutor, Public Defender of Rights) do not have to exhaust other remedies before submitting a motion to the Constitutional Court.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure — to make comments, participate at hearing, etc.?
The entities which are entitled to initiate the judicial review of legal regulations (normative act) before the Constitutional Court do not have to participate in consultation procedures.

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 Constitutional Court accepts a petition, it may suspend the effectiveness of the challenged legal regulations or some of their provisions, if their further application could jeopardize the basic rights and freedoms, if there is a threat of a substantial economic damage or other serious irreparable consequence.

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?
Proceedings before the Constitutional Court are generally not subject to court fees. However, in legally and factually similar cases previously decided by the Constitutional Court in which the complainant, who had submitted the constitutional complaint, was not successful, the Constitutional Court orders the complainant to pay court fee of EUR 30 for the eleventh and each subsequent complaint filed by the same complainant in the same year.

The requirement of mandatory (compulsory) representation by an attorney in proceedings before the Constitutional Court. The complaint must be supported by a power of attorney and this power of attorney must expressly state that it was issued for the purpose of representation before the Constitutional Court.

The requirement of mandatory representation by an attorney in proceedings before the Constitutional Court does not apply if reference to the Constitutional Court was made on the basis of a specific dispute by the lower court, where it was claimed that applicable law is unconstitutional, as this is not an individual constitutional complaint but the review of the legislation, where the complainant is not the party to the proceedings.

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]
The obligation for courts to make a reference for a preliminary ruling of the Court of Justice of the EU applies in all cases where EU law is interpreted, and also applies to the interpretation of the validity of acts adopted by the EU institutions and bodies. Any party to the dispute may request the court to make a reference for a preliminary ruling, but it is only up to the court to decide whether to do so.

Under national law, there is no specific procedure for directly challenging an act adopted by an EU institution or body before a national court.

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[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 3rd 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 3rd 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.

Other relevant rules on appeals, remedies and access to justice in environmental matters
Remedies against the silence of the administration (the administrative passivity)
According to the Administrative Procedure Code (§ 49), in simple cases, especially if it is possible to decide on the basis of documents submitted by the party to the proceedings, the administrative authority must decide without delay. In other cases, (unless a special law provides otherwise) the administrative
authority is obliged to decide on the matter within 30 days from the commencement of the proceedings, and in particularly complex cases it must decide within 60 days at the latest. If, in view of the nature of the case, it is not possible to decide within that period, the appeal body may extend it accordingly. If the administrative authority cannot decide within 30 or 60 days, it is obliged to notify the party to the proceedings, stating the reasons.

As stated above, the administrative authorities must proceed without undue delay and comply with the statutory deadlines. If the administrative authority does not act within the statutory time limit or within a reasonable time limit (if the statutory time limit is not specified), the members of public or parties to the proceedings may use the provisions of several laws to protect themselves against the inaction of the administrative authorities.

**Action by the appellate body against administrative inaction:**
According to the Administrative Procedure Code (§ 50), if the nature of the case allows it and redress cannot be achieved otherwise, the administrative authority, which would otherwise be entitled to decide on the appeal, will decide the case itself if the administrative authority of first instance competent to decide did not initiate proceedings, even though it was obliged to do so, or did not decide within the statutory time limit. Thus, if the administrative authority of first instance is inactive, the party to the proceedings may inform the appellate authority and ask it to act and decide.

**Administrative action against the inaction of an administrative authority:**
According to the Administrative Procedure Code, a party to the administrative proceedings may file an administrative action in court against the inactivity of the administrative authority.

Inaction of the administrative authority may relate to the obligation to issue a decision or measure, or to perform an act, or may relate to the obligation of the administrative authority to initiate administrative proceedings ex officio.

However, the condition for filing an administrative action in court is the prior filing of a complaint for inaction of an administrative authority pursuant to Act no. 9/2010 Coll. on complaints, or the prior filing of a complaint for inaction of an administrative authority pursuant to Act no. 153/2001 Coll. on the prosecutor’s office. The party is required to file at least one of these remedies (complaints) before filing an administrative action in court. It is not necessary to file a repeated complaint.

An administrative action may also be brought by the “interested public” if a public authority is inactive in an administrative proceeding concerning environmental matters and at the same time the “interested public” has unsuccessfully filed the above-mentioned remedies (complaint, complaint to the prosecutor’s office).

The law does not set any time limit for filing a lawsuit - a lawsuit can be filed for the entire duration of the inactivity of the administrative authority.

If the administrative court, after review, finds that the administrative authority has been unlawfully inactive, it will impose in the decision an obligation for the administrative authority to act and decide, issue a measure or perform an act, or initiate administrative proceedings ex officio within a period specified by the court. The issuance of this court decision does not end the court proceedings and the inactive administrative authority is obliged to deliver to the administrative court within the specified time limit the issued administrative decision, measure or notification of the performed act, or of the commencement of administrative proceedings.

If the administrative authority does not terminate its inaction within the time limit specified by the court, the administrative court may impose a fine on it.

**Penalties for the de facto contempt of the court, e.g. when the judgment of the court is not followed and respected**
If, after issuing a decision of the administrative court by which the court imposes an obligation on the administrative authority to act and decide (in the case of unlawful inaction of an administrative authority), the administrative authority does not terminate its inaction within the period specified by the court, the administrative court may impose a fine on it.

In case of damage caused by an unlawful decision of the public authority or another unlawful maladministration (including unlawful inaction) of the public authority, the victim can ask for redress before the civil court according to Act no. 514/2003 Coll. on liability for damage caused in the exercise of official authority.

Pursuant to Section 326 of the Criminal Code (Act No. 300/2005 Coll.), a public official may be punished for the criminal offence of abuse of power of a public official. This criminal offence is committed by a public official if he fails to fulfil an obligation arising from his jurisdiction or from a court decision (intending to cause harm to another or to obtain an unjustified advantage for himself or another). For committing this crime, a public official is punishable by imprisonment of two to five years. A public official will be punished by imprisonment of seven to twelve years if he fails to fulfil an obligation arising from his jurisdiction or from a court decision in order to prevent or impede another's exercise of his fundamental rights and freedoms.

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1. Access to justice at Member State level
3. Other relevant rules on appeals, remedies and access to justice in environmental matters

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In the environmental legislation it is common to have authorisations for the Government or a Ministry to issue Decrees on more technical issues. There are several Governmental Decrees that are important for understanding the environmental legislation and also some Ministerial Decrees such as Decrees of the Ministry of Environment. In addition, state agencies can give guidance or even decisions on technical issues related to the environmental legislation. In addition to the above, the autonomous Åland Islands must also be mentioned. This self-governing region is competent to pass its own legislation in many areas of law, including environmental matters, as provided by the Act on the Autonomy of Åland (1144/1991, currently undergoing a general reform). Other areas, such as the court system and proceedings, remain governed primarily by state law, which means the state acts are applied to judicial proceedings. According to the Constitution the exercise of public powers must be based on an Act. In all public activity, the law must be strictly observed. The law providing competence for the decision-making also defines the procedural rights of persons and which type of appeal the decision of the authority is subject to. Procedure in administrative matters is generally governed by the Administrative Procedure Act (APA, 434/2003), which contains provisions on the fundamental principles of good administration and on the procedure applicable in administrative matters. Generally, authority decisions can be challenged by lodging an administrative appeal with the regional administrative court, as prescribed by the Administrative Judicial Procedure Act (AJPA, 808/2019). As an exception to this, decisions taken by municipal authorities under the competence provided by their self-government are challenged instead by means of municipal appeal, which constitutes the second basic category of appeals in the regional administrative courts. The municipal appeal is generally regulated in the Local Government Act (410/2015). While environmental decisions are typically subject to administrative appeal, there are some notable exceptions (e.g. municipal land use plans, building ordinances and local environmental regulations as well as decisions on the organisation of waste transport), which are reviewed based on municipal appeal. The main difference between the two appeal procedures is that municipal appeal is available to all members of a municipality, while the right to administrative appeal is typically restricted to parties who are more directly affected by the decision. On the other hand, the administrative court’s powers of review are wider on administrative appeal than municipal appeal. The administrative court’s decision can be further appealed to the Supreme Administrative Court. In the Supreme Administrative Court a leave to appeal is required after the decision of a regional administrative court, but in some other cases a leave to appeal is not needed. Decisions of the Government (expropriation permits, for example) are generally challenged by appeal directly with the Supreme Administrative Court. General court proceedings follow different and to some extent more detailed procedural regulations, principally the Code of Judicial Procedure (CJP, 4/1734, with numerous amendments) and the Criminal Procedure Act (CPA, 689/1997). Environmental tort and criminal cases are dealt with by the general courts. Environmental tort cases include cases under the Act on Compensation for Environmental Damage (737/1994) and other cases of private environmental liabilities. In real property and easement cases appeals are lodged with specialised land courts that operate as an adjunct to a number of the district courts. The decision of a district court can be appealed to a court of appeal, but full consideration of the appeal requires a qualified interest or, alternatively, grant of a separate leave for continued proceedings. Challenging the decision of a land court or a court of appeal requires leave to appeal from the Supreme Court, which is primarily an instance for judicial precedents. The autonomous Åland Islands have a general district court as well as an administrative court, which operate within the respective national hierarchies. However, decisions taken by the regional government are appealed directly to the Supreme Administrative Court. 2) Constitution – main (content of + including references) provisions on environment and access to justice in the national constitution (if applicable) including procedural rights The Constitution of Finland (731/1999) includes a basic right to the environment under its Section 20. It provides the following:

Nature and its biodiversity, the environment and the national heritage are the responsibility of everyone.

The public authorities must endeavour to guarantee everyone the right to a healthy environment and the ability to influence decisions that concern their own living environment.

Access to justice is regulated under Section 21, entitled “Protection under the law”. The section guarantees everyone the right to have his or her case dealt with appropriately and without delay by a legally competent court of law or other authority, as well as to have a decision pertaining to his or her rights or obligations reviewed by a court of law or other independent organ for the administration of justice.

The aforementioned rights to the environment and to access to justice as well as other basic rights guaranteed in the Constitution can seldom be relied on directly. The observance of the rights stipulated in the Constitution has to be guaranteed by the public authorities (Section 22 of the Constitution). There is no constitutional court in Finland. While constitutional supervision is practised primarily in advance through assessment of legislative proposals by the Constitutional Law Committee of the Parliament, constitutional rights can also be invoked before the courts. If, in a matter being tried by a court, the application of an Act would in evident conflict with the Constitution, the court must give primary to the provision in the Constitution (Section 106 of the Constitution). And if a provision in a Decree or another statute at a lower level than an Act is in conflict with the Constitution or another Act, it may not be applied by a court of law or by any other public authority (Section 107).

The obligation of the public authorities to guarantee the possibility to influence decisions that concern their own living environment stipulated in Section 20 of the Constitution has been mentioned several times in the case law of the Supreme Administrative Court, and has influenced the widening of access to justice in environmental matters.

3) Acts, Codes, Decrees etc.

All the Finnish legislative instruments can be found in Finnish and in Swedish in the FINLEX database, which also contains English translations of most of the central environmental statutes. The English translations are unofficial and may not include the latest amendments.

As mentioned before, procedure in administrative matters is generally governed by the Administrative Procedure Act (APA, 434/2003), which contains provisions on the fundamental principles of good administration and on the procedure applicable in administrative matters. The APA also contains in its Chapter 7a provisions on the procedure for requesting an administrative review.

The Administrative Judicial Procedure Act (AJPA, 808/2019), which prescribes the administrative appeal, is a central statute with regard to access to justice in general and also in environmental matters. The other type of appeal, the municipal appeal, is regulated in general in the Local Government Act (410/2015). Most of the environmental statutes contain a reference to the AJPA and the administrative appeal, but many of them have also include special provisions on judicial appeal, and in some cases, there is a reference to both the administrative and municipal appeal. The most central national environmental statutes are listed here beginning with some generally applicable statutes followed by several sectoral acts that are applied only to certain activities:

The Act on Environmental Impact Assessment Procedure (252/2017) has in its Section 37 a general reference to both the AJPA and the sectoral statutes concerning the different permit procedures that can be relevant in connection to the project. This means in practice that the provisions on judicial appeal concerning the environmental impact assessment depend on the case and the sectoral legislation applicable to the project in question.
The Act on the Remediation of Certain Environmental Damages (383/2009) contains in its Section 17 a reference to several sectoral statutes concerning rules on administrative enforcement procedures that have to be followed in case of a significant environmental damage. These acts are also listed in Section 2 of the Environmental Protection Act (EPA, 527/2014) has in its Chapter 19 provisions on administrative appeal and enforcement of a decision. The provisions cover e.g. right of appeal of individuals, NGOs and state and municipal authorities defending environmental interests, request for an administrative review of certain decisions, hearing of views on an appeal concerning an environmental permit decision and the procedure in the appellate court. The Water Act (587/2011) contains in its Chapter 15 provisions on administrative appeal and enforcement of a decision that are very similar to the abovementioned provisions of the EPA.

The Land Use and Building Act (132/1999) has in its Chapter 25 provisions on judicial appeal and rectification issued by an authority. These provisions cover e.g. request for rectification, administrative and municipal appeal as well as the right to appeal depending on the type of appeal and the decision in question.

The Nature Conservation Act (1096/1996) contains in its Chapter 9 provisions on administrative appeal and the right to appeal depending on the type and scope (national, regional or local) of the decision in question.

The Climate Change Act (609/2015) lays down the general framework for the planning of climate change policy in Finland and the monitoring of its implementation.

The Mining Act (621/2011) has in its Chapter 17 provisions on administrative appeal and right to appeal concerning decisions by the mining authorities. There are also special provisions on appeal against decisions made in the proceedings establishing a mining area, which are lodged in the land courts that operate in annex to certain district courts.

The Waste Act (646/2011) contains in its Chapter 14 provisions on judicial appeal covering both the administrative and municipal appeal and right to appeal depending on the type of the appeal and decision in question.

Also e.g. the Land Extraction Act, the Transport System and Highways Act, the Railways Act, the Gene Technology Act, the Hunting Act and the Act on the Organisation of River Basin Management and Marine Strategy include provisions on the right of appeal of environmental NGOs against certain decisions, which can be considered relevant in this context.

4) Examples of national case-law, role of the Supreme Court in environmental cases

The right to environment as guaranteed in Section 20 of the Constitution has been applied several times in the case law of the Supreme Administrative Court, often in the interpretation of provisions on rights to appeal. Since the addition of Section 20 to the Finnish Constitution in 1995 the decisions of the Supreme Administrative Court have gradually moved towards emphasising the enhancement of participatory rights in environmental matters in cases where the national legislation has left room for interpretation (see KHO 2003:99, KHO 2004:76 and KHO 2011:49).

Since the year 2004 and the ratification of the Aarhus Convention in the Finnish legislation the connection to the European Union environmental legislation have also been referred to several times in the jurisprudence of the Supreme Administrative Court. As an example, some of the cases in the Supreme Administrative Court concerning the national legislation transposing Habitats and Birds Directives lead to amendments in the provisions on right to appeal in the Hunting Act (see KHO 2004:76 and KHO 2007:74).

Summaries of selected precedents of the Supreme Administrative Court can be found in English on the website of the court. One of the latest decisions concerning right of appeal in an environmental matter to be found on the website is case KHO 2019:97 on the right of appeal of a Polish foundation against a decision granting a water permit for gas pipes on the bottom of the Baltic Sea.

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?

As a general rule, the applicability of international agreements is reliant on their implementation in national law. Approval of the Finnish Parliament is needed for the ratification of international agreements containing stipulations falling within the scope of national law. The international agreement must also be implemented into national law after it has entered into force. In the ratification process the competence of the European Union has also to be taken into consideration.

In published case law, the Aarhus Convention has been applied a few times, in order to redress an inconsistency in the right of appeal for non-governmental organisations (NGOs) through a broader interpretation of the applicable national law (see KHO 2011:49 and KHO 2018:1). The legislation of the European Union and especially the case-law of the European Union Court of Justice concerning the union-wide transposition of the Aarhus Convention has also played an important role in Finnish jurisprudence on access to justice in environmental matters.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

The Finnish court system is divided into two independent lines of courts: general courts and administrative courts.

The general court line has three levels:

- district courts
- courts of appeal
- the Supreme Court

The administrative court line has two levels:

- regional administrative courts
- the Supreme Administrative Court

The general courts handle civil and criminal cases, while the administrative courts deal primarily with appeals against authority decisions. In addition, there are a number of specialised courts (e.g. the market court, the insurance court and the labour court) as well as boards of appeal operating under one (or both) lines.

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)?

As environmental matters are generally decided in first instance by public authorities, environmental disputes typically end up with the administrative courts.

The law providing competence for the decision-making prescribes which type of appeal the decision is subject to, the two main categories being administrative and municipal appeal. There are some notable exceptions, namely real property and easement cases, in which appeals are lodged with specialised land courts that operate as an adjunct to a number of the district courts. In addition, environmental tort and criminal cases are dealt with by the general courts.

The Åland Islands have a general district court as well as an administrative court, which operate within the respective national hierarchies. However, decisions taken by the regional government are appealed directly to the Supreme Administrative Court. Moreover, the centralisation of judicial review of environmental matters does not apply to environmental matters on Åland, i.e. the Administrative Court of Åland deals with such matters on the Islands.
Within the administrative court system, a major part of all environmental cases on the Finnish mainland (not covering the Åland Islands) has been centralised to one of the regional administrative courts, i.e. the Vaasa administrative court. This court deals with all cases under the Environmental Protection Act (EPA, 527/2014) and the Water Act (587/2011), which make up for roughly one fourth of environmental cases in administrative courts nationwide. The remaining environmental cases are handled by the regionally competent administrative court, which is usually the court for the judicial district that includes the geographical area of operations of the authority that issued the administrative decision. An appeal against the decision of an authority operating throughout the country must be addressed to the administrative court to whose jurisdiction the decision has the closest link by virtue of that jurisdiction containing most of the territory or property affected by the decision. The geographical jurisdiction of the regional administrative courts is described in detail in Section 10 of the Administrative Judicial Procedure Act. Overall, the abovementioned geographical and substantial jurisdictions of the competent courts in environmental matters are quite clearly defined by law, and although borderline cases may turn up, the possibility of forum shopping is non-existent.

3) Specialties as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges

Within the administrative court system, a major part of all environmental cases on the Finnish mainland (not covering the Åland Islands) has been centralised to one of the regional administrative courts, i.e. the Vaasa administrative court. This court deals with all cases under the Environmental Protection Act (EPA) and the Water Act, which make up for roughly one fourth of environmental cases in administrative courts nationwide. The remaining environmental cases, such as ones dealing with nature protection, soil extraction and quarrying as well as land use planning and building, are handled by the regionally competent administrative court.

Expert judges in Vaasa administrative court and in the Supreme Administrative Court (SAC) participate in the consideration of cases on the basis of the Water Act and the Environmental Protection Act. In Vaasa administrative court the expert judges work full-time, and in the SAC there are part-time environmental expert judges. In Vaasa administrative court there can be one or two expert judges in the composition with two legally trained judges, depending on the expertise needed in the case. In SAC there can be one expert judge in the composition with three legally trained judges when a leave to appeal is decided on, and there are always two expert judges in the composition with five legally trained judges when the final decision is made. The expert judges as well as other members of the court assess the materials in the case file on the basis of their own expertise. An expert judge must have an appropriate Master’s degree in technology or in the natural sciences. In addition, he or she must be familiar with the duties falling within the scope of the applicable legislation.

4) Level of control in case of administrative appeals, concept of own motion, what are its limits? Rules on court action on its own motion.

The administrative appeal is a reformatory remedy, which means the court is competent to amend the challenged decision. In principle, the powers of the court to reconsider the matter at hand are quite extensive, but self-restraint is exercised in this regard. Amendments are usually left for situations where the challenged decision would be found unlawful as such, but overturning and renewal of the administrative procedure can be avoided by a restricted amendment, which thus serves general process economic considerations. In environmental matters, revision of disputed permit conditions comprises a typical use of this reformatory power.

The municipal appeal, on the other hand, is cassatory, meaning the court can only uphold or overturn the authority decision. However, the law typically provides for exceptions to this rule in environmental matters, allowing the administrative court to make limited amendments also in such cases.

The AJPA requires that the appellant states the reasoning for the claims in the appeal, but it is for the administrative court to discern the law according to which legality of the decision is reviewed. When considering administrative appeals, the administrative court’s responsibilities are quite broad, and the review is not restricted explicitly to what has been alleged in the appeal. In dealing with municipal appeals, on the other hand, the court is strictly bound to the grounds of illegality invoked by the appellant. In the municipal appeal process, these grounds of appeal must also be stated within the appeal period, while the administrative appeal procedure provides more leeway for complementing one’s appeal during the proceedings.

1.3. Organisation of justice at administrative and judicial level

1) System of the administrative procedure (ministries and/or specific state authorities)

The environmental administration in Finland consists of the Ministry of Environment and the Finnish Institute for Environment at the national level, four Regional State Administrative Agencies and 13 Centres for Economic Development, Transport and Environment (so called ELY or ETE Centres) at the regional level and the municipal environmental administration at the local level. In addition to these authorities there are several authorities e.g. under the Ministry of Agriculture and Forestry, Ministry of Transport and the Ministry of Economic Affairs and Employment making decisions on the use of natural resources or transport infrastructure where this is relevant for the environment.

Environmental permits are needed in Finland for all activities that pose a risk of environmental pollution covering widely different types and sources of emissions to into air, water or onto land. No permits can be granted to activities causing contamination of the soil or pollution of groundwater since these are strictly prohibited in the legislation. Water permits are needed for other activities affecting constructions in waters or the water supply. Permits may be granted to individuals or companies. Depending on the activity and its scale the most central permit authorities are the four Regional State Administrative Agencies and local environmental authorities in the municipalities. Finland’s 13 Centres for Economic Development, Transport and the Environment act as supervisory authorities concerning the permit procedure and are also responsible for areas like nature conservation and water management planning.

Procedure in administrative matters is generally governed by the Administrative Procedure Act (APA, 434/2003), which contains provisions on the fundamental principles of good administration and on the procedure applicable in administrative matters. The procedure under the APA is observed in environmental matters unless provided for otherwise in the applicable substantive law. Even then, the provisions as well as principles of the APA are complementary. In other words, the APA lays down a universal procedure, which is then tailored on specific points by various other laws. Many types of environmental matters adhere to such tailored procedures. Environmental permit granting under the EPA and land use planning under the Land Use and Building Act (LUBA, 132/1999) are examples of procedures that have been extensively regulated in addition to the APA. In addition to its own regional substantive legislation on the environment, the administration of the Åland Islands abides by a regional act regulating administrative procedure (Forvaltningslag for landskapet Åland, 2008:9). General administrative procedure under the regional law closely corresponds with procedure under the state legislation.

Typically, the substantive law prescribes who is to be specifically notified or heard during the administrative procedure as well as whether or not a wider public consultation of some sort is to be arranged prior to decision-making. If the procedure is not specifically regulated, the general provisions of the APA are applied. The APA grants standing, as party to an administrative matter, to anyone who has rights, interests or obligations affected by the matter, and requires that such a party be heard before the matter is decided. In addition, the APA requires that the authority should also give others an opportunity to participate in matters that may have a significant effect on the living or working conditions of other than the parties. In most cases, environmental substantive law provides for wider standing and consultation. In environmental permit matters, for example, the EPA grants standing (right to be specifically heard) to anyone whose rights, interests of obligations may be affected by the matter, and provides others the opportunity to voice their opinion during a general public consultation (in writing). NGOs are not ordinarily granted standing during administrative procedures, which means they are generally able to participate during public consultations, when these are provided for as part of the procedure.

2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?
Administrative procedure does not include a general stage of internal review, i.e. reconsideration by the decision-maker or a superior administrative body. However, substantive law can prescribe such administrative review procedures. If a review procedure is provided for, it cannot be bypassed by directly lodging an appeal with the court. As an example, the Land Use and Building Act stipulates that court proceedings are preceded by a request for rectification with the municipal supervision authority in cases where a matter has been decided by a subordinate official under delegated competence. The time limit for lodging a request for administrative review is typically shorter than the appeal procedure, and the authority may be required to give priority to processing the request as well. Ordinarily only those who have submitted a request for administrative review are entitled to challenge the review decision through appeal, unless the original decision is changed as result of the request.

According to the Administrative Procedure Act, appeal instructions must be enclosed with a decision qualifying for appeal (APA, Section 47). The appeal instructions must indicate the appellate authority, the authority with which the appeal document is to be lodged and the appeal period and the date when the said period begins to run. In most of the environmental decisions the appeal period is thirty days and the appellate authority is the regionally competent administrative court or in case of environmental and water permits according to Environmental Protection Act (EPA) and Water Act the Vaasa administrative court. Administrative court proceedings are predominantly carried out in writing, through written statements from the authorities, appellants and other parties to the proceedings. Legal counsel is not mandatory, and the law does not set many formal requirements for the appeal or other stages of the proceedings. The pending times for appeal proceedings in the regional administrative courts have in recent years (situation in January 2020 according to the common website of the administrative courts) averaged around 10 months in the category of land use and building matters and slightly above 12 months in other environmental matters. In the Supreme Administrative Court the corresponding pending times were approximately 11 and 10 months, respectively.

3) Existence of special environmental courts, main role, competence
Within the administrative court system, a major part of all environmental cases on the Finnish mainland (not covering the Åland Islands) has been centralised to one of the regional administrative courts, i.e. the Vaasa administrative court. This court deals with all cases under the Environmental Protection Act (EPA, 527/2014) and the Water Act (587/2011), which make up for roughly one fourth of environmental cases in administrative courts nationwide. The remaining environmental cases, such as ones dealing with nature protection, soil extraction and quarrying as well as land use planning and building, are handled by the regionally competent administrative court. Overall, the geographical and substantial jurisdictions of the competent courts in environmental matters are quite clearly defined by law, and although borderline cases may turn up, the possibility of forum shopping is non-existent.

4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)
As mentioned above the administrative procedure does not include a general stage of internal review, i.e. reconsideration by the decision-maker or a superior administrative body. However, substantive law can prescribe such administrative review procedures. If a review procedure is provided for, it cannot be bypassed by directly lodging an appeal with the court. The substantive law providing competence for the decision-making also prescribes which type of appeal the decision is subject to, the two main categories being administrative and municipal appeal. Both the administrative and the municipal appeal are lodged in the regionally competent administrative court, or in the case of environmental and water permits under the Environmental Protection Act and the Water Act on the Finnish mainland (not covering the Åland Islands), in the Vaasa administrative court, which is specialised in environmental matters.

The administrative court’s decision can be further appealed to the Supreme Administrative Court. The general rule is that a leave to appeal is required at the Supreme Administrative Court, but in some cases a leave to appeal is not needed.

In addition to ordinary appeals, there are a number of particular forms of remedy, such as administrative litigation (hallintorita, förvaltningsritemål), material tax appeal (perustevelius, grundbesvär) and church appeal (kirkollisvalitus, kyrkobesvär), which are not especially relevant with regard to environmental justice.

The AJPA provides for two means of extraordinary appeal concerning decisions that have become final: request for restoration of lapsed time (menetetyn määräajan palauttaminen, återställande av försutten fatalietid), lodged with the Supreme Administrative Court request for annulment of a final decision (purku, återbrytande), lodged with the Supreme Administrative Court. Lapsed time may be restored to a person who has a lawful excuse or who for another very serious reason has been unable to within a time limit to file a request for an administrative review or request a judicial review of a decision by way of appeal or to take other measures in administrative procedure or in administrative judicial procedure (AJPA, Section 114). Where a lawful excuse is claimed in support of the application, the application must be made within 30 days of the cessation of the excuse. In the case of another extremely significant reason the time limit of 30 days is not applicable, but restoration of expired time must be applied for within one year of the end of the original time limit, at the latest. A final decision may be annulled if a party has not been given the right to be heard, or some other procedural error has occurred in considering the matter, the decision is based on a manifestly incorrect application of law or on an error that could have materially affected the decision, new evidence has become available that could have materially affected the matter, and the failure to present the evidence at the time of the decision-making was not due to the applicant or the decision is so unclear or incomplete that it is not evident how the matter has been resolved (AJPA, Section 117).

There are no special rules for introducing preliminary references in the national legislation. The appellant can make a request for making a preliminary reference to the European Court of Justice, which will be considered by the national court.

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?
It is ordinarily not possible to officially confirm settlements in administrative court appeal matters, and mediation or other means of alternative dispute resolution are accordingly not available in administrative environmental matters.

In civil matters, different methods of dispute resolution are available. Court mediation is offered by the general courts, and it is also possible to confirm out-of-court settlements. There are no established forms of out of court solutions in the environmental area, but there have been some experimental and academic research projects on mediation in real estate and environmental disputes (like the SOMARI project at Aalto University by the Finnish Forum for Mediation in 2012). The [Finnish Forum for Mediation](https://www.forumformediation.fi/) also offers up to date information on mediation in Finland.

7) How can other actors help (ombudsperson (if applicable), public prosecutor), accessible link to the sites?
In addition to directly challenging administrative decisions, the option of making an administrative complaint is also available. Complaints can be filed with municipal or state supervisory authorities, where relevant, or the two supreme overseers. The Parliamentary Ombudsman and the Chancellor of Justice with the Government are the two supreme overseers of public authorities’ and officials’ compliance with law and good administrative practice, with an emphasis on fundamental and human rights. With minor distinctions, the jurisdictions of the supreme overseers are largely the same and extend also to the authorities of the autonomous Åland Islands. The overseers deliver their opinion to complaints lodged with them and are also competent to issue official reprimands as well as initiate criminal prosecution for malfeasance. The overseers can also initiate investigations on their own initiative. It is worth mentioning that the supreme overseers of legality are competent to investigate the actions of
courts and court officials, which naturally entails careful consideration with respect to the separation of powers and judicial independence. The overseers are not competent to compel authorities or officials in individual matters or to overturn or amend decisions or to lodge appeals of their own. There are also a number of specialised overseers with a nationwide jurisdiction, such as the Data Protection Ombudsman, the Consumer Ombudsman and the Ombudsman for Minorities, for example, but no such office is designated for especially environmental matters.

Office of the Parliamentary Ombudsman
Office of the Chancellor of Justice
Ombudsman for Minorities

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)?

Section 7 of the Administrative Judicial Procedure Act (AJPA, 808/2019) provides for a general right of appeal against administrative decisions. This right is granted to any person the decision is addressed to or whose right, obligation or interest is directly affected by the decision. In addition, decisions that are subject to municipal appeal, such as land use planning decisions, can be challenged by any member of the municipality, which includes any individual, corporation etc. domiciled in the municipality as well as anyone who owns or occupies property in the municipality (Local Government Act, Sections 3 and 137). Other private legal entities usually have participatory rights and right of appeal according to the same rules as individuals.

An authority has the right to appeal if this is necessary because of a public interest overseen by the authority (AJPA, Section 7). State authorities, municipalities as well as municipal authorities may also have right of appeal under applicable substantive law. Typically, the right to appeal concerning environmental decisions is prescribed to the regional ETE Centre (Centre for economic development, transport and the environment) in matters decided by municipal authorities or other state authorities. Municipal environmental or health protection authorities, regional or national museum authorities as well as municipalities themselves are examples of other authorities which may be entitled to appeal.

Apart from municipal appeal, there is no actio popularis with regard to access to court. Nor are there any general provisions on the right of appeal of NGOs. Right of appeal is provided for NGOs by substantive law in most significant environmental matters (see next section), complemented to a certain extent by case law as well.

The administrative court’s decision can be further appealed to the Supreme Administrative Court, where a leave to appeal is required. The right to appeal against the decision of the administrative court follows the same principles as the right to appeal against the original administrative decision in question. The decision-making authority has the right to continued appeal when the administrative court has reversed or amended its decision (AJPA, Section 109).

As part of the administration of justice, which falls under state competence, right of appeal is regulated by state legislation also on the Åland Islands. Thus, right of appeal in environmental matters is normally resolved according to the state law corresponding to the applicable regional law.

<table>
<thead>
<tr>
<th>Legal Standing</th>
<th>Administrative Procedure</th>
<th>Judicial Procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Individuals and other legal entities</td>
<td>Obligation to hear parties during the administrative procedure is ordinarily regulated by the applicable substantive law (otherwise APA); others can participate through public consultation according to the applicable substantive legislation. Other private legal entities usually have participatory rights according to the same rules as individuals.</td>
<td>Right of appeal for directly affected parties as well as for others when prescribed by the applicable substantive law; all members of the municipality, in matters subject to municipal appeal. Other private legal entities usually have right of appeal according to the same rules as individuals.</td>
</tr>
<tr>
<td>NGOs</td>
<td>With a few exceptions, no specific provisions on standing during the administrative procedure, i.e. NGOs can generally participate through public consultation.</td>
<td>Right of appeal is provided for by substantive law in most significant environmental matters, complemented to a certain extent by case law as well. The NGO must be registered, and certain requirements with regard to field of operation (geographic / registration purpose) are usually prescribed.</td>
</tr>
<tr>
<td>Ad hoc groups</td>
<td>Participation through public consultation; otherwise in the capacity of the individuals concerned.</td>
<td>No, i.e. only in the capacity of the individuals concerned.</td>
</tr>
<tr>
<td>Foreign NGOs</td>
<td>Participatory rights in cross-border EIA procedure: frontier treaties and other agreements may provide for rights in other procedures.</td>
<td>Right of appeal in accordance with the same provisions as for domestic NGOs, i.e. typically based on field of operation, taking into account possible obligations arising from frontier or other treaties.</td>
</tr>
<tr>
<td>Any other</td>
<td>The applicable substantive law may provide that state authorities, municipalities and/or municipal authorities have to be consulted prior to decision-making.</td>
<td>State authorities, municipalities as well as municipal authorities may have right of appeal under applicable substantive law or based on AJPA.</td>
</tr>
</tbody>
</table>

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?

Substantive environmental legislation often includes superseding provisions, which typically prescribe a wider right of appeal than Section 7 of the AJPA. Thus, the Environmental Protection Act (EPA), for example, provides a general right of appeal for all persons whose rights or interests may be affected by the matter, while the Land Use and Building Act (LUBA) lays down a more detailed framework for right of appeal against different types of building and land use permits under its regime.

Provisions on the right to appeal of environmental NGOs have been introduced in the sectoral legislation under a longer period of time starting with the Nature Conservation Act (Section 61) in 1996 and LUBA (Sections 191 and 193) in 2000. Now there are provisions on the right of appeal of NGOs also in e.g. the EPA, Water Act, Waste Act, Mining Act, Land Extraction Act, Transport System and Highways Act, Railways Act, Hunting Act, Gene Technology Act, Flood Risk Management Act and the Act on the Organisation of River Basin Management and Marine Strategy. The provisions of the EPA are applicable to the installations under the Industrial Emissions Directive. The provisions in the abovementioned acts can differ in e.g. in whether both national and local NGOs have a right to appeal or if the right is only prescribed to local and regional NGOs.

The Act on Environmental Impact Assessment Procedure as well as the Act on the Remediation of Certain Environmental Damages have a general reference to both the AJPA and the sectoral statutes concerning the different permit procedures that can be relevant in connection to the project or activity concerned. This means in practice that the provisions on right to appeal concerning the environmental impact assessment or environmental liability depend on the case and the sectoral legislation applicable to the project or activity in question.

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.)
With a few exceptions, there are no specific provisions on standing during the administrative procedure, i.e. NGOs can generally participate through public consultation in decision-making procedures that include public consultation. Right of appeal is provided for NGOs by substantive law in most significant environmental matters, complemented to a certain extent by case law as well. The NGO must be registered, and certain requirements with regard to field of operation (geographic/registration purpose) are usually prescribed. Consequently, the EPA, for example, provides right of appeal to registered associations or foundations whose purpose is to promote environmental, health or nature protection or the general safeguarding of the environment and whose area of activity is subjected to the environmental impact in question. In cases where the connection between the NGO’s purpose and the challenged decision may not be self-evident, such as various residents’ or village associations, for example, the by-laws of the organisation are usually consulted to resolve right of appeal. There are no requirements pertaining to duration of activity or number of members.

4) What are the rules for translation and interpretation if foreign parties are involved?

Rights of individuals to use the two national languages, Finnish and Swedish, as provided by Section 17 of the Constitution, are laid down in the Language Act (423/2003). Additional language rights are provided for the indigenous Sámi, especially, as well as other groups such as pupils or students using Romani or sign language (see Language Act for Sámi 1086/2003 and Basic Education Act 628/1998). With relevance to foreigners, Section 6 of the Constitution provides that everyone is equal before the law, and that no one may, without an acceptable reason, be treated differently from other persons on the ground of origin or language, among other things. The Ombudsman for Minorities supervises compliance with prohibitions against ethnic discrimination and works to advance the status and legal protection of ethnic minority and foreigners.

The legislation covering administrative and court procedure (APA, AJPA, CJP and CPA) contains additional provisions on language rights. Additional provisions are included for certain specific procedures, but typically not for environmental procedures. In administrative matters, translation and interpretation can be provided for parties under certain conditions, mainly in authority-initiated matters, but it is also possible for guaranteeing the rights of parties in other matters. General language rights in administrative judicial proceedings correspond with the above but provide for an unconditional right to interpretation when being orally heard. In criminal matters, language rights are naturally more pronounced. In civil disputes, a party who does not speak Finnish, Swedish or Sámi is ordinarily responsible for translation at his/her own expense, unless the court rules otherwise due to the nature of the case. In addition to the above, both administrative authorities and courts are under obligation to ensure that citizens of the other Nordic countries receive the language assistance they require (see AJPA, Section 52).

The stipulations described above mean that individuals with a language foreign to the Nordic countries wishing to take part in an environmental matter will typically have to cover their own translation expenses. However, when legal aid is available, it also applies to required translation and interpretation costs. Translations in transboundary environmental matters are dealt with below (see section 1.8.4).

Unlike the rest of Finland, the autonomous Åland Islands are monolingually Swedish. This applies both to regional and municipal authorities as well as state authorities on the Islands, including courts. The Act on the Autonomy of Åland includes provisions regarding rights to use Finnish in regional state authorities and courts, and the regional act on administrative procedure (Förvaltningslag för landskapet Åland) contains provisions similar to the state legislation on provision of interpretation and translation in regional and municipal authorities.

1.5. Evidence and experts in the procedures

1) Evaluation of evidence – are there any limits in obtaining or evaluating evidence, can the court request evidence on its own motion?

With regard to review of facts, the AJPA provides that the court must obtain evidence on its own motion to the extent that the impartiality and fairness of the proceedings and the nature of the matter require (Section 37). The court can, for example, request specific evidence from the parties, obtain expert statements or arrange oral hearing or viewing to establish the facts of the case.

When considering appeals, the administrative court usually has access to the complete administrative case file (requesting it from the authority together with a statement is usually the first step to processing an appeal). As has been noted above, the AJPA further imposes a general obligation to ensure that the matter is examined on the court.

The aim is to establish the objective facts of the matter. The court fulfils its obligation by requesting evidence it finds necessary or useful in addition to the administrative case file. Typically, such requests are directed to the authority, while the parties of the case are provided opportunity to provide their own account. The parties have to be heard of all new evidence provided to the court.

Corresponding with this principle of judicial investigation, there are no explicit general rules regarding burden of proof with regard to the parties of appeal proceedings. Certain implicit principles have evolved for different types of matters and situations, sometimes resting also on the case law of the European Court of Justice. However, it must be stressed that issues regarding evidence are usually resolved in first instance by the administrative authority, and, correspondingly, the court’s task is typically not so much to consider new evidence as to review evidence previously submitted to the authority as well as the evaluation made by the authority. In addition to requesting documents or opinions from the first instance authority and the parties, the court can facilitate its review by other means as well.

The court can consult other authorities or arrange a site visit, inspection or oral hearing. Parties are free to introduce evidence of their own to support their claims and arguments.

The parties can also request for the court to employ any of the means of investigation at its disposal. The court exercises discretion in determining whether to agree with requests by the parties. The measure of discretion depends on the type of request as well as the matter at hand, and a refusal to investigate further can naturally be invoked against the court’s final decision, if it is subject to further appeal.

The administrative court is free to independently evaluate the evidence and reassess the facts of the matter even though the court is bound by the claims of the parties when deciding on the final resolution. In this regard, the court is not bound by the parties’ arguments either; i.e. the parties cannot usually settle on the facts of the case. Naturally, allegations pertaining to evidence will guide the court’s attention in the matter. As has been noted above, the court is competent to extend its review to technical or other scientific bases of the challenged decision. Consequently, the court is free to question scientific studies or expert accounts, regardless of who has submitted them or at whose request.

The general courts have the same principal competence to evaluate evidence, but it is worth stressing that in civil disputes the scope of the court’s review is in this regard normally restricted exclusively to the claims and evidence presented by the parties. Correspondingly, the parties’ role in providing also scientific expertise is considerably more pronounced.

2) Can one introduce new evidence?

There are no strict time limits for introducing new evidence, and introducing new evidence is therefore usually accepted during the procedure. According to the Administrative Judicial Procedure Act the appellant may present new reasoning for his or her claim after the time allowed for appeal has expired, provided that this does not change the matter itself (Section 41). One can introduce also new evidence in the administrative court, but evidence that could have been presented in the first instance may be disregarded during appeal proceedings. Accordingly, parties should not wait until the appeal stage before introducing evidence relevant to the case, when they have the opportunity to do so already during the administrative procedure.

A new expert study presented by appellants against a decision to grant a permit could, for example, prove conclusively that the permit decision is unlawful, or the court could find it necessary to return the matter and for new evidence to be (re)considered in first instance by the permit authority. With its non-jurist
judges, the administrative court of Vaasa is naturally better equipped to directly evaluate scientific evidence and make a substantive decision based on new evidence as well, but the court must obviously be careful not to intrude excessively on the first instance discretion of the administration.

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts

3.1) Is the expert opinion binding on judges, is there a level of discretion?

The expert opinion is not binding on judges, the court can freely consider all the evidence presented in the case (so called free assessment of evidence).

3.2) Rules for experts being called upon by the court.

The administrative court of Vaasa, with nation-wide competence in appeal matters under the Environmental Protection Act (EPA) and Water Act, makes use of judges trained in natural and technical science in order to provide it with sufficient expertise for such consideration. Also, the Supreme Administrative Court has appointed expert judges who participate in the decision-making in cases concerning EPA and Water Act.

A member of an administrative court, other than a legally trained member, who participates in the consideration of cases on the basis of the EPA and Water Act must have an appropriate Master’s degree in technology or in the natural sciences. In addition, he or she must be familiar with the duties falling within the scope of the applicable legislation. The expert judges are equal members of the court with independent decision-making powers and voting rights and can therefore independently define the scope of the scientific evidence they deem to be relevant.

Court-appointed experts are also possible in every sort of case (not only environmental), but quite rare.

3.3) Rules for experts called upon by the parties.

A party may turn to an expert he/she prefers. Professors (even on the field of law) and researchers are sometimes used. There are no public registers with contact details of environmental experts.

3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?

According to the Administrative Judicial Procedure Act, a party to judicial proceedings must be liable to compensate another party for that party’s costs in whole or in part if, particularly in view of the ruling issued in the matter, it is unreasonable for the latter party to be required to meet its own costs (AJPA, Section 95). It is still quite common that the parties bear their own costs. This includes fees for legal counsel as well as possible costs for producing expert statements or other evidence on one’s own initiative. If an oral hearing is held, the state is responsible for compensating witnesses and experts called by the court on its own initiative. Parties, on the other hand, are ordinarily required to compensate witnesses that they have called.

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

Simple and inexpensive access to court is one of the cornerstones of administrative judicial proceedings, and correspondingly, legal counsel is not mandatory in any environmental administrative court proceedings. Neither is it in practice very common for appealing individuals or NGOs to employ counsel. For corporations, in the capacity of appellant or otherwise concerned party, it is more usual.

The AJPA does not require counsel, when used, to have a law degree or other training, only general suitability is called for (AJPA, Section 30). The only exception for this is the case of extraordinary appeal in the Supreme Administrative Court. To lodge an appeal for annulment of a final decision or judgement the services of an attorney or licensed legal counsel must be used by other applicants than a public authority according to Section 118 of the AJPA. Counsel is not mandatory in general court proceedings either, but here it is more commonplace. In contrast with the AJPA, the CJP also requires legal qualification of the person acting as counsel or attorney, with the exception of certain types of cases (which includes land court cases).

There is no official certification for environmental lawyers in specific, excepting studies undergraduate and postgraduate degrees. Nonetheless, there are lawyers and law firms of various sizes that offer environmentally specialised legal counsel. Most of the larger firms offer services in the area of environmental law, although typically in the context of business law. There is no comprehensive register of environmentally specialised law firms or lawyers available.

NGOs do not typically advertise legal services. The Finnish Bar Association provides a search engine that allows searching for members and firms according to location and areas of expertise, including fields of environmental law, and which includes offices on the Åland Islands as well.

1.1 Existence or not of pro bono assistance

Many law firms, especially bigger ones, do pro bono legal work, often in accordance with established pro bono programmes of their own. Associations of public utility, including also environmental NGOs, can be recipients of such pro bono legal assistance. There are no widely publicised pro bono programmes providing legal assistance for individuals in environmental matters specifically. On the whole, pro bono work does not play a significant role in environmental judicial proceedings.

For legal aid see section 1.7.3.

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.)?

Private law firms offering pro bono assistance have established their own pro bono programmes and criteria for assistance, but there are no widely publicised programmes in environmental matters specifically.

1.3 Who should be addressed by the applicant for pro bono assistance?

When looking for law firms offering pro bono assistance the Finnish Bar Association can be contacted.

2) Expert registries or publicly available websites of bars or registries that include the contact details of experts

There are no public registers that might hold contact details of environmental experts. The Finnish Bar Association has an attorney search engine.

3) List of NGOs who are active in the field

The following NGOs are active at a national level in Finland but there are also several local or regional organisations that can actively take part in environmental decision-making in their municipality or region. The national NGOs can help you find contact with some of the local associations.

Finnish Association for Nature Conservation
Finnish Society for Nature and Environment

4) List of international NGOs, who are active in the Member State

There are several international NGOs, who are also active in Finland:

BirdLife Finland
WWF Finland

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).

Administrative procedure does not include a general stage of internal review, i.e. reconsideration by the decision-maker or a superior administrative body.

However, substantive law can prescribe such administrative review procedures. The administrative review procedure follows the rules stipulated in the Administrative Procedure Act (APA, 434/2003, Chapter 7a). If a review procedure is provided for, it cannot be bypassed by directly lodging an appeal with the
The administrative procedure does not include a general stage of internal review, i.e. reconsideration by the decision-maker or a superior administrative body.

As explained above the main rule is that an appeal or a request for an administrative review against a decision automatically delays its execution. In Finland

2) Time limit to deliver decision by an administrative organ

The APA generally provides that an administrative matter must be considered without undue delay. In environmental matters, specific time limits are more typically prescribed for parties than for the authority, although there are exceptions, such as EIA procedure, where deadlines are provided for the authority as well. New national legislation has also been approved to transpose the directive on the promotion of the use of energy from renewable sources (2018/2001 /EU) containing provisions on the duration of the permit-granting processes, and it will enter into force by 30 June 2021. This legislation covers the administrative permits to build, repower and operate plants for the production of energy from renewable sources.

As environmental decisions are taken by a multitude of different administrative authorities, it is not possible to give a comprehensive account on average pending times. The authorities may provide average-based estimates on their websites and are also required by APA to provide a case-specific estimate upon request, as well as respond to queries as to the progress of the matter. In the Regional State Administrative Agencies, which handle the major environmental permit matters, average pending times have varied around 9 to 12 months in recent years.

The regional legislation regulating administrative procedure of the Åland Islands resembles the APA with regard to requirements of timeliness and providing estimates of pending time. However, it also includes a general obligation to decide matters within three months of initiation, when feasible, and further provides that accountable officials must compose a yearly report on the grounds of delay for matters exceeding this time limit. Naturally, environmental matters may very well take a longer time than this to process. With regard to matters decided by the principal regional environmental authority (Ålands miljö- och hälsoskyddsmyndighet), authorisation for lesser activities (miljögranskning), is regularly decided within 6 months, while pending times for environmental permits for major activities (e.g. IPPC/IED) are on average 15 months.

3) Is it possible to challenge the first level administrative decision directly before court?

Administrative procedure does not include a general stage of internal review, i.e. reconsideration by the decision-maker or a superior administrative body. This means that usually the administrative decisions concerning environment can be challenged directly before court. However, substantive law can prescribe such administrative review procedures (also called request for rectification). Typically, internal reviews are not used in cases with multiple parties, so most of the decisions under environmental law are challenged directly before a court. If a review procedure is provided for, it cannot be bypassed by directly lodging an appeal with the court.

4) Is there a deadline set for the national court to deliver its judgment?

With regard to appeal proceedings in the administrative courts, there are no prescribed time limits for the majority of matters. The Constitution provides everyone with the right to have his or her case dealt with without undue delay in a court of law. In addition, certain categories and types of appeal matters are prescribed as urgent by law, which translates in practice to prioritisation in the order of resolution. Examples of such statutory urgent environmental matters are detailed master plans for land use and plans for public roads, when they are considered of communal importance. Although there are no specific provisions with regard to requests for injunctive relief, these are typically processed urgently and can even be resolved in a matter of days or less, in extreme cases. There is no sanction mechanism in place with regard to undue delays, but the courts are subject to the same oversight by the supreme overseers of legality as administrative authorities, as well as possible criminal and tort liability.

An administrative court must, on request, provide an estimate of the time required to consider a matter (AJPA, Section 55).

The pending times for appeal proceedings in the regional administrative courts have in recent years (situation in January 2020) averaged around 10 months in the category of land use and building matters and slightly above 12 months in other environmental matters. In the Supreme Administrative Court the corresponding pending times were approximately 11 and 10 months, respectively.

The procedural legislation governing proceedings in the general courts include more detailed provisions on timeliness for specific stages of the proceedings. The average pending times (2018) in district courts were slightly above 9 months in full-scale civil disputes and around 4.2 months in criminal cases. In courts of appeal, average pending times for appeal proceedings were around 6 months. In the Supreme Court, the averages were around 4.3 months for refused leaves to appeal and 18.7 months for decisions on the merits.

There has been since 2009 also a compensation regime in place for undue delays in the general courts, regulated by the Act on Compensation for Excessive Length of Judicial Proceedings (362/2009). The Act was amended in 2013 to cover also administrative court proceedings. The Act provides that a claim for compensation can be filed with the same court considering the main issue at hand and sets a default value for compensation at 1,500 euros per day of delay. The maximum sum of compensation is 10,000 euros. In administrative proceedings the right to compensation is limited to those individuals who are directly affected by the matter decided in the court, which means that e.g. NGOs can usually not claim for compensation.

5) Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)

The court has wide discretion when deciding upon time limits during the procedure, but these time limits should be reasonable. When a party is given a time limit for his written comments, he or she has to be also notified that the matter can be resolved after the expiry of the time limit even if no comments have been made. A usual time limit for written comments in an administrative court can be 3-4 weeks. A party can always ask for prolongment of the time limit, if he or she has difficulties in keeping it.

1.7.2. Interim and precautionary measures, enforcement of judgments

1) When does the appeal challenging an administrative decision have suspensive effect?

According to general provisions regarding enforceability, an administrative decision qualifying for appeal may not be enforced before (ordinary) means of challenge have been exhausted, i.e. the decision has become final or gained “legal force” (saanut lainvoiman, vunnit laga kraft, AJPA, Section 122). This entails that lodging an appeal against a decision ordinarily automatically delays its execution. The same applies also for a request for an administrative review if such a review process is prescribed in the substantive law, but in the case of the municipal appeal lodging of the appeal does not automatically delay the execution of the decision. Appeal to the Supreme Administrative Court must nevertheless not prevent enforcement of a decision in a matter in which leave to appeal is required. Enforcement may nevertheless not be undertaken if it renders the appeal useless.

Environmental and other permit regimes often provide for an option to request the right to commence work or activities in accordance with the permit decision (miljögranskning), in some cases. There is no sanction mechanism in place with regard to undue delays, but the courts are subject to the same oversight by the supreme overseers of legality as administrative authorities, as well as possible criminal and tort liability.

An administrative court must, on request, provide an estimate of the time required to consider a matter (AJPA, Section 55).
However, substantive law can prescribe such administrative review procedures. If a review procedure is provided for, the competences of the authority or the superior authority to order an injunctive relief are usually prescribed in the substantive law as well. The appeal authority may prohibit the implementation of the decision if a right to commence work or activities has been granted (see for example Section 202 of the Land Use and Building Act).

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?
There are no separate deadlines for submitting a request for an injunctive relief, but since the time limits for a request for an administrative review and also for processing such request are usually quite short, the request should be made as early in the process as possible. There are no specific conditions in the law for an injunctive relief, but if the request for administrative review would become futile due to the execution of the administrative decision, this supports ordering an injunctive relief.

4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?
Environmental and other permit regimes often provide for an option to request the right to commence work or activities in accordance with the permit decision irrespective of challenges against it. As the conditions for granting such right to commence are laid down by the applicable substantive law, they may vary, but typically the requirements are:
- a justified cause for immediate execution
- that execution does not defeat the purpose of appeals against the decision
- that the applicant lodges an acceptable security.

The right to commence can be granted either together with the actual permit or upon separate request submitted within a period of time after the appeal period has expired (typically 14 days). In most cases a request for right to commence is filed with and subsequently decided by the permit authority.

There are also some types of decisions that are directly enforceable before they have become final, i.e. despite appeals, unless the appeal court rules otherwise. Examples include decisions to implement protected habitats or to enforce protection under the Nature Conservation Act. In cases where there are no specific provisions with regard to enforceability, the Administrative Procedure Act provides for a general possibility of execution before legal force (APA, Section 49f). Such order of execution is permitted if the decision is of a nature requiring immediate enforcement or if its enforcement cannot be delayed for reason of public interest. Such an order is also reviewable by the administrative court.

5) Is the administrative decision suspended once challenged before court at the judicial phase?
As explained above the main rule is that an appeal or a request for an administrative review against a decision automatically delays its execution. If leave to appeal is required in the matter, an appeal will not preclude enforcement. However, even in this case the enforcement may not begin if the appeal would become futile due to the enforcement, or if the Supreme Administrative Court denies enforcement.

If the administrative authority has granted an operator a right to commence work or activities in accordance with the permit decision irrespective challenges against it, the administrative court with which the permit decision has been challenged is competent to review an order to grant right to commence as well, upon application of an appellant or on its own initiative. Standing in interim relief proceedings corresponds with standing in the main proceedings. The court can quash or amend the order or otherwise provide injunctive relief. Typically, any measures that cause or risk irrevocable effects to the environment are suspended.

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?
The court’s interim decision, whether positive or negative, cannot usually be challenged separately, but the question of interim relief can be raised again if the final decision of the court is challenged with the Supreme Administrative Court. It is, however, possible to file a new application for injunction with the same court, based for example on a change in circumstances. There are also regimes under which the right to commence is decided in first instance by the competent appeal court (e.g. under the Water Act) or where it is possible for the appeal court to issue such an order together with rejecting appeals against the permit decision (e.g. the Environmental Protection Act, the EPA).

No security is required from an applicant for injunction, regardless of whether enforceability is based on a granted right to commence or other order of execution. Another form of interim judicial protection is the power of the court to order an administrative decision to remain in force until a new decision has been taken in a situation where the court rules to overturn it. An example of application would be a case where a decision to implement nature protection is overturned and sent back for partial reconsideration or renewal of incorrect procedure.

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.
For administrative judicial proceedings, the following trial fee is charged from the appellant, according to appeal stage (as of the beginning of 2019):
- Administrative court: 260 euros
- Supreme Administrative Court: 510 euros.

Certain types of matters are categorically exempt from fee, although these are not typically environmental matters. Likewise, individual appellants can be exempted under certain circumstances. An essential ground for exemption is that the appellant is successful in his or her challenge.
There are no additional court fees for any further stages of the proceedings, e.g. consideration of an application for injunctive relief or arranging an oral hearing or viewing. Likewise, parties will not be incurred costs for other measures of the court in investigating the matter, such as acquiring a statement from an expert authority.

When multiple persons jointly lodge an appeal, only one fee is charged. For general court proceedings, the following trial fees are charged from the plaintiff/appellant (as of the beginning of 2019), with corresponding or similar exemptions as in administrative court proceeding:
- District court (incl. land court): 65–510 euros
- Court of appeal: 510 euros (260 euros in criminal matters)

Supreme Court: 510 euros.
According to a research commissioned by the National Research Institute of Legal Policy, the average legal expenses in 2008 in civil dispute proceedings in district court the average liability imposed on the losing party was 5,277 euros. There has not been made a more recent study covering the whole country, but according to some studies made in certain district courts the average liability has clearly gone up, even though the variation in legal expenses is big. According to a study of the Finnish Bar Association the average (median) hourly rate charged for legal counsel was 200 euros.

2) Cost of injunctive relief/interim measure, is a deposit necessary?
No security is required from an applicant for injunction, regardless of whether enforceability is based on a granted right to commence or other order of execution.

3) Is there legal aid available for natural persons?
Legal aid is available for persons who need expert assistance in a legal matter according to the Legal Aid Act (257/2002). Legal aid is not commonly used in environmental matters where the costs of the administrative judicial procedure are usually relatively low. Legal aid is provided for persons resident in Finland or another EU or EEA country. It is also provided irrespective of residence, if the recipient has a matter to be heard by a Finnish court or when there is special cause. Legal aid is granted based on the applicant’s available means. It is provided for free to persons without means, while other entitled persons are liable to co-pay for the aid. The aid covers legal advice as well as necessary measures and representation before a court or other authority. For court proceedings, the applicant can choose between representation by a public legal aid attorney or a private attorney. In other matters, legal aid is provided solely by public legal aid attorneys. Persons who are granted legal aid are also exempt from trial fees. There are some exceptions as to when legal aid is provided, such as matters considered legally simple or of little importance to the applicant, as well as matters in which standing is based on municipal membership, for example.

In addition to the above, the right to legal aid may be restricted in part or fully if the applicant has legal expenses insurance covering the matter at hand. This is relatively common, as such insurance is typically included in many kinds of insurance policies, such as home insurance, car insurance as well as trade union insurance. The financial assistance provided by legal expenses insurance varies according to the policy in question, which determines its scope as well as applicable deductibles and maximum compensations. Insurance conditions in common use stipulate a deductible of 15% and a maximum compensation of 10,000 euros.

Legal aid is state administered and thus available according to the same preconditions on the Åland Islands. Separate from legal aid, the defendant in criminal proceedings or pre-trial investigations may be entitled to a public defender regardless of available means.

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?

Legal aid is not available to NGOs or companies. Many law firms, especially bigger ones, do pro bono legal work, often in accordance with established pro bono programmes of their own. Associations of public utility, including also environmental NGOs, can be recipients of such pro bono legal assistance. There are no widely publicised pro bono programmes providing legal assistance for individuals in environmental matters specifically. On the whole, pro bono work does not play a significant role in environmental judicial proceedings.

5) Are there other financial mechanisms available to provide financial assistance?

Apart from the legal aid and pro bono legal assistance offered by certain law firms, an insurance covering legal expenses is relatively common in Finland. There is no information available about the use of legal expenses insurance in environmental cases.

6) Does the ‘loser party pays’ principle apply? How is it applied by courts, are there exceptions?

Traditionally the “loser party pays” principle has not played a central role in administrative judicial procedure, but since the renewal of the Administrative Judicial Procedure Act in 2020 the situation has changed somewhat. According to the AJPA a party has the obligation to bear the costs of another party, in full or in part, if it would be unreasonable in light of the outcome of the case that the other party would bear his or her own costs (AJPA, Section 95). This includes fees for legal counsel as well as possible costs for producing expert statements or other evidence on one’s own initiative. If an oral hearing is held, the state is responsible for compensating witnesses and experts called by the court on its own initiative. Parties, on the other hand, are ordinarily required to compensate witnesses that they have called.

With regard to the obligation of another party or the authority whose decision has been challenged to bear these costs in full or in part, the circumstances of the case are tried by the court on a case-by-case basis. The AJPA provides that especially the outcome of the case must be considered. Assessment of the reasonableness of a liability may also consider the legal ambiguity of the matter, the actions of the parties and the significance of the matter for a party. In addition, the AJPA holds that private individuals can be held liable for the costs of a public authority only if they have made a manifestly unfounded claim. In practice, it is not common in environmental cases for private parties to be required to pay other private parties’ expenses. However, it is worth repeating that the administrative judicial proceedings typically give rise to relatively low costs, and it is considerably more common that private parties claim no expenses in court than that they do so.

Unlike in administrative court proceedings, the loser pays principle applies to civil disputes in the general courts. This means the party who loses the dispute is assigned responsibility for the reasonable costs of the necessary measures of the opposing party. The CJP also provides for some more specific grounds for exception from or reduction in liability, including frivolous lawsuits, a justifiable reason for pursuing the case that lost or circumstances that would make liability otherwise manifestly unreasonable. If the basis or reasonability of claimed expenses are challenged by the liable party, the court rules on the costs on a case-by-case basis.

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 addition to categorical exemptions from the trial fee, such as when the appellant is successful in his or her challenges, an exemption can be granted on grounds of unreasonable costs on a case-by-case basis by the referendary or rapporteur, who assigns the fee. Although the trial fee is charged together with the decision of the court, it is separately challengeable through a request for reconsideration with the official who has assigned the fee. The decision of the official can be challenged by means of administrative appeal.

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?

Comprehensive information on access to justice is not available for environmental matters specifically. General information about administrative (and general) court proceedings is available on the website of the Finnish justice system. Information about the legislation is available in the FINLEX database. The general website of the environmental administration provides information on different environmental procedures, including information on access to the courts.

The websites of the four Regional State Administrative Agencies competent in environmental and water permit matters include registers on pending permit matters and permit decisions. Further information on specific environmental procedures and access to justice may be provided on the websites of municipalities, for example.

2) During different environmental procedures how is this information provided? From whom should the applicant request information?

According to the Administrative Procedure Act the competent authority is obliged to provide advice on dealing with administrative matters and respond to questions and enquiries concerning the use of its services. Advice must be provided free of charge. In environmental legislation there are often more precise stipulations on the obligation of the authorities to provide with advice and information as described under the next questions.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?

The Administrative Procedure Act is generally applied also in environmental administrative procedures. Apart from the general obligations on administrative authorities to provide advice and respond to questions and enquiries there are more detailed obligations in some of the sectoral environmental acts.
According to the Environmental Protection Act (EPA), which applies to e.g. installations under the IPPC and IED, the permit authority must provide information for the applicant in an electronic format necessary for applying an environmental permit and also anybody else interested in the ongoing procedures or decisions made in a certain area (Sections 39a, 45 and 86). This obligation concerns mainly the Regional State Administrative Agencies, and also the municipal authorities.

According the Act on Environmental Impact Assessment Procedure concerning the EIA, competent authorities are the Centres for Economic Development, Transport and the Environment (so called ETE Centres), which have also the general obligation to provide advice. These ETE Centres are also the national competent authorities with regard to the Water Framework Directive and provide information on the water management planning process.

4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment?

Appeal instructions must be appended with a decision eligible for review by appeal. This applies both for an administrative decision and a judgement (APA, Section 47 and AJPA, Section 88). The appeal instructions must indicate the appellate authority, the authority with whom the appeal document is to be lodged and the appeal period and the date when the said period begins to run. Alternatively, the legal basis for a prohibition against appeal must be indicated. The Administrative Judicial Procedure Act further provides that appeals may not be dismissed due to incorrect lodging by reason of lacking or faulty appeal instructions (AJPA, Section 17). Therefore, an appellant acting in accordance with appeal instructions that indicate an incorrect appeal period, for example, should not have his or her appeal dismissed because of exceeding the appeal period.

5) Is translation, interpretation provided to foreign participants? What are the rules applicable?

Rights of individuals to use the two national languages, Finnish and Swedish, as provided by Section 17 of the Constitution, are laid down in the Language Act (423/2003). Additional language rights are provided for the indigenous Sámi, especially, as well as other groups. With relevance to foreigners, Section 6 of the Constitution provides that everyone is equal before the law, and that no one may, without an acceptable reason, be treated differently from other persons on the ground of origin or language, among other things. The Ombudsman for Minorities supervises compliance with prohibitions against ethnic discrimination and works to advance the status and legal protection of ethnic minorities and foreigners.

The legislation covering administrative and court procedure (APA, AJPA, CJJP and CPA) contains additional provisions on language rights. Additional provisions are included for certain specific procedures, but typically not for environmental procedures. In administrative matters, translation and interpretation can be provided for parties under certain conditions, mainly in authority-initiated matters, but it is also possible for guaranteeing the rights of parties in other matters. General language rights in administrative judicial proceedings correspond with the above but provide for an unconditional right to interpretation when being orally heard. In criminal matters, language rights are naturally more pronounced. In civil disputes, a party who does not speak Finnish, Swedish or Sámi is ordinarily responsible for translation at his/her own expense, unless the court rules otherwise due to the nature of the case. In addition to the above, both administrative authorities and courts are under an obligation to ensure that citizens of the other Nordic countries receive the language assistance they require.

The stipulations described above mean that individuals with a language foreign to the Nordic countries wishing to take part in an environmental matter will typically have to cover their own translation expenses. However, when legal aid is available, it also applies to required translation and interpretation costs. Unlike the rest of Finland, the autonomous Åland Islands are monolingually Swedish. This applies both to regional and municipal authorities as well as state authorities on the Islands, including courts. The Act on the Autonomy of Åland includes provisions with regard to rights to use Finnish in regional state authorities and courts, and the regional act on administrative procedure (Förvaltningslag för landskapet Åland) contains provisions similar to the state legislation on provision of interpretation and translation in regional and municipal authorities.

1. Special procedural rules


Country-specific EIA rules related to access to justice

1) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

Environmental impact assessment (EIA) procedure is regulated by the Act on Environmental Impact Assessment Procedure (EIA Act, 252/2017) together with a complementary governmental decree (277/2017). The Act has in its Section 37 a general reference to both the AJPA and the sectoral statutes covering the different permit procedures that can be relevant in connection to the project. This means in practice that the provisions on judicial appeal including rules on standing concerning the environmental impact assessment depend on the case and the sectoral legislation applicable to the project in question.

Annex I to the Act includes a list of activities (thresholds), for which an EIA is always required. In addition, a state authority is competent to decide on whether or not an EIA is required in case of other activities (screening). In most cases, this state authority is the Regional Centre for Economic Development, Transport and the Environment (ETE Centre). In the case of nuclear power plant projects, the competent authority is the Ministry of Economic Affairs and Employment. According to the EIA Act (Section 34) the ETE Centre has always a right to appeal against the final permit or other consent decision, if an assessment has been omitted altogether or if there are essential deficiencies in the assessment.

In cases where a screening decision is positive, i.e. an assessment procedure is required:

The decision can be challenged by administrative appeal with the regional administrative court by the developer/operator

The review proceedings follow ordinary administrative appeal procedure under the AJPA, as described in prior contexts.

In cases where a screening decision is negative:

The decision can only be challenged at a later stage, in the context of a final permit or other consent decision in the matter according to the applicable substantive legislation.

The procedural conditions, including right of appeal, are determined by how this consent decision can be challenged (see further questions 3 to 5).

EIA procedure on the Åland Islands is governed by a regional act (Landskapslag om miljökonskvensbedömning, 2018:31) and decree (Landskapsförordning om miljökonskvensbedömning, 2018:33). In contrast to the state procedure, there is no separate authority responsible for screening, i.e. the administrative authority competent in the main permit or consent matter decides whether there is need for an EIA when it is not required directly by law. The means of challenging EIA decision-making and invoking faulty EIA correspond with what has been described for the state law. Appeals are lodged with either the Administrative Court of Åland or the Supreme Administrative Court, depending on the administrative authority whose consent decision is being challenged.

2) Rules on standing relating to scoping (conditions, timeframe, public concerned)

The Act on Environmental Impact Assessment Procedure has in its Section 37 a general reference to both the AJPA and the sectoral statutes concerning the different permit procedures that can be relevant in connection to the project. This means in practice that the provisions on judicial appeal concerning the environmental impact assessment depend on the case and the sectoral legislation applicable to the project in question.
Provisional statements issued by the coordinating authority during the scoping or concluding stages of the assessment procedure are not separately appealable. Instead, the EIA Act provides that essential deficiencies in the assessment, which again covers both substantial and procedural shortcomings, can be invoked against the final consent decision. When called for, the court can ascertain the validity of disputed findings of the EIA. Participation in or during the EIA procedure is not a formal prerequisite for challenging either the consent decision or the EIA preceding it.

3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?

The Act on Environmental Impact Assessment Procedure has in its Section 37 a general reference to both the AJPA and the sectoral statutes concerning the different permit procedures that can be relevant in connection to the project. This means in practice that the provisions on judicial appeal including rules on standing concerning the environmental impact assessment depend on the case and the sectoral legislation applicable to the project in question (see next question). Apart from municipal appeal, there is no actio popularis with regard to access to court. Nor are there any general provisions on the right of appeal of NGOs. Right of appeal is provided for NGOs by substantive law in most significant environmental matters. For example, in the case of the environmental impact assessment of a groundwater extraction project, the provisions of the Water Act on judicial appeal would be applicable. According to the Water Act the permit authority is the Regional State Administrative Agency and the appellate authority is the Vaasa administrative court. An appeal against the decision of the Regional State Administrative Agency to grant a permit to the groundwater extraction project in question can be lodged at the Vaasa administrative court within thirty days of publication of the decision, and the permit decision can be challenged also on the ground of deficiencies in the environmental impact assessment.

4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO?

Both the substantial and procedural legality of the screening decision can be reviewed in the court once the final consent decision has been made, and the court’s powers of review accord with the review of the consent decision. Essential deficiencies in the assessment, which again covers both substantial and procedural shortcomings, can also be invoked against the final consent decision. The fact that an assessment has been omitted altogether can be invoked in a similar fashion, which, in accordance with established case law, means that the administrative court is competent to review the need for an EIA whether a screening decision has been issued or not, provided that it has established the necessary facts to resolve this question.

The procedural conditions, including right of appeal, are determined by how the consent decision can be challenged. This means in practice that the provisions on judicial appeal depend on the case and the sectoral legislation applicable to the project in question. Right of appeal is granted according to the general provisions of AJPA to any person the decision is addressed to or whose right, obligation or interest is directly affected by the decision. Substantive environmental law typically provides a wider right of appeal than the AJPA.

Right of appeal is provided for NGOs by substantive law in most significant environmental statutes such as the Nature Conservation Act, Land Use and Planning Act, Environmental Protection Act, Water Act, Waste Act, Mining Act, Transport System and Highways Act, Railways Act, etc. These provisions in substantive law can differ in e.g. whether both national and local NGOs have a right to appeal or if the right is only prescribed to local and regional NGOs. The same rules apply for foreign NGOs as for national ones, and the abovementioned differences in substantive law can lead to different outcomes when determining the right of appeal of a foreign NGO.

5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?

Both the substantial and procedural legality of the screening decision can be reviewed in the court once the final consent decision has been made, and the court’s powers of review accord with the review of the consent decision. Essential deficiencies in the assessment, which again covers both substantial and procedural shortcomings, can also be invoked against the final consent decision. The fact that an assessment has been omitted altogether can be invoked in a similar fashion, which, in accordance with established case law, means that the administrative court is competent to review the need for an EIA whether a screening decision has been issued or not, providing that it has established the necessary facts to resolve this question.

6) At what stage are decisions, acts or omissions challengeable?

In cases where an EIA screening decision is positive, i.e. an assessment procedure is required:

- The decision can be challenged by administrative appeal with the regional administrative court by the developer/operator.
- The review proceedings follow ordinary administrative appeal procedure under the AJPA, as described in prior contexts.

In cases where a screening decision is negative:

- The decision can only be challenged at a later stage, in the context of a final permit or other consent decision in the matter.

The procedural conditions, including right of appeal, are determined by how this consent decision can be challenged.

In general, the substantive and procedural aspects of the EIA can be challenged in the context of a final permit or other consent decision according to the sectoral legislation concerning the project in question. The fact that an assessment has been omitted altogether can be invoked in a similar fashion in the context of a final permit or other consent decision in the matter.

7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

In Finland administrative procedure does not include a general stage of internal review, i.e. reconsideration by the decision-maker or a superior administrative body. However, substantive law can prescribe such administrative review procedures. If a review procedure is provided for, it cannot be bypassed by directly lodging an appeal with the court. As an example, the Land Use and Building Act stipulates that court proceedings are preceded by a request for rectification with the municipal supervision authority in cases where a matter has been decided by a subordinate official under delegated competence. In general the substantive law rarely provides for an administrative review in case of those activities, for which environmental impact assessment is required.

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 hearings, etc., not meaning the requirement determined under point 12?

Participation in or during the environmental impact assessment (EIA) procedure is not a formal prerequisite for challenging either the consent decision or the EIA preceding it.

9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

There are no specific provisions concerning a fair and equitable judicial procedure in the national legislation on environmental impact assessment (EIA). According the Administrative Judicial Procedure Act (AJPA) the appellate authority, or the administrative court, is responsible for leading the process and reviewing the matter. With regard to review of facts, the AJPA provides that the court must obtain evidence on its own motion to the extent that the impartiality and fairness of the proceedings and the nature of the matter require. The state is responsible for compensating witnesses and experts called by the court on its own initiative. The authority that has made the decision challenged by an appeal takes part in the administrative judicial procedure and is obliged to give equitable consideration to public and private interests when presenting the facts of the case to the court (AJPA, Section 37).

10) How is the notion of "timely" implemented by the national legislation?

There are no specific provisions concerning a timely judicial procedure in the national legislation on environmental impact assessment. With regard to appeal proceedings in the administrative courts, there are no prescribed time limits for the majority of matters. The Constitution provides everyone with the right to have his or her case dealt with without undue delay in a court of law.
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?

Enforceability and injunctive relief are governed by the procedure observed for the consent decision. In addition, the Act on Environmental Impact Assessment Procedure (EIA Act) provides that, should the implementation of a project not require a permit or other consent decision, and implementation is begun without a necessary EIA, the competent regional state authority has the power to order such implementation to be halted until EIA has been carried out.

1.8.2. Integrated Pollution Prevention and Control (IPPC)/Industrial Emissions Directive (IED) - provisions related to Directive 2003/35/EC

Country-specific IPPC/IED rules related to access to justice

Competence to grant permits under the Environmental Protection Act (EPA) for activities that pose a risk of environmental pollution (environmental permits) is divided between four of the Regional State Administrative Agencies (RSA agency; AVI, RFV) and municipal environmental authorities. The permit regime covers activities from animal shelters to major industrial installations (IPPC/IED), and permits can also be integrated with ones under the Water Act. Permit decisions can be challenged through administrative appeal in the Vaasa administrative court, which has a nationwide jurisdiction in appeal matters under the EPA and expert judges trained in natural and technical sciences. An exception from this is the autonomous Åland Islands, which have their own legislation on environmental protection. Permit decisions under this regional legislation are taken by the Environmental and Health Protection Authority of Åland (Ålands miljö- och hälsoskyddsmyndighet) and reviewed on appeal by the Administrative Court of Åland.

In addition to regulating the administrative permit procedure, the EPA also includes some special provisions regarding the court proceedings. The right of appeal is somewhat wider than under the standard provisions of the Administrative Judicial Procedure Act, belonging to persons whose rights or interests may be affected by the matter. The right of appeal is also provided for registered associations or foundations whose purpose is to promote environmental, health or nature protection or general safeguarding of the environment and whose area of activity is subject to the environmental impact in question. Certain authorities are also entitled to appeal decisions under the EPA. Participation during the administrative permit procedure is not a prerequisite for standing in court.

The initial stages of the court proceedings in EPA appeal cases differ from the general appeal procedure in some cases. The court announces an appeal of an environmental permit decision by a permit applicant by posting a public notice of it for at least 14 days on the website of the administrative court, in order to allow responses to be submitted (Section 196 of the EPA and Section 62a of the APA). Information about the public notice should also be posted on the website of the municipality within the area impacted by the activity (Section 108 of the Local Government Act). The same applies to the decision of the court.

1) Standing rules, at what stage(s) can one challenge decisions (if one is an NGO, a foreign NGO, a citizen)? Is the final decision challengeable?

The Environmental Protection Act (EPA) includes some special provisions regarding the court proceedings. The right of appeal is somewhat wider than under the standard provisions of the Administrative Judicial Procedure Act, belonging to persons whose rights or interests may be affected by the matter. The right of appeal is also provided for environmental NGOs, meaning registered associations or foundations whose purpose is to promote environmental, health or nature protection or general safeguarding of the environment and whose area of activity is subject to the environmental impact in question. Certain authorities are also entitled to appeal decisions under the EPA.

The permit authority announces the permit application by posting a public notice of it for at least 30 days on the website of the authority, in order to allow responses to be submitted (Section 44 of the EPA and Section 62a of the APA). Information about the public notice should also be posted on the website of the municipality within the area impacted by the activity (Section 108 of the Local Government Act). The state environmental permit authority must also publish a summary of the permit application for the public on its website, along with other essential contents of the application.

The parties concerned can lodge an objection to the matter and other parties can also express their opinions. Participation during the administrative permit procedure is not a prerequisite for standing in court, but in addition to other requirements on delivery and publication of permit decisions, the permit authority is required to give separate notice of its decision to anyone who has lodged an objection during the procedure or requested such notification.

2) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

There are no provisions on screening related to IPPC/IED installations specifically. The screening procedure follows the general rules of the environmental impact assessment (see section 1.8.1). This means that the provisions of the Environmental Protection Act (EPA) on standing and access to justice described above apply when a decision related to screening of an IPPC/IED installation is challenged.

3) Rules on standing relating to scoping (conditions, timeframe, public concerned)

There are no provisions on scoping related to IPPC/IED installations specifically. The scoping procedure follows the general rules of the environmental impact assessment (see section 1.8.1). This means that the provisions of the Environmental Protection Act (EPA) on standing and access to justice described above apply when a decision related to scoping of an IPPC/IED installation is challenged.

4) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?

The permit authority must announce the permit application by public notice posted for at least thirty days on the authority’s website and on the websites of municipalities within the area impacted by the activity. The state environmental permit authority must also publish a summary of the permit application for the public on its website, along with other essential contents of the application. The parties concerned can lodge an objection to the matter and other parties can also express their opinions. An appeal against the decisions of the permit authority under the Environmental Protection Act (EPA) can be lodged in the Vaasa administrative court within thirty days of publication of the decision.

5) Can the public challenge the final authorisation?

The right of appeal under the Environmental Protection Act (EPA) is somewhat wider than under the standard provisions of the Administrative Judicial Procedure Act, as described under question 2, but there is no actio popularis with regard to access to court. An appeal against the final authorisation or permit decision under the EPA can only be made by those who have standing according to Section 191 of the Act.

6) 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 court’s competence and responsibilities of review are the same as in other administrative appeal matters. Both the procedural and substantial legality of the challenged decision are liable to review, as well as underlying material and technical findings. However, in order to provide the court with sufficient expertise, a number of specialist judges, who are trained in technical or natural science instead of law, are appointed as full members of the Vaasa administrative court. When deciding matters under the Environmental Protection Act (EPA) or the Water Act, two jurist members of the court are joined by one or two of these specialist members, instead of the generally competent panel of three legally trained judges. As neither the national EPA nor the linked court specialisation applies to the Åland Islands, corresponding permit appeals are handled in accordance with ordinary administrative court procedure in the Administrative Court of Åland.

The decision of the Vaasa administrative court can be further appealed to the Supreme Administrative Court, where a leave to appeal is required. Justices trained in technical and natural science are employed by the supreme instance as well, on the basis of part-time appointment. These specialist justices also partake in deciding appeals against decisions of the Administrative Court of Åland in environmental protection and water cases.
With regard to acts and omissions and enforcement through a request to the competent supervisory authority, the EPA identifies the competent state supervisory authority as well as requiring the municipality to assign one of its committees as local supervisory authority. At state level, the ETE Centre is according to the EPA the competent supervisory authority in environmental matters. The Chapter 18 of the EPA defines the supervisory authority’s powers of enforcement, i.e. the authority’s competence to use administrative compulsion against someone breaching the provisions of the law. Depending on the case, this may for example entail orders to comply with a permit, prevent or remedy environmental damage or an application to the permit authority for revocation of the permit. In principle, anyone can approach the authority with a request for such enforcement measures from the supervisory authority, although some environmental acts include specific provisions of entitlement. An appeal against the decision by the competent supervisory authority or the permit authority under Chapter 18 of the EPA can be lodged in the Vaasa administrative court.

7) At which stage are these challengeable?

An administrative appeal can be lodged against the decisions of the permit authority and the competent supervisory authority under the Environmental Protection Act (EPA) in Vaasa district court within thirty days of publication of the decision.

8) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

There are a few provisions on an administrative review procedure in the Environmental Protection Act (EPA) concerning the monitoring and control plans and fishery matters that are in first instance decided by the competent supervisory authority. The application for administrative review is in these cases made to the state permit authority. The operator may also submit a request for an administrative review of a decision by a state supervisory authority (the Centre for economic development, transport and the environment, ETE Centre) concerning permit review to the state environmental permit authority (the Regional State Administrative Agency) once the Commission has published its decision on the conclusions concerning the main activity of an installation covered by the IED. In this case a separate appeal against this decision of the ETE Centre is not possible. An appeal against a decision by the state environmental permit authority under the EPA can be lodged directly with the Vaasa administrative court.

9) 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?

Participation during the administrative permit procedure is not a prerequisite for standing in court, but in addition to other requirements on delivery and publication of permit decisions, the permit authority is required to give separate notice of its decision to anyone who has lodged an objection during the procedure or requested such notification.

10) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

There are no specific provisions concerning a fair and equitable judicial procedure in the EPA or other national legislation on IED/IPPC installations. According the Administrative Judicial Procedure Act (AJPA) the appellate authority, or the administrative court, is responsible for leading the process and reviewing the matter. In the Vaasa administrative court, with nationwide competence in appeal matters under the EPA, there are judges trained in natural and technical sciences in order to ensure sufficient expertise. The Supreme Administrative Court has also appointed experts judges that participate in decision-making in cases under the EPA. With regard to review of facts, the AJPA provides that the court must obtain evidence on its own motion to the extent that the impartiality and fairness of the proceedings and the nature of the matter require. The state is responsible for compensating witnesses and experts called by the court on its own initiative. The authority that has made the decision challenged by an appeal takes part in the administrative judicial procedure and is obliged to give equitable consideration to public and private interests when presenting the facts of the case to the court (AJPA, Section 37).

11) How is the notion of “timely” implemented by the national legislation?

There are no specific provisions concerning a timely judicial procedure in the Environmental Protection Act (EPA) or other national legislation on IED/IPPC installations. According the Administrative Judicial Procedure Act (AJPA) the appellate authority, or the administrative court, is responsible for leading the process and reviewing the matter. In the Vaasa administrative court, with nationwide competence in appeal matters under the EPA, there are judges trained in natural and technical sciences in order to ensure sufficient expertise. The Supreme Administrative Court has also appointed experts judges that participate in decision-making in cases under the EPA. With regard to review of facts, the AJPA provides that the court must obtain evidence on its own motion to the extent that the impartiality and fairness of the proceedings and the nature of the matter require. The state is responsible for compensating witnesses and experts called by the court on its own initiative. The authority that has made the decision challenged by an appeal takes part in the administrative judicial procedure and is obliged to give equitable consideration to public and private interests when presenting the facts of the case to the court (AJPA, Section 37).

12) 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?

The general rule in all administrative judicial proceedings, which applies also to environmental permit matters, is that administrative decisions can be executed only after means of and time limits for challenging the decision through appeal have been exhausted. Thus, appealing against an environmental permit decision ordinarily suspends commencement of the authorised activity until the appeal court has ruled on the matter. As an exception from this suspensive effect, the administrative authority can under certain conditions issue a provisional order for enforcement of the permit despite appeals, either together with the permit decision or shortly thereafter through a separate decision. The court is competent to review such an order, and to suspend enforcement despite it. (This system of injunctive relief is described in more detail in section 1.7.2.)

13) Is information on access to justice provided to the public in a structured and accessible manner?

Comprehensive information on access to justice is not available for environmental matters or IED specifically. General information about administrative (and general) court proceedings is available on the website of the Finnish justice system. According to the Environmental Protection Act (EPA), access to information by means of electronic communications is promoted in the sense that anyone has the right to request to be informed of environmental permit matters initiated and permits granted in a specific area by means of electronic communications insofar as the authority’s information systems are able to receive such requests and automatically send messages. The websites of the Regional State Administrative Agencies competent in environmental and water permit matters include registers of pending permit matters and permit decisions and general information on access to justice.

General information on the environmental permit procedures and more precise information on how to lodge an appeal can be found on the common website of thexious Administrative Agencies (more information is provided on the Finnish website).

1.8.3. Environmental liability

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?

In Finland, the Environmental Liability Directive has been implemented by the Act on the Remediation of Certain Environmental Damages (383/2009) which entered into force on 1 July 2009, i.e. the Environmental Liability Act, and the related changes introduced into the Nature Conservation Act, the Environmental Protection Act (EPA), the Water Act, the Gene Technology Act and the Act on Transport of Dangerous Goods. Based on the Environmental Liability Act, the government has also issued a Decree on the Remediation of Certain Environmental Damages (713/2009), or the Environmental Liability Decree.

The Environmental Liability Act includes provisions on necessary measures related to the remediation of significant damage to protected species, natural habitats and waters, and on liability to pay the costs of such measures. The EPA, the Water Act, the Nature Conservation Act and the Gene Technology Act contain provisions on how, in accordance with the Environmental Liability Act, authorities may issue orders to remedy significant environmental damage.
caused by activities falling within the scope of application of these acts. Provisions to be applied in such cases are those on administrative enforcement proceedings set out in the act concerned. Under the reference provision, the EPA applies to the remediation of damage caused by the transport of dangerous goods.

Appeals against the authority’s decision concerning the imposition of remedial measures and liability for costs is prescribed in the act whose administrative enforcement procedures have been followed (Environmental Liability Act, Section 17). This means that the right of appeal is also prescribed in these acts and can vary depending on the act to be applied. In all of these acts the right of appeal is somewhat wider than under the standard provisions of the Administrative Judicial Procedure Act (AJPAct). An appeal related to matters falling under the scope of the Water Act and the EPA is made to the administrative court of Vaasa. In matters falling under the scope of the Nature Conservation Act, such appeals are made in a regional administrative court. A decision made by the Board for Gene Technology pursuant to the Gene Technology Act is also open to appeal before the administrative court, as referred to in the Administrative Judicial Procedure Act.

More information on remediation of environmental damages and the implementation of ELD in the Finnish legislation can be found in a report of the Ministry of Environment “Remediation of Significant Environmental Damage” from 2012.

2) In what deadline does one need to introduce appeals?

Appeals against the authority’s decision concerning the imposition of remedial measures and liability for costs is prescribed in the act whose administrative enforcement procedures have been followed (Environmental Liability Act, Section 17). An appeal related to matters falling under the scope of the Water Act and the Environmental Protection Act (EPA) has to be made to the administrative court of Vaasa within thirty days of publication of the decision. In matters falling under the scope of the Nature Conservation Act, such appeals are made in a regional administrative court within thirty days of notice of the decision. A decision made by the Board for Gene Technology pursuant to the Gene Technology Act is also open to appeal before the administrative court within thirty days of notice of the decision.

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?

Anyone who observes environmental damage may inform or notify the supervisory authority, which is usually the nearest Regional Centre for Economic Development, Transport and the Environment (ETE Centre) or the Board for Gene Technology. In cases where the supervisory authority does not take action, the provisions on right to initiate (administrative enforcement) proceedings set out in the applicable act are applied. Administrative enforcement proceedings are initiated in writing, but there are no other requirements for the observations accompanying the request for action. Administrative enforcement proceedings related to environmental damage can be initiated by people concerned, NGOs or other state or municipal authorities. The authority where the administrative enforcement proceedings are initiated is typically the same authority that must be informed of the damage. However, administrative enforcement proceedings falling under the scope of the Water Act are initiated by the Regional State Administrative Agency.

4) Are there specific requirements regarding ‘plausibility’ for showing that environmental damage occurred, and if yes, which ones?

There are no specific requirements in Finnish law regarding the plausibility of a claim of environmental damage. If there is justified cause to suspect that significant environmental damage has occurred, the competent authority, usually the regional ETE Centre, should be contacted. It is the duty of the competent authority to assess the scope and extent of the damage and, when necessary, to initiate administrative enforcement proceedings. Competent authorities may use the help of other expert authorities in assessing the significance of the damage.

In practice, to be able to issue administrative enforcement orders for remedial measures, the authorities must establish who the operator is that has caused the damage and show that there is a causal link between the damage and the operator’s activity subject to administrative enforcement. If administrative enforcement proceedings related to environmental damage are initiated by a notification from a person concerned or a NGO, it is not their duty to establish this information, but in some cases it might not be possible for the competent authority to do it either.

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)?

When assessing the significance of environmental damage and the necessary remedial measures, the authority must hear other affected parties, such as landowners and inhabitants. According to the administrative enforcement proceedings, the affected parties, including the entitled NGOs, have the right to be heard before the authority decides on remedial measures. Typically, the hearing focuses on the proposal for remedial measures that was prepared by the operator causing the damage.

According to the APA, any decision taken by the competent authority must be issued in writing and instructions for requesting an administrative review must be provided at the same time as the decision. An authority must serve its decision without delay on the party concerned and on other known persons who have the right to request an administrative or judicial review of the decision, including the entitled environmental NGOs. The decision is usually communicated to the address indicated by the person in question. There are no time limits in the substantive legislation for completing the administrative enforcement proceedings.

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?

There is no extension of the entitlement to request action concerning the cases of imminent threat of a damage to the environment in the substantive environmental legislation, nor are these cases excluded from the scope of the administrative enforcement proceedings. Depending on the substantive law the competencies of different authorities and also the duties of operators differ in some ways in different cases of imminent threat of a damage.

According to the Water Act, an operator who has caused damage or harm or the imminent threat thereof must immediately notify the state supervisory authority (Regional Centre for Economic Development, Transport and the Environment, the ETE Centre) and take appropriate measures to prevent or minimise the damage or harm. A decision on the remediation, according to the Water Act cannot be made by the ETE Centre, which has to initiate administrative enforcement proceedings in the regional state administrative authority if the operator has not done so.

According to the Environmental Protection Act (EPA), the operator must notify the ETE Centre without delay of any substantial damage and the imminent threat thereof. In case of damage to nature the operator who has caused the damage or harm or the imminent threat of it must immediately notify the ETE Centre acting as the supervisory authority and take appropriate measures to prevent or minimise said damage or harm. In these cases the ETE Centre is competent to decide on both the immediate measures to prevent damage and the remediation measures.

7) Which are the competent authorities designated by the MS?

Regional Centres for Economic Development, Transport and the Environment (the ETE Centres) can issue orders in accordance with the Nature Conservation Act and the Environmental Protection Act (EPA). Regional State Administrative Agencies can issue orders based on the Water Act, and the Board for Gene Technology can issue orders in accordance with the Gene Technology Act. In ETE Centres, activities related to the remediation of environmental damage are part of the area of responsibility for the environment and natural resources, which is addressed at 13 regional ETE Centres. If there is justified cause to suspect that significant environmental damage has occurred, primary contacts include the regional ETE Centre, and in urgent cases, the local rescue authorities.

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?
There are no provisions on administrative review procedures in connection with the administrative enforcement proceedings in the relevant environmental statutes. The appeal against a decision by the competent authority concerning the imposition of remedial measures and liability for costs can be made directly in an administrative court.

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 order to transpose the Convention on Environmental Impact Assessment (Espoo Convention) and other international obligations, the Finnish EIA Act contains provisions with regard to projects likely to have significant environmental impacts on the territory of another country. The Act requires that the competent EIA authority notifies the Ministry of the Environment, which is responsible for coordination with other concerned states. States concerned are notified of the pending project and provided with information about its transboundary impacts as well as assessment and consent procedure. This generally includes translations at least to the extent required to understand the matter at hand, as well as information on possible public hearing events in the target country or in Finland. A time limit is provided for authorities and the public to notify the Ministry of their wish to participate in the assessment procedure. Public consultation corresponding with the domestic EIA procedure is then arranged in the neighbour country, ordinarily by a contact authority belonging to the state in question. The geographical scope of notification for the consultation is not specified in the Act, but neither is the right to comment restricted. The developer is responsible for the costs of required translations. The Ministry of Environment is also responsible for coordinating public consultation and communicating the views of Finnish participants in cases where Finland is likely to be affected by a foreign project.

The Act on the Assessment of the Effects of Certain Plans and Programmes on the Environment (SEA Act, 200/2005) contains similar provisions with regard to strategic environmental assessment of plans and programmes. The SEA Act transposes the Protocol on Strategic Environmental Assessment to the Convention on Environmental Impact Assessment in a Transboundary Context. As far as land use plans are concerned, the Protocol has been transposed to Finnish legislation by Land Use and Building Act.

There are also some provisions concerning certain activities such as installations covered by the Industrial Emissions Directive (IED). According to the Environmental Protection Act (EPA), if the operations of an installation covered by the IED or of a waste facility for extractive waste posing a risk of a major accident are likely to cause significant harmful environmental impacts in the territory of another Member State of the European Union, the state environmental permit authority must provide the other state with information about the environmental permit application for the activity in question and any related documents at the same time as public notice of them is given and hearing of views is arranged. If necessary, the Ministry of the Environment must hold consultations with the competent authority of the other state before the permit matter is resolved to ensure that the environmental permit application and the related documents are made available to the public for an appropriate period in the state in question for possible comments. Frontier treaties or other agreements between states together with corresponding legislation may include more detailed provisions on transboundary assessment procedure (e.g. the Agreement between Estonia and Finland on transboundary EIA), as well as provisions on standing and participation in environmental matters that do not entail an EIA (e.g. the Nordic Environmental Protection Convention or the Agreement between Finland and Sweden concerning transboundary rivers).

In accordance with the Act on the Autonomy of Åland, the state has principal legislative authority in matters relating to foreign affairs. Although the regional act on EIA contains some provisions on delivery of information in case of transboundary impacts, international hearing is arranged through the Ministry of Environment.

2) Notion of public concerned?

The notion of public concerned does not make a distinction between the public in the country of the installation or the activity and the public in other affected countries. This is also explicitly formulated in some environmental statutes. According to Section 211 of the Environmental Protection Act (EPA), the environmental impacts of an activity referred to in the Act that extend into another state, must be taken into account in the same manner in which account would be taken of corresponding impacts in Finland. A similar provision about the impacts on a water body and groundwater can be found in the Water Act.

Legal aid is not available to NGOs or companies. NGOs or individuals with a language foreign to the Nordic countries wishing to take part in an environmental matter will typically have to cover their own translation expenses. With regard to legal aid and language, see also sections above (1.7.3 and 1.7.4, respectively).

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)?

Foreign NGOs have in case law been granted right of appeal according to the same criteria as domestic NGOs. Once standing in court is established, the same basic procedural rights (to request an injunction, for example) apply regardless of nationality. As an example of the recent case law of the Supreme Administrative Court, see case KHO 2019:97 on the right of appeal of a Polish foundation against a decision granting a water permit for gas pipes on the bottom of the Baltic Sea.

Legal aid is not available to NGOs or companies. NGOs or individuals with a language foreign to the Nordic countries wishing to take part in an environmental matter will typically have to cover their own translation expenses. With regard to legal aid and language, see also sections above (1.7.3 and 1.7.4, respectively).

5) At what stage is the information provided to the public concerned (including the above parties)?

The substantive environmental acts have various provisions on providing information to the public concerned. If there are possible environmental impacts in another country the information should be provided to the public in that other country at the same time as in Finland. In practice the information especially on smaller scale activities or installations is in many cases published on the websites of the authorities only in Finnish or Swedish.

6) What are the timeframes for public involvement including access to justice?

The timeframes for public involvement vary depending on the substantive environmental law in question, but as an example a permit application under the Environmental Protection Act (EPA) has to be announced for at least thirty days on the website of the permit authority to allow for objections and opinions by the public concerned. In most of the environmental decisions the appeal period is thirty days.

7) How is information on access to justice provided to the parties?

Appeal instructions must be appended with a decision eligible for review by appeal. These instructions must indicate the appellate authority, the authority with whom the appeal document is to be lodged and the appeal period and the date when the said period begins to run.

8) Is translation, interpretation provided to foreign participate? What are the rules applicable?

NGOs or individuals with a language foreign to the Nordic countries wishing to take part in an environmental matter will typically have to cover their own translation expenses. With regard to language and translation, see also section 1.7.4.
9) Any other relevant rules?

If a project requires permits in two (or more) countries, individuals or NGOs may want/need to pursue their interests in proceedings on both sides of the border. With regard to permit requirements and other public law liabilities, opportunities to choose in which jurisdiction to act are usually quite limited. Transboundary civil law liabilities, on the other hand, are typically governed by bilateral or multilateral treaties and national and EU legislation transposing them. As an example, the Convention of the Protection of the Environment between Denmark, Finland, Norway and Sweden provides that claims for damages can be filed with the competent court of the state where the potentially damaging activity has taken place.


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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) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission and its content (in particular, the conditions to be fulfilled and any time-limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The Habitats Directive and the Birds Directive have been transposed into Finnish law mainly by the Nature Conservation Act (1096/1996). The right of appeal according to the Nature Conservation Act is wider than under the standard provisions of the Administrative Judicial Procedure Act (AJPA), mainly in regard to certain NGOs. The right to appeal is granted to those whose rights or interests are affected by the matter in question. In matters other than compensation, the local authority also has the right of appeal. In matters other than compensation and those involving certain derogations from protection orders, the right of appeal is also granted to any registered local or regional association whose purpose is to promote nature conservation or environmental protection. A decision taken by the Government concerning the adoption of a nature conservation programme can also be appealed by a corresponding national organisation or any other national organisation safeguarding the interests of landowners.

In addition, anyone who incurs inconvenience, as well as the above-mentioned local or regional NGOs, has the right to request the environmental authority to take coercive measures against someone who is acting contrary to the Nature Conservation Act (Section 57.2). The authority may upon this request forbid that person from continuing or repeating the offence or instance of negligence and require that he correct the unlawful situation or redress his negligence. A decision by the authority not to take action can be challenged in the administrative judicial procedure by the party making the request.

The same rules apply in principle for domestic and foreign NGOs, but in practice foreign NGOs can rarely be considered as local or regional associations in the meaning of the above-mentioned provisions.

According to the Hunting Act similar provisions on standing and access to justice to those in the Nature Conservation Act apply also to decisions by the Finnish Wildlife Agency concerning derogations from certain prohibitions under the Habitats Directive and the Birds Directive.

For activities falling within the scope of the Water Framework Directive, the provisions of the Environmental Protection Act (EPA) and the Water Act are of importance (for the provisions on access to justice of the EPA see also section 1.8.2). These acts cover water related activities listed in Article 11 of the Water Framework Directive and requiring prior authorisation or regulation. Both of these acts include some special provisions regarding the court proceedings. These provisions of the two acts are very similar due to the common history of water legislation and the fact that according to these two acts the permit procedures in the Regional State Administrative Agencies can be combined.

The right of appeal according to the EPA and the Water Act is somewhat wider than under the standard provisions of the AJPA, granted to persons whose rights or interests may be affected by the matter. The right of appeal is also provided for environmental NGOs, meaning registered associations or foundations whose purpose is to promote environmental, health or nature protection or general safeguarding of the environment and whose area of activity is subject to the environmental impact in question. The same rules apply to foreign NGOs. Certain authorities are also entitled to appeal decisions under the EPA and the Water Act.

In Finland, administrative procedure does not include a general stage of internal review, i.e. reconsideration by the decision-maker or a superior administrative body. However, substantive law can prescribe such administrative review procedures. In the above-mentioned statutes, there are only a few provisions on administrative review e.g. in the EPA and the Water Act concerning decisions on monitoring and control plans of activities that have already been granted a permit under those acts. This means that in most of the environmental decisions the appeal period is thirty days and the appellate authority is the regionally competent administrative court or in case of environmental and water permits according to EPA and Water Act the Vaasa administrative court.

The general provisions of Administrative Procedure Act (APA) and Administrative Judicial Procedure Act (AJPA) on access to justice are central also when assessing access to justice in environmental matters. However, there are numerous special provisions in the Finnish environmental legislation on access to justice and especially the standing of NGOs, which is a special feature of the environmental law. These special provisions have since the 1990s gradually widened to cover a large number of activities and decisions related to the environment. The provisions on standing and access to justice in different acts can differ in their details and a clear overall picture can therefore be difficult to obtain. As an example, in some cases only local and regional environmental NGOs have a right to appeal whereas the right to appeal in other cases covers also national NGOs. The Aarhus Convention and the case law of the Court of Justice of the European Union have played an important role in this development of the legislation and in the case law of the Supreme Administrative Court, but also the coherence of the national legislation has been emphasised in the national case law (see KHO 2004:76, KHO 2011:49 and KHO 2019:97). In light of the national case law, access to national courts in environmental matters is guaranteed in an effective way.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

In Finland, administrative procedure does not include a general stage of internal review, i.e. reconsideration by the decision-maker or a superior administrative body. However, substantive law can prescribe such administrative review procedures. The administrative appellate authority is competent to review both the procedural and substantive legality of decisions. The court’s competence and responsibilities of review are the same as in other administrative appeal matters. Both the procedural and substantial legality of the challenged decision are liable to review, as well as underlying material and technical findings.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
In Finland, administrative procedure does not include a general stage of internal review, i.e. reconsideration by the decision-maker or a superior administrative body. However, substantive law can prescribe such administrative review procedures. If a review procedure is provided for, it cannot be bypassed by directly lodging an appeal with the court. Ordinarily only those who have submitted a request for administrative review are entitled to challenge the review decision through appeal, unless the original decision is changed as result of the request (Administrative Judicial Procedure Act, Section 7). An example of a provision concerning administrative review in the environmental matters described in this section is the decision of the fisheries authority to approve implementation plan for a fisheries obligation according to the Water Act; a request for administrative review has to be submitted to the permit authority, which is the Regional State Administrative Agency.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.? Participation during the administrative procedure is not a prerequisite for standing in court.

5) Are there some grounds/arguments precluded from the judicial review phase? There are no provisions precluding certain grounds or arguments from the judicial review phase. The administrative court is not strictly bound to allegations specifically presented in the appeal. When it is called for, the court will assess the validity of material and technical findings, on which a decision has been based. However, courts have to ensure adherence to claims in their decision-making.

6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction? There are no specific provisions concerning a fair and equitable judicial procedure in the national legislation concerning the environmental decisions described in this section. According the Administrative Judicial Procedure Act (AJPA) the appellate authority, or the administrative court, is responsible for leading the process and reviewing the matter. In the Vaasa administrative court, with nationwide competence in appeal matters under the Environmental Protection Act (EPA) and the Water Act, there are judges trained in natural and technical sciences in order to provide sufficient expertise. The Supreme Administrative Court has also appointed expert judges that participate in decision-making in cases under the EPA and Water Act. With regard to review of facts, the AJPA provides that the court must on its own motion obtain evidence to the extent that the impartiality and fairness of the procedure and the nature of the case so require. The state is responsible for compensating witnesses and experts called by the court on its own initiative. The authority that has made the decision challenged by an appeal takes part in the administrative judicial procedure and is obliged to give equitable consideration to public and private interests when presenting the facts of the case to the court (AJPA, Section 37).

7) How is the notion of “timely” implemented by the national legislation? There are no specific provisions concerning a timely judicial procedure in the national legislation on the decisions falling within the scope of EU environmental legislation. With regard to appeal proceedings in the administrative courts, there are no prescribed time limits for the majority of matters. The Constitution provides everyone with the right to have his or her case dealt with without undue delay in a court of law.

8) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions? The general rule in all administrative judicial proceedings, which applies also to environmental matters, is that administrative decisions can be executed only after means of and time limits for challenging the decision through appeal have been exhausted. Thus, appealing against an environmental decision described in this section, such as a water permit decision or a derogation from the prohibitions in the Nature Conservation Act, ordinarily suspends commencement of the authorised activity until the appeal court has ruled on the matter. As an exception from this suspensive effect, the administrative authority can under certain conditions issue a provisional order for enforcement of the permit despite appeals, either together with the permit decision or shortly thereafter through a separate decision. The court is competent to review such an order, and to suspend enforcement despite it. (This system of injunctive relief is described in more detail in section 1.7.2.)

9) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? For administrative judicial proceedings, the following trial fee is charged from the appellant, according to appeal stage (as of the beginning of 2019):

- Administrative court: 260 euros
- Supreme Administrative Court: 510 euros

There are no additional court fees for any further stages of the proceedings. The costs of legal counsel form a major part of the costs of an administrative judicial procedure but use of legal counsel is not always necessary. A party has the obligation to bear the costs of another party in full or in part, if it would be unreasonable in light of the outcome of the case, that the other party should bear his or her own costs. The administrative judicial proceedings typically give rise to relatively low costs. (For more information on costs see section 1.7.3.)

1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[1]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

The content and procedure related to SEA can only be challenged in connection to the decision-making procedure of the plan or programme in question. This means in practice that the provisions on judicial appeal concerning the strategic environmental assessment depend on the case and the sectoral legislation applicable to the plan or programme. The SEA Act contains a similar general reference to the sectoral statutes with regard to strategic environmental assessment of plans and programmes as the EIA Act concerning access to justice. The Governmental Decree on the Assessment of the Effects of Certain Plans and Programmes (347/2005) includes a list of plans and programmes, for which a strategic environmental assessment according to the SEA Act is always required. Some of these plans and programmes, such as the national land use objectives under the Land Use and Building Act, are adopted by the Council of State, and others, such as the flood risk plans, by a Ministry. An appeal against these decisions of the Council of State or a Ministry is made directly to the Supreme Administrative Court. Other plans and programmes are adopted at the regional level, such as the regional waste plans. According to the Waste Act, the regional waste plans are adopted by the ETE Centres (centres for economic development, transport and the environment). An appeal against these regional decisions is submitted to the regional administrative courts. Right of appeal pertains to individuals affected by the decision. Apart from municipal appeal, there is no actio popularis with regard to access to court. Nor are there any general provisions on the right of appeal of NGOs. Right of appeal is provided for NGOs by most of the sectoral statutes applicable to the plans and programmes listed in the SEA Decree.

Decisions to approve municipal land use plans (local master or detail plans) under the Land Use and Building Act (LUBA) can be challenged by means of municipal appeal with the regional administrative court. In addition to directly concerned parties, the right of appeal is granted to all members of the
municipality. This includes registered associations domiciled in the municipality. In addition, the right of appeal is granted to any other registered local or regional organisation when the matter concerns its sphere of activity.

In addition to the above, also nationally active organisations are entitled to appeal against decisions to approve regional plans on certain grounds, specified in the Act. Since planning decisions are reviewed on municipal appeal, the court’s review is strictly confined to the grounds of illegality stated by the appellant. As an exception to the cassatory nature of the municipal appeal, the LUBA includes provisions that enable the court to make slight amendments to the plan under specified conditions. In other regards, the proceedings follow the general procedure under the Administrative Judicial Procedure Act.

In the Act on the Organisation of River Basin Management and Marine Strategy, there is a reference to the SEA Act stating that provisions on the environmental report that must be presented as part of the river basin management plan and the marine strategy document, are laid down in the SEA Act. An appeal against the Government’s decision to approve the river basin management plan or the marine strategy document can be lodged at the Supreme Administrative Court. The right of appeal applies to anyone whose right, obligation or interest may be impacted by the decision, the municipality concerned, an authority supervising the public interest, and a registered local or regional association or foundation whose function is to promote environmental protection or nature conservation and whose operating area the river basin management plan concerns.

In the Flood Risk Management Act there is a similar reference to the SEA Act as in the Act on the Organisation of River Basin Management and Marine Strategy concerning the environmental report in connection to the flood risk management plans. An appeal against the decision of the Ministry of Agriculture and Forestry to approve the flood risk management plan can be lodged at the Supreme Administrative Court. A decision may be appealed by a party whose right, obligation or benefit may be impacted by the decision, relevant municipality, Regional Council or regional rescue service, an authority supervising the public interest and a registered local or regional association or foundation whose purpose is to promote environmental or nature protection or use of water resources and in whose territory the flood risk management plan is applicable.

In the Transport System and Highways Act there is also a reference to the SEA Act concerning the national plan for transport network. The Government’s decision to adopt the plan for transport network can be appealed to the Supreme Administrative Court.

SEA procedure on the Åland Islands is governed by the same regional act as the EIA procedure (Landskapslag om miljökonsekvensbedömning, 2018:31). The provision on SEA procedure in Chapter 3 of the Act are applied on plans and programmes adopted by the government and the municipalities of the Åland Islands. Appeals are lodged with either the Administrative Court of Åland or the Supreme Administrative Court, depending on the administrative authority whose consent decision is being challenged.

The Åland Islands have their own regional act governing plans and construction (Plan- och bygglag för landskapet Åland, 2008:102). The regional act provides two levels of plans: local master and detail plans. Like their counterparts under the LUBA, such plans are approved by the municipality and challenged by means of municipal appeal to the administrative court of Åland. In addition to directly concerned parties and members of the municipality, the right of appeal is granted to organisations registered in the region when the matter concerns its sphere of activity.

The general provisions of the Administrative Procedure Act (APA) and the Administrative Judicial Procedure Act (AJPA) on access to justice are central also when assessing access to justice in environmental matters. However, there are numerous special provisions in the Finnish environmental legislation on access to justice and especially on the standing of NGOs, which is a special feature of environmental law. These special provisions have gradually widened to cover a number of plans and programmes related to the environment. The provisions on standing and access to justice in different acts can differ in their details and a clear overall picture can therefore be difficult to obtain. As an example, in some cases only local and regional environmental NGOs have a right to appeal whereas the right to appeal in other cases covers also national NGOs. In light of the national case law, access to national courts in environmental matters is guaranteed in an effective way.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The court’s powers of review accord with the review of the decision to adopt the plan or programme. The fact that an assessment has been omitted altogether can always be invoked in the court according to Section 11 of the SEA Act.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

In Finland, administrative procedure does not include a general stage of internal review, i.e. reconsideration by the decision-maker or a superior administrative body. However, substantive law can prescribe such administrative review procedures. At the moment there are no such provisions concerning the plans and programmes covered by the SEA Directive.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

Participation during the administrative procedure is not a prerequisite for standing in court.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

The general rule in all administrative judicial proceedings, which applies also to environmental matters, is that administrative decisions can be executed only after means of and time limits for challenging the decision through appeal have been exhausted. Thus, appealing against an environmental decision described in this section, such as adoption of a nature conservation programme under the Nature Conservation Act, ordinarily suspends commencement of the authorised activity until the appeal court has ruled on the matter. As an exception from this suspensive effect, the administrative authority can under certain conditions issue a provisional order for enforcement of the plan despite appeals. The court is competent to review such an order, and to suspend enforcement despite it. (This system of injunctive relief is described in more detail in section 1.7.2.)

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court?

What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

For administrative judicial proceedings, the following trial fee is charged from the appellant, according to appeal stage (as of the beginning of 2019):

Administrative court: 260 euros
Supreme Administrative Court: 510 euros

There are no additional court fees for any further stages of the proceedings. The costs of legal counsel form a major part of the costs of an administrative judicial procedure but use of legal counsel is not always necessary. A party has the obligation to bear the costs of another party in full or in part, if it would be unreasonable in light of the outcome of the case, that the other party should bear his or her own costs. The administrative judicial proceedings typically give rise to relatively low costs. (For more information on costs see section 1.7.3.)
time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

In Section 3 of the Act on the Assessment of the Effects of Certain Plans and Programmes on the Environment (SEA Act, 200/2005) there is a general obligation on the authorities to assess the effects of all plans and programmes that might have significant effects on the environment. This general obligation is not limited to the plans and programmes under the SEA Directive, which are listed in the Governmental Decree described in section 2.2. The SEA Act contains a similar general reference to the sectoral statutes with regard to strategic environmental assessment of plans and programmes as the EIA Act concerning access to justice. This means in practice that the provisions on judicial appeal concerning the strategic environmental assessment depend on the case and the sectoral legislation applicable to the plan or programme in question.

Apart from the plans and programmes covered by the SEA Directive and the Finnish SEA Act described in section 2.2 there are several plans and programmes that are relevant in connection to the question of access to justice in environmental matters. In general, the provisions of Administrative Judicial Procedure Act (AJPA) on standing and access to justice are applied to plans and programmes adopted by the state authorities and the provisions of Local Government Act on municipal appeal to plans and programmes at the local level of administration.

The Environmental Protection Act (EPA) lays down rules on the adoption of air quality protection plans according to the Directive on ambient air quality and cleaner air for Europe (2008/50/EC), emission reduction programmes according to the Directive on the reduction of national emissions of certain atmospheric pollutants (2016/2284/EU) and national noise abatement action plans according to the Directive relating to the assessment and management of environmental noise (2002/49/EC). The air quality protection plans are adopted by the municipalities (EPA, Section 145) and the national emission reduction plans are prepared by the Ministry of Environment and adopted by the Government (EPA, Section 149c). The noise abatement action plans are adopted by the municipalities or the Finnish Transport Agency depending on the areas concerned (EPA, Section 152). The provisions of public participation procedures guarantee all the persons and NGOs the right to participate in the preparation and modification or review of these plans (EPA, Sections 147, 149c, 152 and 204). There are no provisions on access to justice related to these plans in the EPA. This has been justified by the lack of a requirement for access to justice in the relevant EU directives and the nature of these plans as establishing a general framework for necessary national or regional measures. However, anyone can make a complaint to the Parliamentary Ombudsman or to the Chancellor of Justice if the relevant competent authorities fail to fulfil their responsibilities to prepare these plans or do not comply the public participation procedures or other relevant legal requirements while preparing these plans. The special provisions in the Finnish legislation on access to justice and especially the standing of NGOs in environmental matters have gradually widened to cover several plans and programmes related to the environment. This means in practice that the provisions on standing and access to justice differ in their details and a clear overall picture can therefore be difficult to obtain. In light of the national case law access to national courts in environmental matters is guaranteed in an effective way.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

In Finland, administrative procedure does not include a general stage of internal review, i.e. reconsideration by the decision-maker or a superior administrative body. However, substantive law can prescribe such administrative review procedures. The court’s competence and responsibilities for review are the same as in other administrative and municipal appeal matters. When an administrative appeal has been lodged both the procedural and substantial legality of the challenged decision are liable to review, as well as underlying material and technical findings. When a decision taken by a municipal authority is challenged by means of municipal appeal, the court's review is more strictly confined to the grounds of illegality stated by the appellant.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

In Finland, administrative procedure does not include a general stage of internal review, i.e. reconsideration by the decision-maker or a superior administrative body. However, substantive law can prescribe such administrative review procedures. If a review procedure is provided for, it cannot be bypassed by directly lodging an appeal with the court. Ordinarily only those who have submitted a request for administrative review are entitled to challenge the review decision through appeal, unless the original decision is changed as result of the request.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

Participation during the administrative procedure is not a prerequisite for standing in court.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

The general rule in all administrative judicial proceedings, which applies also to environmental matters, is that administrative decisions can be executed only after means of and time limits for challenging the decision through appeal have been exhausted. Thus, appealing against an environmental decision described in this section ordinarily suspends commencement of the authorised activity until the appeal court has ruled on the matter. As an exception from this suspensive effect, the administrative authority can under certain conditions issue a provisional order for enforcement of the plan despite appeals. The court is competent to review such an order, and to suspend enforcement despite it. (This system of injunctive relief is described in more detail in section 1.7.2.)

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court?

What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

For administrative judicial proceedings, the following trial fee is charged from the appellant, according to appeal stage (as of the beginning of 2019):

Administrative court: 260 euros
Supreme Administrative Court: 510 euros

There are no additional court fees for any further stages of the proceedings. The costs of legal counsel form a major part of the costs of an administrative judicial procedure but use of legal counsel is not always necessary. A party has the obligation to bear the costs of another party in full or in part, if it would be unreasonable in light of the outcome of the case, that the other party should bear his or her own costs. The administrative judicial proceedings typically give rise to relatively low costs. (For more information on costs see section 1.7.3.)

14. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the content of the plan (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

Apart from the plans and programmes covered by the SEA Directive and the Finnish SEA Act described in section 2.2 there are several plans and programmes that are relevant in connection to the question of access to justice in environmental matters. In general, the provisions of Administrative Judicial Procedure Act (AJPA) on standing and access to justice are applied to plans and programmes adopted by the state authorities and the provisions of Local Government Act on municipal appeal to plans and programmes at the local level of administration.
In section 2.3 certain plans under the Environmental Protection Act (EPA) are mentioned, since the provisions of the EPA are applied to the adoption of air quality protection plans according to the Directive on ambient air quality and cleaner air for Europe (2008/50/EC), emission reduction programmes according to the Directive on the reduction of emissions of certain atmospheric pollutants (2003/35/EU) and national noise abatement action plans according to the Directive relating to the assessment and management of environmental noise (2002/49/EC).

The Water Framework Directive and the Marine Strategy Directive have been transposed into Finnish law by the Act on the Organisation of River Basin and Marine Strategy. In this Act there is a reference to the SEA Act stating, that provisions on the environmental report that must be presented as part of the river basin management plan and the marine strategy document, are laid down in the SEA Act. An appeal against the Government’s decision to approve the river basin management plan or the marine strategy document can be lodged at the Supreme Administrative Court. The right of appeal applies to anyone whose right, obligation or interest may be impacted by the decision, the municipality concerned, an authority supervising the public interest, and a registered local or regional association or foundation whose function is to promote environmental protection or nature conservation and whose operating area the river basin management plan concerns.

The maritime spatial plans according to the Directive establishing a framework for maritime spatial planning (2014/89/EU) are covered by the Chapter 8A of the Land Use and Building Act (LUBA). Drawing up the maritime spatial plans is the responsibility of the regional councils, which are in charge of other regional planning as well. The LUBA contains provisions on the planning procedure and the interaction with different stakeholders. However, the provisions on maritime spatial plans have been criticised because there are no clear stipulations on how the regional council’s decision to approve a maritime spatial plan can be challenged. The content of a maritime spatial plan has not yet been the object of a case in the courts.

The flood risk management plans according to the Directive on the assessment and management of flood risks (2007/60/EC) are regulated under the Flood Risk Management Act, which contains provisions on the planning procedure and participation and communication during the process. An appeal against the decision of the Ministry of Agriculture and Forestry to approve the flood risk management plan can be lodged at the Supreme Administrative Court. A decision may be appealed by a party whose right, obligation or benefit may be impacted by the decision, a relevant municipality, Regional Council or regional rescue service, an authority supervising the public interest and a registered local or regional association or foundation whose purpose is to promote environmental or nature protection or use of water resources and in whose territory the flood risk management plan is applicable. The provisions of the Land Use and Building Act concerning the appeal and right to appeal a decision concerning the approval of local plans apply to the appeal of a decision by a municipality concerning the approval of a flood risk management plan for stormwater and meltwater flood risks.

The special provisions in the Finnish legislation on access to justice and especially the standing of NGOs in environmental matters have gradually widened to cover several plans and programmes related to the environment. This means in practice that the provisions on standing and access to justice differ in their details and a clear overall picture can therefore be difficult to obtain. In light of the national case law, access to national courts in environmental matters is guaranteed in an effective way.

2) Does the form in which the plan or programme is adopted make a difference in terms of legal standing (see also section 2.5 below)?

In general, the provisions of Administrative Judicial Procedure Act (AJPAct) on standing and access to justice are applied to plans and programmes adopted by the state authorities. An appeal against the decision of the Council of State and also certain decisions by a Ministry to adopt a plan or a programme is lodged directly in the Supreme Administrative Court. An appeal against a decision by a regional state authority to adopt a plan or a programme is lodged in the regional administrative courts.

The provisions of Local Government Act on municipal appeal are applied to plans and programmes at the local level of administration. According to the Local Government Act the right of appeal is granted to all members of the municipality, in addition to directly concerned parties.

There is no regular review procedure concerning the decisions by a legislative body e.g. the Parliament of Finland or the Council of State when adopting normative instruments such as Acts or Decrees (see also section 2.5). There are some plans and programmes, such as the climate change policy plans and the annual climate change report according to the Climate Change Act, that are reported to the Parliament, but at the moment there are no plans or programmes that would be adopted directly by the Parliament. According to Section 8 of the AJPAct an appeal against a decision by the Council of State (the government plenary session) is lodged in the Supreme Administrative Court.

3) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The court’s competence and responsibilities of review are the same as in other administrative appeal matters. Both the procedural and substantial legality of the challenged decision are liable to review, as well as underlying material and technical findings.

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

In Finland, administrative procedure does not include a general stage of internal review, i.e. reconsideration by the decision-maker or a superior administrative body. However, substantive law can prescribe such administrative review procedures. At the moment there are no provisions on a review procedure concerning plans and programmes to be prepared under EU environmental legislation.

5) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure — to make comments, participate at hearing, etc.?

Participation during the administrative procedure is not a prerequisite for standing in court.

6) Are there any grounds/arguments precluded from the judicial review phase?

There are no provisions precluding certain grounds or arguments from the judicial review phase. The administrative court is not strictly bound to allegations specifically presented in the appeal. When it is called for, the court will assess the validity of material and technical findings, on which a decision has been based.

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

There are no specific provisions concerning a fair and equitable judicial procedure in the national legislation on the environmental decisions described in this section. According to the Administrative Judicial Procedure Act (AJPAct), the appellate authority, or the administrative court, is responsible for leading the process and reviewing the matter. The Supreme Administrative Court has appointed expert judges who participate in decision-making in cases under the Environmental Protection Act (EPA) and the Water Act and also the Act on the Organisation of River Basin Management and Marine Strategy. With regard to review of facts, the AJPAct provides that the court must obtain evidence on its own motion to the extent that the impartiality and fairness of the proceedings and the nature of the matter require. The state is responsible for compensating witnesses and experts called by the court on its own initiative. The authority that has made the decision challenged by an appeal takes part in the administrative judicial procedure and is obliged to give equitable consideration to public and private interests when presenting the facts of the case to the court (AJPAct. Section 37).

8) How is the notion of 'timely' implemented by the national legislation?

There are no specific provisions concerning a timely judicial procedure in the national legislation on the decisions falling within the scope of EU environmental legislation. With regard to appeal proceedings in the administrative courts, there are no prescribed time limits for the majority of matters. The Constitution provides everyone with the right to have his or her case dealt with without undue delay in a court of law.
9) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

The general rule in all administrative judicial proceedings, which applies also to environmental matters, is that administrative decisions can be executed only after means of and time limits for challenging the decision through appeal have been exhausted. Thus, appealing against an environmental decision described in this section ordinarily suspends commencement of the authorised activity until the appeal court has ruled on the matter. As an exception from this suspensive effect, some of the plans described in this section, like the water management plans, can be enforced despite appeals according to special provisions in the substantive law. The court is competent to suspend enforcement despite the special provisions if necessary. (This system of injunctive relief is described in more detail in section 1.7.2.)

10) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

For administrative judicial proceedings, the following trial fee is charged from the appellant, according to appeal stage (as of the beginning of 2019):

- Administrative court: 260 euros
- Supreme Administrative Court: 510 euros

There are no additional court fees for any further stages of the proceedings. The costs of legal counsel form a major part of the costs of an administrative judicial procedure but use of legal counsel is not always necessary. A party has the obligation to bear the costs of another party in full or in part, if it would be unreasonable in light of the outcome of the case that the other party should bear his or her own costs. The administrative judicial proceedings typically give rise to relatively low costs. (For more information on costs see section 1.7.3.)

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[4]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedure for adopting or the content of the decision, act or omission of the national regulatory act (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?

According to the Constitution of Finland (731/1999), the legislative powers are exercised by the Parliament, which has also adopted all the Acts that form the most important part of the environmental legislation. The President of the Republic, the Government and a Ministry may issue Decrees on the basis of authorisation given to them in the Constitution or in another Act. There is no Constitutional Court or other regular review procedure concerning the decisions by a legislative body e.g. the Parliament of Finland or the Council of State when adopting normative instruments such as Acts or Decrees. According to Section 74 of the Constitution of Finland, the Constitutional Law Committee of the Parliament must issue statements on the constitutionality of legislative proposals and other matters brought for its consideration, as well as on their relation to international human rights treaties.

If, in a matter being tried by a court of law, the application of an Act would be in evident conflict with the Constitution, the court of law must according to Section 106 of the Constitution give primacy to the provision in the Constitution. If a provision in a Decree or another statute at a lower level than an Act is in conflict with the Constitution or another Act, it may not be applied by a court of law or by any other public authority.

Normative instruments cannot usually be challenged directly by appeal in court. In order to obtain a court ruling on the implementation of an Act or Decree used to implement EU environmental legislation, a first instance decision from the authority applying that Act or Decree is generally required. In case of an omission of a national regulatory act, an individual can seek enforcement of environmental responsibilities based on EU law by approaching the competent municipal or state authority with a request for enforcement measures. Upon review of the decision of the municipal or state authority the national administrative court has to consider the conformity of the national legislation with EU legislation and the need to seek a preliminary ruling from the Court of Justice of the European Union of the interpretation or validity of the EU law according to the Treaty on the Functioning of the European Union.

2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

The court’s competence and responsibilities for review are the same as in other administrative appeal matters. Both the procedural and substantial legality of the challenged decision are subject to review, as well as underlying material and technical findings.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

In Finland, administrative procedure does not include a general stage of internal review, i.e. reconsideration by the decision-maker or a superior administrative body. However, substantive law can prescribe such administrative review procedures. If a review procedure is provided for, it cannot be bypassed by directly lodging an appeal with the court. Ordinarily only those who have submitted a request for administrative review are entitled to challenge the review decision through appeal, unless the original decision is changed as result of the request.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure — to make comments, participate at hearing, etc.? Participation during the administrative procedure is not a prerequisite for standing in court.

5) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?

Since the normative instruments cannot usually be challenged directly by appeal in court, the court is only competent to give execution orders concerning the decision of the authority applying the normative instrument in question. The general rule in all administrative judicial proceedings, which applies also to environmental matters, is that administrative decisions can be executed only after means of and time limits for challenging the decision through appeal have been exhausted. Thus, appealing against an environmental decision described in this section ordinarily suspends commencement of the authorised activity until the appeal court has ruled on the matter. (This system of injunctive relief is described in more detail in section 1.7.2.)

6) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive and do these include express statutory reference to a requirement that costs should not be prohibitive?

For administrative judicial proceedings, the following trial fee is charged from the appellant, according to appeal stage (as of the beginning of 2019):

- Administrative court: 260 euros
- Supreme Administrative Court: 510 euros

There are no additional court fees for any further stages of the proceedings. The costs of legal counsel form a major part of the costs of an administrative judicial procedure but use of legal counsel is not always necessary. A party has the obligation to bear the costs of another party in full or in part, if it would be unreasonable in light of the outcome of the case, that the other party should bear his or her own costs. The administrative judicial proceedings typically give rise to relatively low costs. (For more information on costs see section 1.7.3.)
7) Is it possible to bring a legal challenge before a national court concerning any related EU regulatory act with a view to a validity reference under Article 267 TFEU, and if so how?[4]

As explained above, normative instruments cannot usually be challenged directly by appeal in court. In order to obtain a court ruling on the implementation of an Act or Decree used to implement EU environmental legislation, a first instance decision from the authority applying that Act or Decree is generally required. The appellant can make a request to the national court to seek a preliminary ruling from the Court of Justice of the European Union (CJEU) on the interpretation or validity of the EU law according to the Treaty on the Functioning of the European Union. Upon review of the decision of the municipal or state authority, the national administrative court has to consider the need to seek a preliminary ruling. There are no provisions on requests for preliminary ruling from the CJEU in the national legislation.

The judgement of the CJEU of 26.10.2016 in case C-506/14, Yara Suomi Oy and Others, concerning Commission Decision 2013/448/EU on greenhouse gas emission allowance trading within the European Union, is an example of a case where certain provisions of the Commission decision were declared invalid by the CJEU after requests for preliminary ruling of the validity of that decision made by the appellants in the first hand to the Supreme Administrative Court in Finland and other national courts in several member states.

[1] The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.
[2] See findings under ACCC/C/2010/54 for an example of a plan not submitted to SEA but subject to the public participation requirements of Article 7 of the Aarhus Convention.
[3] These fall within the scope of both Article 7 and Article 9(3) of the Aarhus Convention. See also relevant case-law of the Court of Justice of the European Union such as Case C-237/97, Janecek and cases such as Boxus and Solvay C-128/09-C-131/09 and C-182/10, as referred to under the Commission Notice C/2017/2616 on access to justice in environmental matters.
[4] Such acts come within the scope of Article 8 and Article 9(3) of the Aarhus Convention. An example of such an act concerns the decision of the national administration that featured in Case C-281/16, Vereniging Hoeksche Waard, ECLI:EU:C:2017:774.

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Other relevant rules on appeals, remedies and access to justice in environmental matters

Ordinarily, the most easily available means for an individual to seek enforcement of environmental responsibilities against private entities is to approach the competent municipal or state authority with a request for enforcement measures. Private enforcement of public law is not possible, i.e. private individuals cannot take other private parties to court for breach of environmental responsibilities toward the public.

With regard to enforcement through a request to the competent supervisory authority, the correct authority to approach is generally identified in the applicable substantive law or, in the case of municipal authorities, in municipal regulations issued on the basis of this law. Hence the Environmental Protection Act (EPA), for example, identifies the competent state supervisory authority as well as requiring the municipality to assign one of its committees as local supervisory authority. At state level, the ETE Centre (Centre for economic development, transport and the environment) is typically the competent supervisory authority in environmental matters.

The substantive law defines the supervisory authority’s powers of enforcement, i.e. the authority’s competence to use administrative compulsion against someone breaching the provisions of the law. Depending on the case, this may for example entail orders to comply with a permit, prevent or remedy environmental damage or revocation of a permit. The supervisory authority can usually also reinforce the prohibition or order that it has issued with a notice of a conditional fine or a notice that the activity that has been neglected must be carried out at the expense of the negligent party according to the Act on Conditional Fines (see e.g. Section 184 of the EPA). In principle, anyone can approach the authority and inform it about possible breaches of environmental law.

The right to request for enforcement measures depends on the applicable substantive law. As an example in EPA the right to initiate proceedings is granted to parties concerned, environmental NGOs, certain municipal and state authorities and the Sámi Parliament (Section 186).

In order to obtain a court ruling obliging a public authority to take action, a first instance decision from the authority itself is generally required. Only upon review of this decision, the administrative court is competent to find enforcement measures warranted. When directly challenging an administrative decision is not possible due to the silence of the administration, also the option of making an administrative complaint is available (Administrative Procedure Act, Chapter 8a). Complaints can be filed with municipal or state supervisory authorities, where relevant, or the two supreme overseers, the Parliamentary Ombudsman and the Chancellor of Justice. A supervisory authority may in its decision draw the attention of the supervised entity to the requirements of good administration or inform it of the authority’s understanding of lawful conduct. If this is not found sufficient, the supervised entity may be given an warning, unless the nature or severity of the act forming the subject of the complaint requires measures to institute a procedure provided in another act. The supreme overseers deliver their opinion on complaints lodged with them and are also competent to issue official reprimands as well as initiating criminal prosecution for malfeasance. The overseers can also initiate investigations on their own initiative (for the supreme overseers see also section 1.3).

Regardless of whether a public liability or other matter of supervision or enforcement has been initiated through a private request or on the authority’s own initiative, the final decision in the matter can usually be challenged through appeal in regular fashion. This means that a decision compelling an operator to remedy a situation that breaches its permit, for example, can be challenged by the operator in question, while a decision not to require measures from the operator can be challenged by an interested third party (e.g. an NGO that requested enforcement). As usual, the right of appeal is regulated by the applicable substantive law. In most situations, neighbours and NGOs are entitled to appeal, at least if they have been involved in the process earlier.

The supervisory authorities must report any act or omission in breach of the environmental law to the police for preliminary investigation, unless the illegal conduct can be considered minor in view of the circumstances. Penalties for environmental offences are stipulated in Chapter 48 of the Criminal Code of Finland (39/1889). Chapter 40 of the Criminal Code covers offences in office including a violation of official duty, which could be relevant in connection with providing effective access to justice. There are no specific national rules on penalties to be imposed on the public administration for failing to provide access to justice.

If there is a decision of an authority or a judgement that is legally binding (meaning that it cannot be challenged by ordinary means of appeal), the police have an obligation to provide executive assistance to the environmental supervisory authorities so that the decision or judgement can be complied with.

Enforcement of private environmental liabilities is also possible. Compensation for damages resulting from environmental nuisance, such as property damage, health injuries or financial loss, can be sought in the general courts. There is a specific act regulating this type of private damages, the Act on Compensation for Environmental Damage (737/1994), which is complemented by the general Tort Liability Act (412/1974). The first-mentioned act also covers costs of measures to prevent environmental damage threatening the person undertaking the measures, as well as measures to reinstate damaged
environment. This means that it is possible to seek a court judgment regarding costs to restore one's property directly against the liable party, without requesting an order for clean-up or suchlike from the public authorities. With rare exceptions, private individuals cannot otherwise pursue compensation for damage to public interests toward the environment. Certain activities and situations, such as nuisance due to land extraction or permit-authorised water pollution, are subject to specifically regulated compensation procedures, which bypass the general liability legislation. Injunctive orders cannot ordinarily be sought against operators directly in court; the competent administrative supervisory authority must be approached for such enforcement.

On the other hand, compensation for damages caused by exercise of public authority can, under certain conditions, be claimed directly in the general courts on the basis of the Tort Liability Act. Naturally, if claims are directed against the state or municipality in capacity of operator, for example, the same liability procedures as for private operators apply.

In the context of criminal proceedings, the public prosecutor is, upon request, required to pursue a private claim for damages on behalf of an injured party. This assistance is provided free of charge, and the prosecutor can refuse the request only if the claim is obviously ill-founded or its presentation would significantly impair the prosecution of the case. Injured parties also have a secondary right of prosecution. In other words, in a criminal case where the prosecutor has decided not to prosecute, an injured party is entitled to press criminal charges for the offence and have the case decided by the court. Nationally, there are a number of prosecutors specialised in environmental matters, who can be assigned, by special order, to cases outside their ordinary jurisdiction.

With regard to the Aland Islands, the state tort law applies in the autonomous region as well. Likewise, the principles for requesting authority enforcement correspond with what has been described above. The primary supervisory authorities on the Islands are the Environmental and Health Protection Authority of Aland, the regional government and municipal building supervision authorities.

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Access to justice in environmental matters - Sweden
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
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. 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

The right for individuals and NGOs to challenge environmental decisions, acts and omissions can mainly be found in three different Swedish acts; the Environmental Code, the Planning and Building Act, and the Administrative Procedure Act.

Legislation is the key tool in Sweden with which principles of environmental policy are converted into practical action. Environmental rules in Sweden come in the form of acts, ordinances (decided by the Government) and regulations decided on by the main authorities for the protection of the environment. A hierarchy of these rules means that ordinances and regulations decided on by authorities can never be contrary to the laws. The Parliament (Riksdagen) is the national law-making body responsible for adopting all acts. The executive power rests with the Government (regeringen), and the Government is in turn responsible to the Parliament. The Government is assisted in its work by the Government Offices, comprising all ministries, and some 400 central government agencies and public authorities. Administrative functions may further be entrusted to regional or local authorities or delegated to other public as well as private bodies. Government agencies carry out their tasks independently under the laws and other legislation. The relevant ministry is therefore not permitted to intervene in an individual matter that is being handled by an agency.

The main authorities for the protection of the environment are the Swedish Environmental Protection Agency (Naturvårdsverket), the Swedish Chemicals Agency (Kemiinspektionen), the Swedish Agency for Marine and Water Management (Havs- och vattenmyndigheten) and the Swedish Radiation Safety Authority (Strålskyddsmyndigheten).

Sweden is divided into 21 counties (län) and 290 municipalities (kommuner). Each county has a County Administrative Board (länsstyrelsen). Constitutorially, each County Administrative Board constitutes a government agency subordinate to the Government with expert staff in various areas, such as environmental protection.

The County Administrative Boards (together with the Land and Environment Courts) are the main licensing authorities in environmental matters. Twelve of the County Administrative Boards have an Environmental Permit Office that issues permits for environmentally hazardous activities in accordance with the Environmental Code. In their decision-making, the Environmental Permit Offices are independent from the County Administrative Boards. The County Administrative Boards are also responsible for “green” issues and supervision concerning water-related activities and larger industrial activities. Additionally, the County Administrative Boards issue permits for waste transportation and disposal, and chemical activities, amongst other things.

Each municipality has an elected assembly, the municipal council (kommunfullmäktige), which is the decision-making body for municipal matters. The municipal council appoints the municipal executive board (kommunstyrelsen), which leads and coordinates the municipal tasks and responsibilities. The Swedish municipalities are responsible for executing and providing a significant proportion of all public tasks and services, including environmental and health protection. The competence to issue plans and permits under the Planning and Building Act resides with the municipalities. For some minor environmentally hazardous activities, carrying is out at municipality level.

2) Constitution – main (content of + including references) provisions on environment and access to justice in the national constitution (if applicable) including procedural rights

The main provisions are found in the Instrument of Government, which also sets out some principles of relevance to access to justice in environmental matters. Chapter 1 Section 1 states the fundamental provision that the public power is exercised under the law. The public institutions shall promote sustainable development leading to a good environment for present and future generations (Chapter 1, Section 2). All courts, the public administration and others performing functions within the public administration shall observe the principle of equality of all persons before the law and be objective and impartial (Chapter 1, Section 9). It is also stipulated that no act of law or other provision may be promulgated in contradiction of Sweden’s obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms. The right to a fair and public hearing before an independent and impartial tribunal must be upheld (European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 6).

3) Acts, Codes, Decrees, etc. - main provisions on environment and access to justice, national codes, acts

The main environmental law in Sweden is the Environmental Code (1998:808), which constitutes a framework legislation consisting of the general provisions regarding environmental protection. It applies to all human activities that might harm the environment. The Code contains the environmental principles and provisions providing for environmental quality norms as well as environmental impact assessments. Certain water operations, industrial undertakings, quarries and other environmentally hazardous activities are subject to permit or notification requirements, as specified in Governmental Ordinances. The Code also contains provisions relating to nature protection, flora and fauna, genetically modified organisms, chemicals and waste.

Under the Environmental Code, there are several ordinances decided on by the Government containing more specific rules. Certain activities are also regulated in special sectoral legislation. Planning and building issues are covered by the Planning and Building Act (2010:900). Infrastructure installations, such as railroads and highways, also have regulations of their own, as do mining and forestry. Fauna is protected, in part, through hunting law.

By statutory authorisation, many of the central administrative authorities are responsible for issuing regulations in the field of operation. The central administrative authorities are often designated as the Swedish competent authorities, such as the Swedish Environmental Protection Agency and the Swedish Agency for Marine and Water Management.

Both the Environmental Code and the Planning and Building Act include special provisions on access to justice. When it comes to sectoral legislation, such as the Game Act, the Forestry Act and the Minerals Act, the provision on access to justice may be found in the general rule in Section 42 of the Administrative Procedure Act.

List of relevant national legislation
- Access to justice found in Chapter 16, Sections 12, 13 and 14
- Access to justice found in Chapter 13
- Administrative Procedure Act (2017:900) [Förvaltningslag (2017:900)]
- Access to justice found in Section 42
- Judicial Review of Certain Government Decisions Act
- Access to justice found in Sections 1 and 2

4) Examples of national case-law, role of the Supreme Court in environmental cases

The access to justice of the public affected has been developed through case law. The courts most important when it comes to case law in environmental matters are the Land and Environment Court of Appeal and the Supreme Court, both of which may decide on judgments that may become precedents in those cases where their rulings include more general principles. Important case law has also been developed by the Supreme Administrative Court in cases related to i.a. forestry and legal review of Governmental decisions.

Judgments from the Supreme Courts or appeals courts are not binding for lower courts, except where they refer to formal issues in a specific case. The judgments from the Supreme Courts, however, are regarded as guiding and there must be reasons of some importance to deviate from what has been decided.

NJA 2004, p. 590 and NJA 2012, p. 921. The Supreme Court stated that the right to appeal must apply to any person liable to be harmed, injured or otherwise inconvenienced as a result of the activity for which a permit is sought. The risk of injury or inconvenience should concern an interest that is protected by the legal order and should not be purely theoretical or completely insignificant.

MÖD 2011:46. The Land and Environment Court of Appeal stated that an individual affected should be given the right to appeal a decision not to request the withdrawal of a permit for environmentally hazardous activities.

MÖD 2000:43 and MÖD 2004:43. Nearby residents were held to have the right to appeal a decision by a supervisory authority not to intervene against environmentally hazardous activities.

The right of environmental NGOs to appeal public authority decisions under other administrative environmental legislation has also been developed in case law.

NJA 2012 p.921. The Supreme Court affirmed that organisations that meet the criteria in Chapter 16, Section 13 of the Environmental Code have the right to appeal, but in cases where an organisation does not meet the criteria an assessment has to be made of all the circumstances in the particular case. The court concluded that a generous assessment should be made of the right of environmental NGOs to appeal, since they can base their right to appeal on representing public interests, even in situations where no individuals can invoke such interests.

Case law has given environmental NGOs the right to also appeal decisions other than those stated explicitly in Chapter 16, Section 13 of the Environmental Code, including supervisory decisions under the Environmental Code with reference to article 9, point 3 of the Aarhus Convention and Sweden’s obligations under EU law. The courts have also given the expression ‘decision concerning permits or exemptions’ a broad interpretation (MÖD 2012:47, MÖD 2012:48, MÖD 2013:6, MÖD 2014:30 and the judgment of the Land and Environment Court of Appeal of 18 March 2014 in cases M 11609-13 and MÖD 2015:17).

Recent case law from the Supreme Court has given NGOs the right to appeal decisions on building permits, NJA 2020 p. 190, and a decision to adopt a detailed plan that was alleged to interfere with interest of cultural values, judgment 9 July 2020 Ö 6554-19, with reference to a judgment from the Supreme Administrative Court, HDF 2018 ref. 10 II.

In case T 5637-19 from October 2020, the Supreme Court stated that an NGO with only 5-10 members was considered to fulfil the criteria in Chapter 16, Section 13 and hence given the right to appeal.

According to firmly established case law, environmental NGOs have the right to appeal decisions under the Game Ordinance on hunting of species protected by Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, the ‘Habitats Directive’ (see the judgment of the Administrative Court of Appeal in Stockholm in cases 4390-12 and 4396-12 and subsequent judgments).

The Supreme Administrative Court 2014 ref.8. The Supreme Administrative Court gave an environmental NGO that met the criteria in Chapter 16, Section 13 of the Environmental Code the right to appeal the decision of the Swedish Forest Agency to grant a permit for the felling of subalpine forest, partly because decisions on permits for the felling of subalpine forest are covered by article 9, point 3 of the Aarhus Convention.
The Administrative Court of Appeal in Gothenburg in case 1186-16. A decision on a permit for intrusion in historic remains under the Historic Environment Act (1988:950) was held to be covered by article 9, point 3 of the Aarhus Convention. A nature conservation society that met the criteria in Chapter 16, Section 13 of the Environmental Code was therefore held to have the right to appeal the decision.

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?

In Sweden, international conventions do not have direct effect so they must be incorporated in Swedish law to be applicable. However, by ratifying a convention Sweden becomes bound by the convention in terms of international law and national regulations should be interpreted in the light of the convention.

EU regulations apply directly as national law, while EU directives are transposed at the most appropriate level in the hierarchy to meet the given objectives. For provisions of a directive to be transposed into a Swedish ordinance or administrative provision, there must be a statutory delegation in a Swedish act.

The provisions on access to justice in EU directives are also incorporated into Swedish law.

Parties involved in administrative or court procedure may, though, rely directly on international environmental agreements in their arguments.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

Court judgments are not recognised as a formal source of law, but the courts have a role as interpreters of law and other legal regulation. The courts have an independent status within the Swedish constitution. Neither the Parliament nor any other authority may decide on, or otherwise interfere in, matters handled by the courts.

Judgments from the Supreme Courts or appeals courts are not binding on lower courts, except where they refer to formal issues in a specific case. The judgments from the Supreme Courts, however, are regarded as guiding and there must be reasons of some importance to deviate from what has been decided.

There are three kinds of courts in Sweden:

- the general courts, which comprise district courts, courts of appeal and the Supreme Court;
- the general administrative courts; administrative courts, administrative courts of appeal and the Supreme Administrative Court; and
- the special courts, which determine disputes within specific areas such as environment.

Usually the number of levels in the court system, regardless of whether the case concerns administrative decisions or a civil or criminal case, is three. In most cases there is a need for a leave to appeal (review permit) to get access to justice in the highest courts (the Supreme Administrative Court, the Supreme Court and the Land and Environment Court of Appeal). The main rule is that the Supreme Court and the Supreme Administrative Court only grant leave to appeal if the Supreme Court's judgment or decision can have significance as a precedent, i.e. provide guidance on how the courts should assess similar cases. Apart from the precedent reason, the Land and Environment Court of Appeal may also grant a leave to appeal if there may be a reason to change the decision of the Land and Environment Court and it is needed for the Land and Environmental Court of Appeal to be able to better assess whether the Land and Environmental Court has ruled correctly or there are other special reasons to try the appeal such as risk of severe damage to the environment.

If the higher court finds that none of these conditions are met, it will not try the case.

It should also be noted that decisions by authorities under the Environmental Code may be challenged through the system of Land and Environment Courts, but only up to the Land and Environment Court of Appeal as the final instance. Appealed decisions from authorities under the Planning and Building Act, as well as property cases, may be appealed to the Supreme Court, but only where the Land and Environment Court of appeal so allows, which is mainly if that court deems that there is a need for precedence regarding a disputed issue.

2) Rule 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)?

For matters pertaining to environmental law, as well as matters of property registration, planning and building, Sweden has developed a system of special courts. This system consists of five Land and Environment Courts, and the Land and Environment Court of Appeal. Their jurisdiction covers all kinds of decisions made pursuant to the Environmental Code and the Planning and Building Act. They are also competent in cases concerning damages and private actions against hazardous activities.

The five Land and Environment Courts are each incorporated as a special branch within five designated district courts located in various parts of Sweden, each responsible for their respective part of the country (according to law). The Land and Environment Court of Appeal is part of the Svea Court of Appeal and is responsible for the entire country. The Supreme Court in turn hears virtually all cases, including matters of environmental law, of precedential significance.

The administrative courts try some cases regulated in sectoral legislation concerning hunting, forestry and mining.

3) Specialities as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges

For matters pertaining to environmental law as well as matters of property registration, planning and building, Sweden has developed a system of special courts. This system consists of five Land and Environment Courts, and the Land and Environment Court of Appeal. Their jurisdiction covers all kinds of decisions made pursuant to the Environmental Code and the Planning and Building Act. They are also competent in cases concerning damages and private actions against hazardous activities.

Installations and activities involving a substantial environmental impact must obtain a permit from the Land and Environment Court, as must most kinds of water operations. In these cases, the court is exercising administrative powers usually allocated to authorities. This is a unique situation for Sweden. The Land and Environment Courts also try civil cases related to the environment, decisions appealed from administrative authorities, and handle cases on imposition of conditional fines after application from the supervisory authorities. It should be noted that most decisions from local authorities are first challenged through administrative appeal to the County Administrative Boards and then to the Land and Environment Court.

The Land and Environment Courts are specifically designed to deal with the technical complexity of the matters under their authority. The Land and Environment Courts rule on cases with one legally trained judge presiding over the case and a technically trained judge providing the special competence often needed due to the distinctive nature of the matters. In cases relating to environmental permitting, the two judges are assisted by two technical counsellors. Industry and national public authorities nominate the last two. The underlying philosophy is that experts will contribute their experience of municipal or industrial operations or public environment supervision. Depending on the case at hand and the issues involved, more than one technical judge, and then with additional technical/scientific competence, may participate.

The Land and Environment Court of Appeal rules on cases with three legally trained judges, one of whom presides over the case, and one technically trained judge.

All members of the courts have an equal vote. In the majority of cases, though, the chair has a casting vote where voting is tied.

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.
The administrative courts, as well as the Land and Environment Courts, decide cases on their merits in a reformatory procedure, meaning that they may replace the appealed decision with a new one. It should be noted that the administrative court procedure is simpler and less formal than the civil procedure. Another vital difference is that in the administrative procedure the ultimate responsibility for the investigation of the case rests with the court according to the “ex officio principle”. The principle means both that the examining courts (and authorities) have an obligation to ensure that a satisfactory investigation is made of each individual matter and that the courts may base their judgment on causes of action other than invoked by the parties. The Court must, through communication with the parties, ensure that the case is examined properly and that any ambiguities are clarified. It is thus obliged and competent to fully examine the facts/merits of the case. In administrative cases (challenged decisions from authorities and applications on imposition of conditional fines), the Court may, on its own initiative, perform investigations at the location in question if this is deemed necessary in order to examine the case.

In Sweden, in the judicial review procedure the relevant court will review both the substantive and procedural legality of the judgment or decision. There are no administrative procedural rules under Swedish law that set out the scope of the review of the Court. The legislation forms the framework for this review. It consists of both substantive provisions on environmental protection and procedural rules, both specific to environmental cases and general. The Court has the right to try any issues related to this substantive and procedural law framework, and the Courts’ obligation to examine the case on its own initiative does not only apply to substantive issues, but also to procedural issues. The Court would thus raise issues regarding the correctness of a decision, whether it has been adopted by the competent authority (or whether the authority has abused its powers), whether the required form of a decision has been respected, and also whether the decision is appropriate in relation to the substantive and formal space given to the deciding authority. Though bound by the claims of the parties setting the framework of the process, in these cases the court in principle is put in the same position as the first deciding authority.

When a permit application is appealed and the court finds that the permit should not have been issued because of infringements of procedural or substantive nature, the court may reject the permit application and the permit will then no longer exist. However, if the Court finds that amendments to the permit conditions make it possible to conduct the activities in accordance with the Environmental Code, the court may add additional conditions to the permit, or amend conditions already prescribed by the authority, instead of revoking the permit. In addition, the court may deliver a new decision instead of the appealed one, repealing or changing the old decision, or remitting it back to the administrative decision-maker. As a main rule, they must not deliver a decision beyond the claims of the parties, but exceptions can be made to the benefit of the individual if this is not detrimental to involved private interests. There is no Constitutional Court in Sweden, nor any abstract norm control. Instead, when a court is dealing with a case, it is obliged to control the legal basis for the decision and must disregard any act or statute which is in conflict with the Constitution or superior norms.

1.3. Organization of justice at administrative and judicial level

1) System of the administrative procedure (ministries and/or specific state authorities)

The Environmental Code

To ensure effective compliance with the general rules of the Environmental Code, many activities and operations are subject to permits. Such activities and operations may not commence without a permit from a competent authority. The permit sets out the scope of the activity concerned and must include the conditions under which the activity may be carried out. If the surveys are not sufficient to decide on “final” conditions, a licence may be issued where certain issues are to be further investigated during a certain period in which provisional conditions on precautionary measures will be applicable. The activities or operations for which permits are compulsory are specified either in the Code or in ordinances issued under the Code based on their typical environmental impact.

The Environmental Code divides competence between the local administration and the Land and Environment Courts. Licensing of very large hazardous activities, such as facilities for nuclear operations, is carried out by the Government. Licensing of larger industrial installations basically following the 2010/75 EU directive on industrial emissions and water activities is carried out by the Land and Environment Courts and licensing of medium-size polluting activities is carried out by the County Administrative Boards Environmental Permit Office. For some minor environmentally hazardous activities, licensing or a notification procedure is carried out at municipality level.

For the purpose of overseeing compliance with the requirements set out in the Environmental Code and ordinances issued under the Code, as well as the requirements set out in permits, the Environmental Code also contains provisions concerning supervision. The supervision is conducted by certain supervisory authorities whose authority and responsibility are set out in the Environmental Code and in an ordinance issued under the Code. With some exceptions, the operative supervisory actions, such as inspections and enforcement, are carried out at regional or local level by the County Administrative Boards or by the municipalities. The County Administrative Boards are generally responsible for the supervision of larger hazardous activities and compliance with legislation based on EU directives. The duties of the County Administrative Board can be transferred to the municipality according to a special procedure. In turn, the municipality is assigned general supervisory responsibility for all other environmentally hazardous activities within the municipality. In addition, there are twelve central government agencies, including the Swedish Environmental Protection Agency, which are assigned operative supervisory responsibilities within specific fields, such as chemicals, forestry or agriculture. To ensure compliance with the Environmental Code and ordinances issued under the Code, the supervisory authority may issue an injunction, often combined with conditional fines.

Planning and Building Act

The municipalities are responsible for the planning of land and water areas within their geographical boundaries. It is only the municipality that has the authority to adopt plans and decide whether the planning is to be implemented or not. The municipality must have a current comprehensive plan that covers the entire area of the municipality. The act also contains regulations on detailed development plans, area regulations and building permits.

2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?

Individuals concerned and NGOs meeting the requirements according to the Environmental Code may appeal an administrative environmental decision made by the County Administrative Board or the Environmental Permit Office of the County Administrative Board to the Land and Environment Court. Individuals concerned and NGOs meeting the requirements according to the Environmental Code may also appeal administrative decisions according to sectoral legislations such as the Forestry Act and the Minerals Act.

The appeal must be in writing, stating the claim and reasons, and is sent to the authority, which will check that the appeal was made in time and send it to the court. The appeal process can take different lengths of time depending on the scope of the case. A final ruling by the court may be expected within somewhere between 6 months and one year.

3) Existence of special environmental courts, main role, competence

Sweden has special courts for matters pertaining to environmental law as well as matters of property registration, planning and building. There are five Land and Environment Courts and one Land and Environment Court of Appeal. Their jurisdiction covers all kinds of decisions made pursuant to the Environmental Code and the Planning and Building Act. They are also competent in cases concerning damages and private actions against hazardous activities. The five Land and Environment Courts are each incorporated as a special branch within five designated district courts located in various parts of Sweden, each responsible for their respective part of the country (according to law). The Land and Environment Court of Appeal is part of the Svea Court of Appeal and is responsible for the entire country.
4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)

The Environmental Code

The routes of appeal in cases concerning licensing, dispensation exemptions or injunctions according to the Environmental Code are as follows:

- Local municipality – County Administrative Board – Land and Environment Court – Land and Environment Court of Appeal (leave to appeal needed)
- County Administrative Board – Land and Environment Court – Land and Environment Court of Appeal (leave to appeal needed)
- Land and Environment Court – County Administrative Board – Land and Environment Court of Appeal (leave to appeal needed) – the Supreme Court (leave to appeal needed)

In certain cases, the Government decides on permissibility for very large hazardous activities, such as facilities for nuclear operations. Decisions by the Government cannot be appealed but may be subject to a legal review by the Supreme Administrative Court.

The applicant and the other parties in the procedure, as well as certain other stakeholders, can appeal against a permit decision. The right to appeal also applies to non-profit organisations or other legal persons with the primary purpose of promoting nature conservation and environmental protection interests or recreational interests, provided they also meet certain other specified requirements.

Planning and Building Act

Municipal decisions on planning and building licensing according to the Planning and Building Act are appealed directly to one of the Land and Environment Courts and may be appealed further to the Land and Environment Court of Appeal (leave to appeal needed).

Decisions on licensing according to the Planning and Building Act are first challenged through administrative appeal to the County Administrative Board and then, via the Land and Environment Court, to the Land and Environment Court of Appeal. If that court gives permission to appeal its ruling, the case may end up in the Supreme Court. Leave to appeal is still needed, as at the Land and Environment Court of Appeal.

Other sectoral legislation related to the environment

Some cases are dealt with in a different manner. For example, some decisions on hunting, forestry, mining and infrastructure projects are appealed to the administrative courts or to the Government.

Decisions by the County Administrative Boards on licence hunting according to the Game Act – Administrative Court – Administrative Court of Appeal (leave to appeal needed) – Supreme Administrative Court (leave to appeal needed)

Decisions by the Swedish Forest Agency according to the Forestry Act – Administrative Court – Administrative Court of Appeal (leave to appeal needed) – Supreme Administrative Court (leave to appeal needed)

Decisions of the Mining Inspectorate on exploration permits according to the Minerals Act – Administrative Court – Administrative Court of Appeal (leave to appeal needed) – Supreme Administrative Court (leave to appeal needed)

Decisions of the Mining Inspectorate on exploitation concessions according to the Minerals Act – the Government

Decisions concerning infrastructure projects that are decided by national authorities can be appealed to the Government.

5) Extraordinary ways of appeal. Rules in the environmental area. Rules for introducing preliminary references

Judicial review by the Supreme Administrative Court

The Supreme Administrative Court is the supreme general administrative court and considers determinations on appeal from any of the four administrative courts of appeal in Sweden. The Supreme Administrative Court can also, under certain circumstances, examine whether a decision made by the Government is in contravention of the rule of law. This institution is known as judicial review pursuant to the Judicial Review of Certain Government Decisions Act.

According to this act, a prerequisite for judicial review is that the decision involves an examination of the individual's civil rights or obligations as referred to in Article 6.1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, or, if the applicant is an environmental NGO, the government decision refers to Article 9.2 of the Aarhus Convention.

Preliminary rulings from the EU Court

All parties in an ongoing case may petition that the court trying the case request a preliminary ruling from the EU Court. This may be done regardless of which court is reviewing the case. It is up to the court to decide whether or not a preliminary ruling is necessary.

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?

In Sweden, there are no out-of-court solutions such as mediation in environmental cases.

In civil cases, however, e.g. compensation for environmental damage, it is mandatory for the court to try to mediate, either by itself or by involving an external mediator.

7) How can other actors help (ombudsperson (if applicable), public prosecutor), accessible link to the sites?

The Ombudsmen

The Parliamentary Ombudsmen (JO) and the Chancellor of Justice (JK) are both designated to ensure that public authorities and their staff comply with laws and other statutes and fulfil their obligations in other respects. They have a disciplinary function and act through opinions and prosecution for administrative misconduct.

The Ombudsmen ensure in particular that the courts and public authorities, in the course of their activities, act with objectivity and impartiality and that the fundamental rights and freedoms of citizens are not encroached upon in public administration.

Supervision is exercised by the Ombudsmen in assessing complaints made by the public and by means of inspections and such other inquiries as the Ombudsmen may find necessary.

Public prosecutor

The regulation on environmental crimes is under general public prosecution.

The public has very limited access to criminal proceedings, as the power to prosecute is the prerogative of the public prosecutor.

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)?

There are provisions in the Environmental Code and in administrative law that make it possible to appeal against the decisions of public authorities in general. These decisions may concern permits, other approvals, exemptions and supervision.

Appealable judgments and decisions may be appealed by anyone who is the subject of a decision against them. It has not been specified in Swedish law who should be considered a person concerned; this is decided on a case by case basis. Under Swedish law, it is generally not specified that ‘person’ refers to both natural and legal persons. Decisions and judgments may be directed to legal persons and it is possible that legal persons may suffer harm from a permit decision and could therefore also have standing on that ground.

The preparatory work of the Environmental Code explains that the concept of standing shall be interpreted widely and shall be decided on a case by case basis by the court. According to case law, any person who may suffer harm or be subjected to some other detriment as a result of the activity for which a permit is being sought has the right to be a party and to appeal a decision if the risk of harm or detriment concerns an interest that is protected by the legal system and is not solely theoretical or wholly insignificant.
NGOs who meet the requirements stipulated in the Environmental Code may challenge many administrative decisions. The requirements are that the NGO is a non-profit association whose purpose according to its statutes is to safeguard nature conservation or environmental protection interests. The association furthermore must have conducted activities in Sweden for at least three years and have at least 100 members or, by some other means, show that its activities are supported by the public. In respect of shore protection, the provisions also apply to non-profit associations whose purpose according to their statutes is to promote outdoor interests.

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?

Rules on legal standing can be found in the Environmental Code, Chapter 16, Sections 12 and 13, in the Planning and Building Act and in sectoral legislation. Some of this sectoral legislation lacks specific regulation on standing. In these cases, the general rule on standing found in Section 42 of the Administrative Procedure Act is applicable.

The general right of environmental NGOs to appeal environmental matters, including permit decisions, is regulated specifically in both the Environmental Code and in a number of sectoral legislations, such as the Minerals Act. These environmental NGOs also have an explicit right to apply for judicial review of permit decisions by the Government according to the Act on judicial review of certain government decisions. Regarding sectoral legislation which does not specifically refer to the rule of standing for NGOs in the Environmental Code, such as the Forestry Act and the Game Act, the right for NGOs to appeal has been opened up by case law.

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.)

The standing rules according to the Environmental Code, the Planning and Building Act, and the Administrative Procedure Act are the same regardless of whether the case concerns standing for administrative review, standing for judicial review in the court of first instance or standing for appealing decisions of courts of first instance.

The Environmental Code:
Chapter 16 Section 12
Appeals may be made against appealable judgments or decisions by:
any person who is the subject of a judgment or decision against them;
local employees’ associations that organise workers in the activity to which the decision relates in the case of judgments and decisions concerning permits for environmentally hazardous activities;
national employees’ organisations within the meaning of the Codetermination at Work Act (1976:580), the corresponding employers’ organisations and consumer associations in the case of decisions taken by a County Administrative Board or a central administrative authority pursuant to an authorisation issued in accordance with chapter 14, provided that the decision does not relate to an individual case; and
authorities, municipal committees or other bodies which have a right of appeal pursuant to specific provisions in this Code or to rules issued in pursuance thereof or pursuant to the Act (2010: 897) on border river agreements between Sweden and Finland.

The provisions of this section shall be without prejudice to the right of appeal provided by the Code of Judicial Procedure.

Chapter 16 Section 13
Appealable judgments and decisions concerning permits, approvals or exemptions issued pursuant to this Code, concerning withdrawal of the status of protected areas pursuant to Chapter 7, or concerning supervision pursuant to Chapter 10 or questions relating to provisions adopted pursuant to this Code, may be appealed by a non-profit association or other legal person:
whose primary purpose is to safeguard nature conservation or environmental protection interests;
that is not run for profit;
that has conducted activities in Sweden for at least three years; and
that has at least 100 members or, by some other means, shows that its activities are supported by the public.

The right to appeal pursuant to the first paragraph also applies if the appeal only refers to a condition or other provision in the judgment or decision, and also if the judgment or decision is the result of an assessment pursuant to Chapter 22, Section 26 or Chapter 24, Section 2, 3, 5, 6 or 8 of this Code, or an assessment pursuant to Chapter 7, Section 13, 14 or 16 of the Water Operations (Special Provisions) Act (1998:812). However, the right to appeal pursuant to the first paragraph does not apply to judgments or decisions relating to the Swedish Armed Forces, the Swedish Fortifications Agency, the Swedish Defence Materiel Administration or the National Defence Radio Establishment.

Anyone who wishes to appeal pursuant to the first or second paragraph must do so within the time limit set for the parties and for other concerned persons.

Chapter 16 Section 14
The provisions of section 13 on the right of certain non-profit associations to appeal also apply in respect of shore protection to a non-profit association which, according to its statutes, has the purpose of safeguarding recreational interests.

The Planning and Building Act
The Planning and Building Act regulates the right for environmental NGOs referred to in Chapter 16, Section 13, of the Environmental Code to appeal a decision to adopt, amend or set aside a detailed development plan likely to have a significant environmental impact given that the planned area may be used for certain types of activity, and a decision to adopt, amend or set aside a detailed development plan which means that an area will no longer be covered by shore protection.

For individuals, the general rule on standing in the Administrative Procedure Act is applicable. According to case law, an individual may usually appeal building permits and development plans which may affect them personally (they are neighbours or living within or directly adjacent to the area to which a municipal plan applies).

Chapter 13 Section 8
Provisions on who may appeal a decision referred to in Sections 2 a, 3, 5 and 6 can be found in Section 42 of the Administrative Procedure Act.

Chapter 13 Section 11
A decision to adopt, amend, or repeal a detailed development plan or area regulations may only be appealed by someone who, prior to the expiration of the review period, has presented opinions in writing that have not been approved.
Curtailment of the right to appeal as determined by the first paragraph does not apply if:
the decision has gone against the affected party through the proposal being amended after the review period; or
the appeal is based on the decision not having been established according to the regulations prescribed by law.

Chapter 13 Section 12
A non-profit organisation or other legal entity of the kind referred to in Chapter 16, Section 13 of the Environmental Code may appeal a decision to adopt, amend or repeal a detailed development plan that can be assumed to result in a significant environmental impact owing to the fact that the planned area may be used for activities or measures indicated in Chapter 4, Section 34 of this Act.
A non-profit organisation or other legal entity of the kind referred to in Chapter 16, Section 13 of the Environmental Code, or a non-profit organisation of the kind referred to in Chapter 16, Section 14 of the Environmental Code, may appeal a decision to adopt, amend or repeal a detailed development plan that entails an area no longer being covered by shore protection in accordance with Chapter 7 of the Environmental Code.

The Administrative Procedure Act

Section 42

A person whom the decision concerns may appeal against it, provided that the decision affects them adversely and is subject to appeal.

The Administrative Procedure Act also gives provisions regarding who may appeal against decisions according to:

the Minerals Act (1991:45)
the Forestry Act (1979:429)
the Heritage Conservation Act (1988:950)
the Game Act (1987:259)
the Fishing Act (1993:787)
the Road Act (1971:948)
the Act on Construction of Railways (1995:1649)
the Electricity Act (1997:857)

Judicial Review of Certain Government Decisions Act

Section 1

An individual may apply for judicial review of such decisions by the Government which include an examination of the civil rights or obligations of the individual within the meaning of Article 6 (1) of the European Convention of 4 November 1950 on the Protection of Human Rights and Fundamental Freedoms.

Section 2

An environmental organisation referred to in Chapter 16, Section 13 of the Environmental Code may apply for judicial review of such permit decisions by the Government covered by Article 9 (2) of the Convention of 25 June 1998 on access to information, public participation in decision-making processes and access to judicial review in environmental matters.

4) What are the rules for translation and interpretation if foreign parties are involved?

The main rule is that the language in courts and administrative authorities is Swedish, though there is a special regulation (Act 2009:724 on National Minorities and National Minority Languages) giving citizens in certain municipalities in the north of Sweden the right to speak i.a. Finnish or Sami in court.

The general rules on translation and interpretation in administrative authorities and courts are codified in the respective procedural rules.

According to the Administrative Procedure Act, Section 13, an authority shall use an interpreter and ensure that documents are translated if necessary in order for the individual to be able to exercise their right when the authority has contact with someone who does not have mastery of Swedish.

According to the Code of Judicial Procedure, Chapter 5, Section 6, for a party, witness or other person who is to be heard before the court and does not have mastery of Swedish, the court may employ an interpreter. If a suspect or a prosecutor in a criminal case does not have mastery of Swedish, an interpreter should be hired for a court hearing. By reference to Section 48 of the Court Matters Act, this provision is also applicable in administrative cases at the Land and Environment Courts.

If a party, witness or other person who is to be heard before the court does not speak Swedish, the court shall, if necessary, employ an interpreter. The court may also, in other instances where necessary, hire an interpreter or translate documents (according to Section 50 of the Administrative Court Procedure Act).

The court may, if necessary, according to the Code of Judicial Procedure, Chapter 33, Section 9, translate documents that are sent in or sent out by the court. The court is obliged to translate a document in a criminal case, or the most important parts of it, for the suspect or at the request of an appellant, if a translation is essential to enable the suspect or appellant to exercise their right. The translation may be made orally if this is not inappropriate for the purposes of the document or the case or any other circumstance. By reference to Section 48 of the Court Matters Act, this provision is also applicable in administrative cases at the Land and Environment Courts.

1.5. Evidence and experts in the procedures

1) Evaluation of evidence – are there any limits in obtaining or evaluating evidence, can the court request evidence on its own motion?

Both administrative authorities and all Swedish courts involved in environmental cases have extensive obligations to examine a case and ensure that it is examined to the extent needed, and, for this purpose, to ask the parties questions throughout the procedure. The Court may even carry out investigations at a location if it deems it necessary. New facts are thus added to the case throughout the procedure and the Court must also consider any additional facts provided by the Parties. There is thus no partial preclusion requirement. It should be noted that this does not apply in civil cases tried by the Land and Environment Courts.

As the ultimate responsibility to investigate the case according to the "ex officio principle" in the Environmental Code lies with the administration and the Land and Environment Courts, which both have technicians participating in the decision-making, there are no stipulations in Swedish law that an individual or an environmental NGO should have to present expert opinions, even if the proceedings are initiated by them. Accordingly, a Swedish administrative authority or court can never order an individual or an environmental NGO to produce such experts (although a court may require such an expert opinion from an applicant for a permit or an operator of an environmentally hazardous activity). Also, there are no requirements under Swedish law that individuals or environmental NGOs should have to present or bear the costs of experts or witnesses.

2) Can one introduce new evidence?

The ex officio principle at both administrative and judicial levels means there are no limits to how and when new evidence can be introduced. Having said that, it is still primarily up to the party to be responsible for presenting the evidence. This can be done both at the very beginning of a case and later during the court procedure. Evidence may also be introduced in the next instance during an appeal. It should be noted that administrative cases are handled differently from civil cases, where the possibility to present new evidence is more restricted.

Written documents which are relied upon as evidence must be submitted to the court without delay. The same applies to items which are relied upon as evidence and can be moved to court. If necessary, the court may order the party which relied on the evidence to submit this within a specified time. Such an order must include information that the case may be decided even if the party has not provided the evidence. At a hearing, witness hearings may be held.

The testimony may be required to be given under oath.

Any party may present experts to strengthen their legal action. Any party may also ask the court to call for expert witnesses, such as experts from environmental authorities.

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts.

In administrative cases, the court often at its own initiative refers a case or specified questions to authorities, e.g. national authorities, with expert knowledge within certain fields. This is also practised at appeal level.

Any party may present experts to strengthen their legal action. Any party may also ask the court to call for expert witnesses, such as experts from environmental authorities.
It is very common for an applicant for a permit to present multiple experts to speak on their behalf. There may also be situations where it is of great advantage, albeit not essential, for individuals and environmental NGOs to be able to present experts of their own or expert reports to prove the veracity of their claim. Mostly such reports are made by experts working within the NGOs themselves and consequently they are mostly free of charge. Another way to obtain expert reports is to resort to independent researchers from universities or to other outside experts who may offer to make such a report for free or for travel expenses and, if needed, compensation for accommodation. Sometimes, though, if the case concerns a very large and/or complicated issue, the environmental NGOs pay to engage an outside expert. There are no publicly available lists and registries of experts.

3.1) Is the expert opinion binding on judges, is there a level of discretion?

Expert opinions are not binding on the judges and can be disregarded.

3.2) Rules for experts being called upon by the court

According to Chapter 22 Section 12 of the Environmental Code, the Land and Environment Court, where a special investigation or valuation is necessary for assessment of the case, may appoint one or more experts to deliver an opinion in the case after carrying out a preliminary investigation. Such an investigation shall be carried out as soon as possible. If it is necessary in view of the nature of the case or the purpose of the investigation, the court shall notify the parties by suitable means of the time when the investigation will take place. This possibility is available when the court is trying first instance permit cases. It is not a general option for environmental cases. However, the rule is also applicable when the Land and Environment Court of Appeal tries cases which are appealed.

If a case concerns an activity or a measure that affects the aquatic environment, the court shall obtain an opinion from the County Administrative Board that is the relevant water authority if the investigation in the case gives reason to assume that any factor of importance for the environmental quality standard does not conform to the basis for such a standard and the non-compliance is relevant to the ability to determine reasonable and appropriate environmental conditions.

3.3) Rules for experts called upon by the parties

An appeal shall include the grounds of appeal and in what respect the reasons for the decision are, in the appellant's view, incorrect, and the evidence relied on and what is to be proved by each specific piece of evidence. This may include expert opinions if the party so wishes.

In civil cases, the plaintiff has to present the claims, causes of action and evidence that is invoked. This may be completed later on during the process. Experts called upon by parties are regarded during the process as witnesses and not as experts called upon by the court.

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 in relation to expert opinions and expert witnesses.

In administrative cases, the court will cover costs for witnesses called by the court. Experts assisting a party, though, are in principle not regarded as witnesses. The party invoking an expert opinion has to do so at its own expense, and its costs will not be compensated or covered by the opposite party even if the former party wins the process.

In civil cases, the costs will initially be covered by the party that has invoked the witness/expert. In the end, the loser pays principle will apply in civil cases.

1.6. Legal professions and possible actors, participant 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

Anyone who is a party in an environmental case may use a legal representative or assistant. This person must be suitable for the assignment, but does not have to be a lawyer. Swedish environmental legislation does not, however, require legal representation, neither for the administrative nor the judicial review procedure, and not even for appeals to the Environment Court of Appeal or to the Supreme Court.

Most of the environmental NGOs which operate at national level (e.g. Greenpeace Sweden, the Swedish Carnivore Association, SOF-Birdlife, the Swedish Botanical Society, and others) and local level have no legal representatives employed. The biggest environmental NGO in Sweden, the Swedish Society for Nature Conservation, is the only Swedish environmental NGO which currently has three employed legal advisors.

There are no publicly accessible internet links to a registry or website of all specialised lawyers in the environmental field. However, the Swedish Bar Association has a search function on its website. Lawyers who are not members of the Association are naturally not included.

1.1. Existence or not of pro bono assistance

There is no organised pro bono assistance available.

There are only a few law firms engaged in representing the public concerned in environmental cases. Furthermore, there are practically no public interest lawyers or law clinics dealing with environmental cases in Sweden.

Officers are free to set their own fees, but there are no legal limitations for lawyers to take on this kind of pro bono work.

In civil cases, property cases and applications for permits for water operations the court may, if it considers the fees to be unreasonable, reduce the compensation for litigation costs either at the request of the losing party or on its own initiative. In other administrative cases, each party has to cover its own costs, irrespective of the outcome, and the court will not intervene regarding costs.

2) Expert registries or publicly available websites of bars or registries that include the contact details of experts

No expert registries or publicly available websites of bars or registries that include the contact details of experts exist.

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible

The list below is not exhaustive. In alphabetical order:

- Birdlife Sweden
- Climate Action
- Greenpeace Sweden
- Norduv
- Protect the Forest
- Swedish Botanical Society

4) List of International NGOs, who are active in the Member Stat

- Swedish Outdoor Association
- Association for Protection of the Swedish Landscape
- River Rescuers
- Swedish Carnivore Association (SCA)
- Swedish Society for Nature Conservation
- Urbergsgruppen
- WWF

4) List of international NGOs, who are active in the Member Stat
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)

As a general rule, for the administrative authorities and the administrative courts an appeal of a decision must have been received by the decision-making authority or administrative court within three weeks of the date on which the appellant received the decision through that authority. However, if the appellant is a party representing the public, the appeal must have been received within three weeks from the date of the decision being notified. The decision-making authority or administrative court then makes sure that the appeal was made within the right time limit and sends the appeal to the court or authority which will try the case.

When it comes to decisions and judgments from the Land and Environment Courts, with the exception of preliminary decisions during the preparation of the case the time for appeal is linked to the date of the ruling.

2) Time limit to deliver decision by an administrative organ

There are no clear provisions protecting the interest of the public concerned to have their cases handled in a timely manner by an administrative organ, except for a very general statement in the Administrative Procedure Act: a case must be handled as simply, quickly and cost-effectively as possible without compromising the rule of law. However, if an authority assesses that the decision in a case initiated by an individual party will be materially delayed, the authority shall inform the party thereof. In such a notification, the authority shall provide the reason for the delay. If a case initiated by an individual party has not been settled in the first instance within six months, the party may request in writing that the authority shall decide the case. The Authority shall, within four weeks from the date of such a request, either decide the matter or, in a special decision, reject the request. Such a decision to reject a request that the case be decided may be appealed to the court or administrative authority competent to review an appeal against the decision in the case.

3) Is it possible to challenge the first level administrative decision directly before court?

The routes of appeal in cases concerning licensing, dispensation exemptions or injunctions are as follows:

- Local municipality – County Administrative Board – Land and Environment Court – Land and Environment Court of Appeal (leave to appeal needed)[1].
- County Administrative Board – Land and Environment Court – Land and Environment Court of Appeal (leave to appeal needed).
- Land and Environment Court – Land and Environment Court of Appeal (leave to appeal needed) – the Supreme Court (leave to appeal needed).

Many environmental cases start at the County Administrative Board or a Land and Environment Court, which means that the decisions may be challenged directly to court.

The Government, in certain cases according to the Environmental Code, decides on permissibility for very large hazardous activities, such as facilities for nuclear operations. The Government also tries certain appeals according to the Code and sectoral legislation, such as the Minerals Act. Decisions by the Government cannot be appealed but may be subject to a legal review by the Supreme Administrative Court.

4) Is there a deadline set for the national court to deliver its judgment?

There are no set rules for the national courts to deliver judgments.

In first instance permit cases at the Land and Environment Courts, the Environmental Code provides that the Land and Environment Court shall deliver the judgment as soon as possible in view of the nature of the case and other circumstances (Chapter 22, Section 21 of the Environmental Code). This also applies when the Land and Environment Court of Appeal tries a case. If a main hearing has been held, a judgment shall be delivered within two months of the conclusion thereof, unless exceptional circumstances exist.

In other administrative cases there are no such rules. In civil cases, the general rule is that the judgment should be delivered within 14 days from the main hearing. It should be noted that, according to the Priority Review Act, a party may ask for priority of a case handled at a court.

5) Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)

There are no fixed legal time limits applicable during the procedure. The administrative organ or the court trying a case decides on a case to case basis the time limits and deadlines for submitting evidence, opinions and other material needed.

1.7.2. Interim and precautionary measures, enforcement of judgements

1) When does the appeal challenging an administrative decision have suspensive effect?

Under Swedish law, appeals have suspensive effect unless otherwise provided by the law. Normally a decision according to the Environmental Code and the Planning and Building Act can only be executed when the decision can no longer be contested through a legal remedy. There are some exceptions to the rule according to special legislation, such as protective hunting according to the Game Act and exploration permits according to the Minerals Act.

Normally a permit according to the Environmental Code cannot be utilised until the possibility of appeal has passed. Permit decisions may, however, be combined with a “go-ahead decision” enabling the applicant to start their activity. As with permits, orders from a supervisory authority do not take legal effect until they are finally decided on appeal. If there is an urgent need, the authority can decide that the order shall take effect even if it is appealed.

2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?

As long as the matter has not been delivered to the superior authority, the first deciding authority may revise and stop an execution of its own decision, if this is not to the detriment of a private opposing party.

If a go-ahead decision has been granted or the case concerns a decision where the rule on an appeal’s suspensive effect is not applicable, the public concerned can ask the authority for an injunction of that decision. According to the Administrative Procedure Act, Section 48, an authority trying an appeal may decide on injunctive relief.

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?

A request for injunctive relief may be made at any time during the procedure, but is normally made at the same time as the appeal itself. Such a request may also be repeated if not successful.

4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?

Under Swedish law, appeals have suspensive effect unless otherwise provided by the law. Normally a decision according to the Environmental Code and the Planning and Building Act can only be executed when the decision can no longer be contested through a legal remedy. In those cases where this does not apply, the Environmental Code, as well as the Planning and Building Act, gives the supervisory authority the possibility, if urgent, to decide that a prohibition or an order shall be immediately binding.

There are some exceptions to the rule according to special legislation, such as protective hunting according to the Game Act and exploration permits according to the Minerals Act.

5) Is the administrative decision suspended once challenged before court at the judicial phase?

Appeals normally have suspensive effect unless otherwise provided by the law.

During the court procedure, the court, if requested by one of the parties, can decide on interim measures either to allow or restrict an activity.

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Normalt kan ett tillstånd enligt miljöbalken således inte användas förrän det vunnit laga kraft. Tillståndsbeslut kan dock kombineras med ett verkställighetsförordnande som gör det möjligt för den sökande att starta sin verksamhet trots att tillståndet överklagas. Liksom vad som gäller för tillstånd får ett föreliggande från en tillsynsmyndighet inte rättssig verkan förrän det vunnit laga kraft. Om det finns ett brädskande behov kan myndigheten dock besluta att beslutet ska träda i kraft genast.

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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?

If a go-ahead decision has been granted or the case concerns a decision where the rule on an appeal’s suspensive effect is not applicable, the public concerned can ask the court for an injunction of that decision. This may be done during the whole procedure but is normally done at the same time as the appeal itself.

According to the Court Matters Act, a court that is to hear an appeal may decide that the appealed decision may not be enforced for the time being. The legal provision on such “inhibition” is rather vague; the details are found in case law. According to the Environment Court of Appeal and the Supreme Court, inhibition shall be granted when the prospects for the success of the appeal are good. An inhibition may also be granted if the appellant has a legitimate interest in having the decision scrutinised by the court or there are vital interests at stake, for example the risk of irrevocable damage. There are no requirements, or legal possibilities, to ask the claimant for a financial deposit. There is, however, one exception. If the applicant for a permit for a water operation asks for a decision on an immediate enforceable permit, they must pay a financial deposit.

1.7.3. Costs – Legal aids – 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.

The rules on costs for trials concerning environmental matters are provided in Chapter 25 of the Environmental Code.

As a general rule, the procedures related to administrative environmental matters in Sweden are free of charge. There are no application or court fees, no obligation to pay the opponent’s costs, no bonds to be paid for obtaining injunctive relief or other costs to be covered, irrespective of whether the case is subject to an administrative or a judicial review procedure.

For as experts’, and lawyers’ fees, these have to be calculated on a case by case basis after contact with them.

Each party has to cover its own costs in administrative cases.

The loser pays principle is not applicable as in civil cases. In civil cases, there is also a court fee for the plaintiff, around 300 euros.

2) Cost of injunctive relief/interim measure, is a deposit necessary?

Injunctive relief and interim measures are free of charge.

If, however, the applicant for a permit for a water operation asks for a decision on an immediate enforceable permit, they must provide a financial deposit.

3) Is there legal aid available for natural persons?

Considering that the procedures related to environmental cases in Sweden are free of charge, there is little legal aid available. According to the Legal Aid Act (1996:1619), an appellant may, under certain conditions, get legal aid and certain costs associated with the process paid. The act, however, due to the official principle, has very little significance in cases that are appealed to the Land and Environment Courts. One of the criteria for being awarded legal aid is that the appellant needs legal assistance in addition to advice and that this need cannot be met in any other way. Because of these criteria, there is almost no possibility for individuals to obtain legal aid in environmental cases.

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?

Environmental NGOs or other legal persons may never obtain legal aid according to the Swedish Legal Aid Act.

5) Are there other financial mechanisms available to provide financial assistance?

Some of the national authorities provide grants for environmental NGOs which they can use at their own discretion. Most importantly, the Swedish Environmental Protection Agency each year distributes funds to organisations to be used for taking legal action in order to develop case law in the environmental area. Furthermore, the Swedish Transport Administration and the Swedish Consumer Agency provide grants to NGOs to increase public influence in different decision-making processes in the environmental field.

6) Does the ‘loser party pays’ principle apply? How is it applied by courts, are there exceptions?

The majority of environmental disputes are pursued through cost-free administrative procedures where the appellate levels have an obligation to ex officio examine the case.

The loser party pays principle does normally not apply. Each party only has to bear its own costs, but Swedish environmental legislation does not require legal representation, neither for the administrative nor the judicial review procedure, and not even for appeals to the Land and Environmental Court of Appeal or the Supreme Court. The only exception to the general rule of a free environmental procedure is found in the permitting procedure for water operations.

The applicant here has to pay the litigation costs of all those who will be affected by the activity. This circle of people, however, is narrower than the public concerned and consists of those whose real estate will be affected by the activity, for example by flooding, loss of fishing water and so on.

In civil cases concerning economic damages, the general rules on legal procedure apply, which means that the losing party has to pay all the winning party’s legal costs; the loser party pays principle in full. Civil cases in environmental matters in Sweden are quite rare. Many civil cases relate to intrusion in the landowner’s rights, e.g. to establish a nature reserve, and in such cases the main rule is that the landowner will have their costs covered irrespective of the outcome.

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?

Since no such costs exist in administrative environmental cases, there is no need for rules on exemptions.

In civil cases, the loser pays principle is not absolute, as the rules give the court space to consider facts related to how the process was pursued, if there were reasons for initial claims due to the action of the opposing party etc., and cases where restrictions are imposed on how the landowner may use the land or the land is expropriated for public interests.

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?

The right for individuals and NGOs to challenge environmental decisions, acts and omissions is mainly found in three different Swedish laws: the Environmental Code, the Planning and Building Act, and the Administrative Procedure Act. Generally they state that individuals must be concerned and NGOs must fulfill the requirements set out in the Code in order to have standing.
There is no structured dissemination on where to find the rules on access to justice available in Sweden. However, rudimentary information may be found on the websites of some of the main authorities for the protection of the environment, such as the Swedish Environmental Protection Agency and the National Board of Housing, Building and Planning. Some general information on access to justice can also be found on the website of the Swedish Courts.

2) During different environmental procedures how is this information provided? From whom should the applicant request information?

During the preparation of a matter at an authority or a case at a court, the main rule is that documents are open to the public. The registries where the respective instance is obliged to register all incoming documents in the particular case are also open. Certain information can be kept secret according to provisions in the Public Access to Information and Secrecy Act. For the parties in a case or a matter before an authority, the space to keep document secrets is very restricted.

In permit cases related to water operations and environmentally harmful operations, the Land and Environment Courts and the County Administrative Boards appoint a person or authority to keep a copy of all documents for the public to access instead of visiting the court or the County Administrative Board, also for such applications that do not need an EIA. This is of particular importance if the proposed activity is located far from the court or the County Administrative Board.

As a general rule, judgments and decisions in cases before courts and authorities must be documented in writing. In addition, there are provisions for judgments to be kept available at the court's office and at the custodian, when notified.

To a large extent, judgments are promulgated in the press and on the website of the court taking the decision in application cases. This applies equally to the County Administrative Boards’ decisions and other authorities.

The Ordinance (2003:234) on the Time for the Provision of Judgments and Decisions contains provisions on the time for delivery of documents, on how documents are to be provided and on information for individuals also. A judgment or decision in a case before a public court shall be sent to the parties on the day of the decision.

The Swedish public principle also means that anyone has the opportunity to read the decision text. Also, in the Administrative Procedure Act and the Code of Judicial Procedure there are provisions on the issuing of judgments and decisions. Provisions in the Environmental Code, the Judicial Code, the Administrative Procedure Act, the Law on Judicial Matters and the Administrative Procedure Act further regulate what a judgment or decision should contain. Every appealable decision and judgement must be accompanied by information on access to justice information.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?

The same rules on access to information on access to justice apply regardless of whether the case concerns an administrative environmental case or a civil case according to the Environmental Code, or a case on planning according to the Planning and Building Act.

Plans and programmes not falling under the SEA Directive are, under Swedish law, generally not binding on the public, only indicative or binding on authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. Thus, there are no rules on access to information on access to justice for these kinds of plans and programmes.

4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment?

It is mandatory for authorities giving an administrative decision and courts to provide access to justice information in the decision and/or judgment.

5) Is translation, interpretation provided to foreign participants? What are the rules applicable?

There is no structured dissemination on where to find the rules on access to justice available in Sweden, neither in Swedish nor in any other language. However, rudimentary information may be found on the websites of some of the main authorities for the protection of the environment, such as the Swedish Environmental Protection Agency, and the National Board of Housing, Building and Planning. Some general information on access to justice can also be found on the website of the Swedish Courts. This information may be found in English.

For individuals involved in an ongoing case, the Administrative Procedure Act, Section 13, states that an authority shall use an interpreter and ensure that documents are translated if necessary in order for the individual to be able to exercise their right when the authority has contact with someone who does not have mastery of Swedish.

The court may, if necessary, according to the Code of Judicial Procedure, Chapter 33, Section 9, translate documents that are sent in or sent out by the court. The court is obliged to translate a document in a criminal case, or the most important parts of it, for the suspect or at the request of an appellant, if a translation is essential to enable the suspect or appellant to exercise their right. The translation may be made orally if this is not inappropriate for the purposes of the document or the case or any other circumstance. By reference to Section 48 of the Court Matters Act, that provision is also applicable in administrative cases at the Land and Environment Courts.

1.8. Special procedural rules


Activities subject to the EIA requirements of the EIA Directive are subject to regulation regarding environmental impact assessments, permits etc. according to the Environmental Code or other specific legislation. Among other things, the application for a permit must include an EIA and a technical description of the planned activity or operation.

Provisions regulating when an EIA is required and what information it must contain are set out in Chapter 6 of the Environmental Code and in an underlying ordinance. Neither the Planning and Building Act nor sectoral environmental legislation have specific rules on the procedure or the content of the EIA, but refer to the rules of the Code.

An EIA must be prepared before the application for a permit is made and should be submitted as a supplement to the application. When preparing the permit application and the EIA, the applicant is obliged to consult the County Administrative Board, the supervisory authority and the private individuals likely to be particularly affected by the activity. For activities which typically have a significant environmental impact, the applicant is also obliged to consult central government agencies and the municipality, the public and the organisations that are likely to be affected by the activity. Prior to the consultation, the applicant should provide information about the activity with regard to location, scope, design and possible environmental impacts.

Furthermore, there are mandatory provisions concerning the minimum details that an EIA must contain. Upon receiving the EIA, the permitting authority is obliged to publicly announce the EIA and make it available to the general public, who should be given the opportunity to comment on it.

Not all activities that are within the scope of the EIA Directive fall within the scope of environmentally hazardous activities under the Environmental Code. Some activities that require environmental impact assessment under the Directive (building of industrial areas, shopping malls, parking spaces, subways or tramways, tourist attractions such as ski slopes and lifts, marinas for leisure boats, holiday villages, hotel complexes, camping sites and theme parks) are therefore dealt with under the Planning and Building Act. The environmental impact assessment required under the Directive for the above-mentioned activities is carried out under the Planning and Building Act within the framework of decisions on detailed urban development plans. It is proposed that from 1 July 2021 certain steps related to the EIA will also be conducted in a subsequent building permits procedure, however this is not related to the regulation of the EIA Directive.
In Sweden, the EIA is thus an intrinsic part of the permitting procedure, and this assessment is not made separately to the decision regarding the permit for an activity. The EIA shall be approved only if the direct and indirect impacts of the planned activity are deemed to be adequately described in accordance with the provisions of the Code, and if approved this will be noted in the decision concerning the permit.

1) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

Because of the system described above, the EIA, or any part of it, such as screening, scoping or final authorisation of the EIA itself, cannot be appealed separately. However, the EIA, including both the procedural requirements and the information it contains in a specific case, can be challenged when appealing the permit as such.

Rules on standing are generally that individuals must be concerned and NGOs must fulfill the requirements set out in the Environmental Code.

2) Rules on standing relating to scoping (conditions, timeframe, public concerned)

Because of the system described above, the EIA, or any part of it, such as screening, scoping or final authorisation of the EIA itself, cannot be appealed separately. However, the EIA, including both the procedural requirements and the information it contains in a specific case, can be challenged when appealing the permit as such.

Rules on standing are generally that individuals must be concerned and NGOs must fulfill the requirements set out in the Environmental Code.

3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?

Because of the system described above, the EIA, or any part of it, such as screening, scoping or final authorisation of the EIA itself, cannot be appealed separately. However, the EIA, including both the procedural requirements and the information it contains in a specific case, can be challenged when appealing the permit as such.

The final decision on authorisation and, if any, preliminary decisions, e.g. on permissibility or the start of construction works, may be appealed following the general rules, that is three weeks from delivering the decision or three weeks after receiving the decision if from the County Administrative Board.

4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO?

The EIA, including both the procedural requirements and the information it contains in a specific case, can be challenged when appealing the environmental permit as such according to the Environmental Code. Decision of the County Administrative Boards may be appealed to the Land and Environment Court and to the Land and Environment Court of Appeal (leave to appeal needed). Decisions of the Land and Environment Court may be appealed to the Land and Environment Court of Appeal (leave to appeal needed) and to the Supreme Court (leave to appeal needed).

The Government, in certain cases according to the Environmental Code, decides on permissibility for very large hazardous activities, such as facilities for nuclear operations. The Government also tries certain appeals according to the Code and sectoral legislation, such as the Minerals Act. Decisions by the Government, including EIA, cannot be appealed, but may be subject to a legal review by the Supreme Administrative Court.

Permit judgments and decisions, including the EIA, may be appealed by anyone who is the subject of a decision according to Chapter 16 Section 12 of the Environmental Code. Permit judgments and decisions may also be appealed by environmental NGOs according to Chapter 16 Section 13 of the Code. No foreign NGO can appeal, since there is a requirement that the organisation has to have been operating in Sweden for at least three years. The provision referred to may be regarded as discriminatory and would probably be set aside in court. In a decision of 21 December 2018 from the Supreme Administrative Court, case 4840-18, a Polish NGO was dismissed, but on the grounds that it had not showed that it had the support of the public. In principle, the organisation’s reference to the Polish public seems to have been accepted.

Decisions on urban detailed development plans, both those subject to an EIA and those not, are adopted by the municipality according to the Planning and Building Act and may be appealed to the Land and Environment Court and, with leave to appeal, to the Land and Environment Court of Appeal. The Land and Environment Court of Appeal may allow appeal of its ruling to the Supreme Court (leave to appeal needed).

As regards appeals of decisions on urban detailed development plans, persons with the right to appeal are those whom the decision concerns, provided that the decision affects them adversely and is subject to appeal (Chapter 13 Section 8 of the Planning and Building Act). NGOs which meet the requirements in Chapter 16 Section 13 of the Environmental Code also have legal standing according to the Planning and Building Act. A party challenging such a decision must also have made statements against the plan and/or EIA for the plan during the public consultation stage, otherwise the challenge would be precluded (Chapter 13 Section 11 of the Planning and Building Act).

5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?

There are no administrative procedural rules under Swedish law that set out the scope of the review of the Court. The relevant court will review both the substantive and procedural legality of the judgment or decision. The ultimate responsibility for the investigation of the case rests with the court according to the “ex officio principle”. The Court must, through communication with the parties, ensure that the case is examined properly and that any ambiguities are clarified. It is thus obliged and competent to fully examine the facts/merits of the case. The Court may even perform investigations at the location in question if this is needed in order to examine the case. The Court’s obligation to examine the case on its own initiative applies not only to material issues, but also to procedural issues. The claims of the parties will set the frame for the process, however the court is not bound by the causes of action invoked and may base its judgment on circumstances other than those invoked.

When a decision on an urban detailed development plan which includes an EIA is appealed to the court and the court finds that the decision contains substantive or procedural infringements, the court repeats the decision on the adoption of the plan. It should be noted that the court does not have the right to change the detailed development plan. The scope for the court in these cases is more narrow, similar to a legal review and in principle restricted to the causes of action invoked by the party. This is regulated in Chapter 13 Section 17 of the Planning and Building Act.

6) At what stage are decisions, acts or omissions challengeable?

The EIA, including both the procedural requirements and the information it contains in a specific case, can be challenged when appealing the permit as such.

7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

No matter who makes the decisions concerning activities under the EIA Directive, the County Administrative Board or the Land and Environment Court when it comes to permits according to the Environmental Code, or the municipality when it comes to certain plans according to the Planning and Building Act, an appeal may be filed directly with the court of appeal according to the route of appeal described above.

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?

There are no requirements under the Swedish Environmental Code regarding participation at the public consultation stage in order to be able to appeal a decision. There are thus no preclusion requirements. Once a decision or judgement on a permit has been issued, it may be appealed by anyone who is adversely affected by the decision.

When it comes to a decision to adopt, amend or repeal a detailed plan which includes an EIA according to the Planning and Building Act, the appellant is obliged to participate in the administrative procedure with the permitting authority as a precondition for being entitled to take a case to national court. A person or NGO may only appeal a decision on an urban detailed development plan if they submitted their opinions on the matter in writing during the initial examination period at the municipality and those opinions have not been considered.
9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
Swedish law requires equal opportunities of the parties in environmental proceedings.
Each party has the same legal rights to call witnesses and experts and to challenge argumentation and experts presented by the other party.

10) How is the notion of "timely" implemented by the national legislation?
There are no clear provisions protecting the interest of the public concerned to have their cases handled in a timely manner by an administrative organ, except for a very general statement in the Administrative Procedure Act that a case must be handled as simply, quickly and cost-effectively as possible without compromising the rule of law. However, if an authority assesses that the decision in a case initiated by an individual party will be materially delayed, the authority shall inform the party thereof. In such a notification, the authority shall report the reason for the delay. If a case initiated by an individual party has not been settled in the first instance within six months, the party may request in writing that the authority shall decide the case. The Authority shall, within four weeks from the date of such a request, either decide the matter or, in a special decision, reject the request. Such a decision to reject a request that the case be decided may be appealed to the court or administrative authority competent to review an appeal against the decision in the case.
In court, a party may apply for priority of a case according to the Priority Review Act.

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?
Normally a permit or an urban development plan cannot be utilised until the possibility of appeal has passed. Permit decisions may, however, be combined with a “go-ahead decision” enabling the applicant to start their activity. If a go-ahead decision has been granted, the public concerned can ask the court for an injunction of that decision.


1) Country-specific IPPC/IED rules related to access to justice
All activities subject to the requirements of the IPPC/Industrial Emissions Directive require a permit according to the Environmental Code. Before such a permit can be issued, an EIA must be performed.
The rules under the Environmental Code on access to justice are general, and thus also to apply to these cases.

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?
There are provisions in the Environmental Code that make it possible to appeal the final decisions and judgments on permits. Both individuals and environmental NGOs can appeal environmental decisions, but this right is limited in some cases. Preliminary decisions, e.g. regarding permissibility or construction works, taken during the preparation of the case may also be challenged.
According to Chapter 16 Section 12 of the Environmental Code, appeals may be made against appealable judgments or decisions by any person who is the subject of a judgment or decision against them.

NGOs which meet the requirements stipulated in Chapter 16 Section 13 of the Environmental Code may challenge many administrative decisions. The requirements are that the NGO is a non-profit association whose purpose according to its statutes is to safeguard nature conservation or environmental protection interests. The association furthermore must have conducted activities in Sweden for at least three years and have at least 100 members or by some other means show that its activities are supported by the public. In respect of shore protection, the provisions also apply to non-profit associations whose purpose according to their statutes is to promote outdoor interests (Chapter 16 Section 14 of the Code).

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)
In Sweden, the EIA is an intrinsic part of the permitting procedure, and this assessment is not made separately to the decision regarding the permit for an activity. Because of the Swedish system, the EIA is carried out together with the IED/IPPC process, which means that no part, such as screening, scoping or final authorisation of the EIA itself, can be appealed separately. However, the EIA, including both the procedural requirements and the information it contains in a specific case, can be challenged when appealing the permit as such.

4) Rules on standing relating to scoping (conditions, timeframe, public concerned)
In Sweden, the EIA is an intrinsic part of the permitting procedure, and this assessment is not made separately to the decision regarding the permit for an activity. Because of the Swedish system, the EIA is carried out together with the IED/IPPC process, which means that no part, such as screening, scoping or final authorisation of the EIA itself, can be appealed separately. However, the EIA, including both the procedural requirements and the information it contains in a specific case, can be challenged when appealing the permit as such.

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?
The permit can be appealed. Preliminary decisions, e.g. regarding permissibility or construction works, taken during the preparation of case may also be challenged.
The routes of appeal in cases concerning licensing are as follows:
County Administrative Board – Land and Environment Court – Land and Environment Court of Appeal (leave to appeal needed)
Land and Environment Court – Land and Environment Court of Appeal (leave to appeal needed) – the Supreme Court (leave to appeal needed)
The Government, in certain cases according to the Environmental Code, decides on permissibility for very large hazardous activities such, as facilities for nuclear operations. Decisions by the Government cannot be appealed but may be subject to a legal review by the Supreme Administrative Court.

As a general rule, an appeal of a decision must have been received by the decision-making authority within three weeks of the date on which the appellant received the decision through that authority. However, if the appellant is a party representing the public, the appeal must have been received within three weeks from the date of the decision being notified. The time limit regarding judgments from the Land and Environment Courts follows the general rule for district courts in civil cases, that is three weeks from the passing of the judgment. The decision-making authority or court then makes sure that the appeal was made within the right time limit and sends the appeal to the court or authority which will try the case.

6) Can the public challenge the final authorisation?
In order to challenge the final authorisation, you need to show that you are a party concerned according to Chapter 16 Section 12 of the Environmental Code or an NGO which meets the requirements in Chapter 16 Section 13 of the Code.

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?
There are no administrative procedural rules under Swedish law that set out the scope of the review of the Court. The relevant court will review both the substantive and procedural legality of the judgment or decision. The ultimate responsibility for the investigation of the case rests with the court according to the “ex officio princi". The Court must, through communication with the parties, ensure that the case is examined properly and that any ambiguities are clarified. It is thus obliged and competent to fully examine the facts/merits of the case. The Court may even perform investigations at the location in question if this is needed in order to examine the case. The Court’s obligation to examine the case on its own initiative applies not only to material issues, but also to procedural issues. The claims of the parties will set the frame for the process, however the court is not bound by the causes of action invoked and may base its judgment on circumstances other than those invoked.
8) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures? Regardless of who makes the decisions, the County Administrative Board or a Land and Environment Court, an appeal may be filed directly with a court; the Land and Environment Court if the licensing authority is the County Administrative Board or the Land and Environment Court of Appeal if the permit is issued by the Land and Environment Court.

9) 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? There are no requirements under the Swedish Environmental Code regarding participation at the public consultation stage in order to be able to appeal a decision. There are thus no preclusion requirements. Once a decision or judgement on a permit has been issued, it may be appealed by anyone who is adversely affected by the decision.

10) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction? Swedish law requires equal opportunities of the parties in environmental proceedings. Each party has the same legal rights to call witnesses and experts and to challenge argumentation and experts presented by the other party.

11) How is the notion of "timely" implemented by the national legislation? There are no clear provisions protecting the interest of the public concerned to have their cases handled in a timely manner by an administrative organ, except for a very general statement in the Administrative Procedure Act that a case must be handled as simply, quickly and cost-effectively as possible without compromising the rule of law. However, if an authority assesses that the decision in a case initiated by an individual party will be materially delayed, the authority shall inform the party thereof. In such a notification, the authority shall report the reason for the delay. If a case initiated by an individual party has not been settled in the first instance within six months, the party may request in writing that the authority shall decide the case. The Authority shall, within four weeks from the date of such a request, either decide the matter or, in a special decision, reject the request. Such a decision to reject a request that the case be decided may be appealed to the court or administrative authority competent to review an appeal against the decision in the case. In court, a party may apply for priority of a case according to the Priority Review Act.

12) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible if this? Are there special rules applicable to this sector apart from the general national provisions? Normally a permit cannot be utilised until the possibility of appeal has passed. Permit decisions may, however, be combined with a "go-ahead decision" enabling the applicant to start their activity. If a go-ahead decision has been granted, the public concerned can ask the court for an injunction of that decision.

13) Is there a time limit for an application to be accepted? There is no structured dissemination on where to find the rules on access to justice available in Sweden. Every party in an ongoing process will be sent the decision or judgment by mail and/or email. This applies to all environmental cases according to the Environmental Code, the Planning and Building Act and the sectoral legislation. It is mandatory for authorities giving an administrative decision and courts to provide access to justice information in the decision and/or judgment.

1.8.3. Environmental liability

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? Anyone, both individuals and NGOs, may request for action pursuant to Article 12(2) ELD from certain supervisory authorities whose authority and responsibility are set out in the Environmental Code and in an ordinance issued under the Environmental Code.

A decision by a supervisory authority not to intervene or to take measures perceived as too lean, in these cases mostly the County Administrative Boards, can be appealed to the Land and Environment Court and the Land and Environment Court of Appeal (leave to appeal needed) even if it states that the authority will take no action. The same rules on standing apply as for permits according to the Environmental Code (Chapter 16 Sections 12 and 13); individuals have to be concerned and NGOs must meet the requirements of the law. In certain cases, though, the supervisory authority is the municipality. If the decision is taken by a local authority, appeal must first be made to the County Administrative Board before it may be challenged at court.

2) In what deadline does one need to introduce appeals? A request for action from a supervisory authority can be made at any time. A decision from the authority may be appealed within three weeks from the decision received by the party. Judgments from the Land and Environment Court must be appealed within three weeks from when they are passed.

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones? A request may be delivered anonymously and the authority is still obliged to start an investigation to see whether there is any substance in the submission. According to the Administrative Procedure Act, Section 19, an individual can initiate a case with an authority through an application, notification or other petition. The petition should state what the case is about and what the individual wants the authority to do. It should also be clear which circumstances are the basis of the individual's request, if this is not obviously unnecessary. An individual party initiating a case shall participate by submitting, as far as possible, the investigation that the party wishes to invoke in support of its request. However, there are no rules on the need for such a request to be accompanied by scientific underpinning or data, but of course it makes the case stronger if such data is available. If a request is incomplete or unclear, the authority shall primarily assist the individual in rectifying their request. If necessary, the authority shall work to make the party clarify or supplement the request. An authority must always ensure that a case is investigated to the extent required by its nature.

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)? After receiving a request for action and after investigating the case, the supervisory authority has to make a decision on how to proceed. According to Section 9 of the Administrative Procedure Act, each matter shall be handled as simply, rapidly and economically as is possible without jeopardising legal security. The decision must be made in writing.

According to Section 33 of the same act, an authority that announces a decision in a case shall, as soon as possible, notify the party of the complete content of the decision, unless this is clearly unnecessary. If the party is entitled to appeal the decision, they must also be informed of the procedure. The authority decides how the notification is to be made; however, a notification must always be in writing if a party so requests.

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? There is no need for such an extension of entitlement.

7) Which are the competent authorities designated by the MS? With some exceptions, the operative supervisory actions, such as enforcement, are carried out at regional or local level by the County Administrative Boards or the municipalities. The County Administrative Boards are generally responsible for the supervision of larger activities and compliance with legislation
based on EU directives. The duties of the County Administrative Board can be transferred to the municipality according to a special procedure. In turn, the municipality is assigned general supervisory responsibility for all other environmentally hazardous activities within the municipality. In addition, there are twelve central government agencies, including the Swedish EPA, which are assigned operative supervision responsibilities within specific fields, such as forestry or agriculture. When it comes to liability according to Article 12 of the ELD, the County Administrative Boards are the supervisory authorities.

To ensure compliance with the Code and legislation issued under the Code, the supervisory authority may issue an injunction. Such injunctions may differ depending on the activity concerned and the actions needed. Should a permit holder disregard a condition set out in the permit, or otherwise breach environmental legislation, the supervisory authority may order them to rectify the matter, or start a procedure to revoke or restrict the scope of the permit. Injunctions can also include an order to cease operations or to prohibit an operator from starting a specific operation. To ensure compliance with an injunction, the supervisory authority may also impose conditional fines. Should the operator fail to observe the injunction, the supervisory authority may turn to the Land and Environment Court for a ruling on the fines, which will then be subject to enforcement.

6) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?
A decision by a municipality must undergo administrative appeal at the County Administrative Board prior to a possibility to have it tried in court. A decision by a County Administrative Board can be appealed to the Land and Environment Court and the Land and Environment Court of Appeal (leave to appeal needed) even if it states that the authority will take no action. The same rules on standing apply as for permits according to the Environmental Code (Chapter 16 Sections 12 and 13).

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?
Chapter 6 of the Environmental Code and the Ordinance on Environmental Assessments include regulation on involving other countries in the EIA process. If a harmful activity or measure is likely to have a significant environmental impact in another country, or if a country that may be significantly affected by the activity or the measure so requests, the Swedish Environmental Protection Agency shall:
inform the competent authority of the other country about the activity or measure, its possible cross-border consequences and the type of decision that may be made; and
give the competent authority of the other country reasonable time to comment on whether it wants to participate in the environmental assessment. If the other country wishes to participate in the environmental assessment, the Agency shall give the other country the opportunity to participate in a consultation process on the environmental impact assessment and the final permit application.

2) Notion of public concerned?
When consultations are to take place with another country according to Chapter 6 Section 13 or 33 of the Environmental Code, the Swedish Environmental Protection Agency shall agree with the responsible authority in that country on how the consultation is to be carried out so that the authorities and the public concerned in the other country are given the opportunity to submit comments within a reasonable time, which should be at least 30 days. For the purpose of completing consultations with other countries, the Swedish Environmental Protection Agency may announce information in Sweden, in another country in the European Union and in another country that is a party under the Espoo Convention on Environmental Impact Assessments in a Transboundary Context. Before an announcement is made in another country, the Agency must consult that country's responsible authority.

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)?
When it comes to participating during consultation with other countries, foreign NGOs are part of the public concern.

The general rule on standing for NGOs can be found in Chapter 16 Section 13 of the Environmental Code. This rule, however, excludes foreign NGOs, since it clearly states that an NGO needs to have been operating in Sweden for at least three years. Due to the 1974 Nordic Environmental Protection Convention, special legislation exists, however, on non-discrimination of Nordic environmental NGOs. As the current Swedish legislation does not provide standing for foreign NGOs, there are no specific procedural rules on when to appeal, procedural assistance etc.

In the EU context, the current Swedish provision is to be regarded as discriminatory. In a decision of 21 December 2018 from the Supreme Administrative Court, case 4840-18, a challenge from a Polish NGO was dismissed, but on the grounds that the organisation had not shown that it had support by the public. The judgment with reasoning regarding the support by the public in Poland indicates that a court would set aside the current provision and not dismiss a foreign NGO on the ground that it has not been operating in Sweden. The problem has been discussed in Governmental bill regarding EIAs, and the provision has been found discriminatory and thus should be altered, but so far nothing has happened.

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)?
If an individual living in another country can show that they are a person whom the judgment or decision concerns and that the decision affects them adversely according to Chapter 16 Section 12 of the Environmental Code or Section 42 of the Administrative Procedure Act, they have the same rights as an individual living in Sweden, including the right to injunctive relief where such is possible.

As for legal aid and pro bono help, there is no such help available for any party in environmental matters. The general rules will apply and are motivated by the ex officio principle for the decision-maker to examine the case.

5) At what stage is the information provided to the public concerned (including the above parties)?
If a harmful activity or measure can be assumed to have a significant environmental impact in another country, or if a country that may be significantly affected by the activity or action so requests, the Swedish Environmental Protection Agency shall inform the other country of the activity or measure. If the other country wishes to participate in the environmental assessment, the Agency shall give the other country the opportunity to participate in a consultation process on the environmental impact assessment and the final permit application.

When consultations are to take place with another country, the Swedish Environmental Protection Agency shall agree with the responsible authority in that country on how the consultation is to be carried out so that the authorities and the public concerned in the other country are given the opportunity to submit comments within a reasonable time, which should be at least 30 days.

A decision may be appealed within three weeks from when the decision or judgement is made.

7) How is information on access to justice provided to the parties?
Section 33 of the Administrative Procedure Act stipulates that an authority that announces a decision in a case shall, as soon as possible, notify the party of the complete content of the decision, unless this is clearly unnecessary. If the party is entitled to appeal the decision, they must also be informed of the procedure. The authority shall at the same time inform the party of dissenting opinions that have been recorded in accordance with section 30 or in accordance with special provisions in another constitution. A notice of how to appeal must contain information about what requirements are placed on the form and content of the appeal and what applies in terms of filing and appeal time.

A similar rule can be found in Section 30 of the Court Matters Act. In cases where a decision can be appealed, the parties shall be informed of this. If the decision means that the case has been decided, the parties shall be informed of what they must observe in an appeal. If the case has not been decided, the parties shall be informed that they may, on request, obtain such information from the court. If leave to appeal is required on appeal, the parties shall also be informed of this and of the grounds on which such leave may be granted.

6) Is translation, interpretation provided to foreign participants? What are the rules applicable?

According to the Administrative Procedure Act, Section 3, an authority shall use an interpreter and ensure that documents are translated if necessary in order for the individual to be able to exercise their right when the authority has contact with someone who does not have mastery of Swedish.

The court may, if necessary, according to Code of Judicial Procedure, Chapter 33, Section 9, translate documents that are sent in or sent out by the court. The court is obliged to translate a document in a criminal case, or the most important parts of it, for the suspect or at the request of an appellant, if a translation is essential to enable the suspect or appellant to exercise their right. The translation may be made orally if it is not inappropriate for the purposes of the document or the case or any other circumstance.

According to Section 48 of the Court Matters Act, that provision is also applicable in administrative cases at the land and environment courts.

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[1] There are some exceptions to this main rule: Decisions on environmental sanction fees and on legally binding land use plans are challenged directly to the Land and Environment Court and not via the County Administrative Board.

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Decisions on protective hunting are, if the requirements based on the Habitats Directive and on the Bird Directive are met, taken by the County Administrative Boards according to the Game Act and the Game Ordinance. The decision can be appealed to the Administrative Court and, with leave to appeal, to the Administrative Court of Appeal and the Supreme Administrative Court. Rules on standing can be found in Section 42 of the Administrative Procedure Act. A person whom the decision concerns may appeal against it, provided that the decision affects them adversely and is subject to appeal. According to established case law, environmental NGOs also have the right to appeal decisions under the Game Ordinance on hunting of species protected by the Habitats Directive and the Bird Directive.

In order to start a mine in Sweden, three different permits are needed. An exploration permit gives access to the land and an exclusive right to explore within the permit area, while an exploitation concession gives the holder the right to exploit a proven, extractable mineral deposit for a period of 25 years according to the Minerals Act. A permit according to the Environmental Code is also needed. Exploration for minerals may affect water quality and nature. However, the rules on standing when it comes to exploration permits are limited through case law. The general rule for individuals can be found in Section 42 of the Administrative Procedure Act. In case law, the Administrative Court of Appeal has ruled that only those who own the land where the exploration will take place and others with special rights, such as land tenants and holders of hunting and fishing rights, in the same area have standing. NGOs have no standing and cannot appeal an exploration permit, not even if the exploration affects nature or water. When it comes to permits according to the Environmental Code, the ordinary rules in Chapter 16 Sections 12, 13 and 14 apply.

Chapter 16 Section 13 stipulates that an NGO must have been conducting activities in Sweden for three years in order to have legal standing. This requirement of a three-year period of conducting activities in Sweden appears to be contrary to the Aarhus Convention and general EU principles of non-discrimination. This restriction means that no environmental organisations from other EU Member States may have standing before the Swedish courts.

There may be industrial emission activities that affect the environment in other Member States, but environmental organisations from these other Member States would not be able to bring a case regarding these activities in Sweden. (There is an Environmental Protection Convention between Denmark, Finland, Norway and Sweden, which at least ensures that environmental organisations from these countries will have standing before Swedish courts). In the EU context, the current Swedish provision is to be regarded as discriminatory. In a decision of 21 December 2018 from the Supreme Administrative Court, case 4840-18, a challenge from a Polish NGO was dismissed, but on the grounds that the organisation had not showed that it had support by the public. The judgment with reasoning regarding the support by the public in Poland indicates that a court would set aside the current provision and not dismiss a foreign NGO on the grounds that it has not been operating in Sweden. The problem has been discussed in a Governmental bill regarding EIAs, and the provision has been found discriminatory and thus should be altered, but so far nothing has happened.

The Planning and Building Act refers to the general rules in Section 42 of the Administrative Procedure Act and, by reference to the rules in Chapter 16 Sections 13 and 14, NGOs have been given the right to standing, but in principle only in cases regarding detailed municipal land use plans. The narrow scope, though, has been expanded through recent case law from the Land and Environment Court of Appeal and the Supreme Court. According to Chapter 13 Section 11 of the Planning and Building Act, the appellant is obliged to participate in the administrative procedure with the permitting authority as a precondition for being entitled to take a case to national court. Hence, the right to appeal for persons concerned and NGOs is, when it comes to urban detailed development plans, limited to those who have submitted their opinions on the matter during the initial examination period at the municipality and those opinions have not been considered. This rule appears to be contrary to the Aarhus Convention.

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 are no administrative procedural rules under Swedish law that set out the scope of the review of the Court. The relevant court will review both the substantive and procedural legality of the judgment or decision. The ultimate responsibility for the investigation of the case rests with the court according to the “ex officio principle”. The Court must, through communication with the parties, ensure that the case is examined properly and that any ambiguities are clarified. It is thus obliged and competent to fully examine the facts/merits of the case. The Court may even perform investigations at the location in question if this is needed in order to examine the case. The Court’s obligation to examine the case on its own initiative applies not only to material issues, but also to procedural issues. The claims of the parties will set the frame for the process, however the court is not bound by the causes of action invoked and may base its judgment on circumstances other than those invoked.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Regardless of who makes the decisions, the County Administrative Board or a Land and Environment Court, an appeal may be filed directly with a court; the Land and Environment Court if the licensing authority is the County Administrative Board, or the Land and Environment Court of Appeal if the permit is issued by the Land and Environment Court. If the first decision is taken by a local authority, with few exceptions an appeal must first be made through administrative appeal at the County Administrative Board prior to challenging the decision at court.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

There are no requirements under the Swedish Environmental Code regarding participation at the public consultation stage in order to be able to appeal a decision. There are thus no preclusion requirements. Once a decision or judgment on a permit has been issued, it may be appealed by anyone who is adversely affected by the decision.

An exception to this general rule is decisions of a municipality regarding detailed development plans under the Planning and Building Act. To challenge such decisions, the appellant must have raised the objections during the preparatory procedure in the consultation phase.

5) Are there some grounds/arguments precluded from the judicial review phase?

No grounds or arguments are precluded from the judicial review phase.

The absence of litigation costs in administrative cases means that each party has to cover its own costs. This may result in an unequal situation, but this is intended to be regulated by the ex officio principle and the burden on the court to investigate the case, not just to clarify foggy parts.

6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

Swedish law requires equal opportunities of the parties in environmental proceedings. Each party has the same legal rights to call witnesses and experts and to challenge argumentation and experts presented by the other party. The absence of litigation costs in administrative cases means that each party has to cover its own costs. This may result in an unequal situation, but this is intended to be regulated by the ex officio principle and the burden on the court to investigate the case, not just to clarify foggy parts.

7) How is the notion of “timely” implemented by the national legislation?

In the Swedish judicial system, there are no binding time limits within which a court must handle a case. Sweden has incorporated the European Convention on Human Rights (ECHR) into Swedish law through the Act on the European Convention for the Protection of Human Rights and Fundamental Freedoms. Article 6(1) of the ECHR states that everyone shall have the right to ‘a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law’. There is a possibility for a party to ask for priority of a case according to the Priority Review Act.
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?

Normally a permit or an exception cannot be utilised until the possibility of appeal has passed. Hence there is no need for injunctive relief in these cases. There is, though, a possibility to decide that such decisions, as well as decisions from the supervisory authority, shall be directly executable. If appealed, the higher instance (irrespective of whether this is a County Administrative Board or a court) can decide on injunctive relief following the general rules.

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?

There are no costs for bringing a case to court according to these rules. Each party only has to bear its own costs, but the Swedish environmental legislation does not require legal representation, neither for the administrative procedure nor for the judicial review procedure, and not even for appeals to the Environmental Court of Appeal or the Supreme Court. The only exception to the general rule of a free environmental procedure is found in the permitting procedure for water operations. The applicant here has to pay the litigation costs of all those who will be affected by the activity.

In civil cases concerning damages, the general rules on legal procedure apply, which means that the losing party has to pay all the winning party’s legal costs; the loser party pays principle in full. In civil cases, the litigant has to pay a court fee, around 300 Euros. Because of this there is no need for rules to safeguard the cost being prohibitive.

1.2. Decisions, acts or omissions concerning the administrative procedure 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?

Chapter 6 Sections 3 to 19 of the Environmental Code sets out the rules for strategic environmental assessments for plans and programmes falling under the SEA Directive. The rules are applicable to all plans and programmes drawn up for a number of sectors, setting out the framework for future authorisations for the projects listed in Annexes I and II to Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, and all plans and programmes which have been deemed to require an assessment in accordance with the Habitat Directive.

In Sweden, the SEA is an intrinsic part of the planning procedure, and this assessment is not made separately to the decision regarding the plan or programme. The SEA shall be approved only if the direct and indirect impacts of the plan or programme are deemed to be adequately described in accordance with the provisions of the Code, and, if approved, this will be noted in the decision concerning the plan or programme. Because of this system, the SEA, or any part of it, such as screening, scoping or final authorisation of the EIA itself, cannot be appealed separately. However, the EIA, including both the procedural requirements and the information it contains in a specific case, can be challenged when appealing the plan as such.

Spatial planning

Sweden has no cross-sector planning for land on the national level; however, there is national-level maritime planning. By 2021 there will be three maritime spatial plans for separate geographical zones. National transportation infrastructure planning also affects the conditions of municipal and regional physical planning.

Like the national planning, the regional planning is relatively limited. The Planning and Building Act stipulates that the municipalities are responsible for the planning of the use of land and water within their geographical boundaries.

The municipality must have a current comprehensive plan that covers the entire area of the municipality. In this plan, the municipality shall present the basic characteristics of its intended use of land and water areas. The plan also has to indicate how the municipality intends to take into account national and regional goals, plans and programmes of significance for sustainable development within the municipality. The stipulations in a comprehensive plan are not legally binding. But if statements are clear and well developed, the practice of the courts show that these plans can have a strong guiding effect. If the land is unexploited, then an urban detailed development plan process generally needs to be initiated. A detailed development plan enables the municipality to regulate the use of land and water areas in a particular area and is regularly required for all operations listed in Annexes I and II of the EIA Directive and for all public and environmental private projects which have been deemed to require an assessment in accordance with the Habitat Directive. The detailed development plan regulates what are public spaces, development districts and water areas, and how they are to be used and designed. The stipulations in a detailed development plan are binding for adjudication of subsequent building permit applications.

According to the Planning and Building Act, Chapter 13, Section 1, a municipal decision on comprehensive plans may be appealed by any member of a municipality to the Administrative Court and, with leave to appeal, to the Administrative Court of Appeal and the Supreme Administrative Court within three weeks of the decision. In these cases, the administrative courts only try the legality of the municipality’s or region’s decision. There is no requirement to participate in the public participation stage of the administrative procedure. There is no cost involved in bringing a challenge of a comprehensive plan to court. Each party is only responsible for its own costs, even if it loses the case. The comprehensive plan does not enter into force until the possibility of appeal has passed. Hence there is no need for injunctive relief in these cases.

Municipal decisions on detailed development plans according to the Planning and Building Act, Chapter 13, Section 2, are appealed directly to one of the Land and Environment Courts and may be appealed further to the Land and Environment Court of Appeal (leave to appeal needed). In its judgment, the Land and Environment Court of Appeal may decide to grant permission to appeal the judgment to the Supreme Court, if the decision is of interest as a precedent. The Supreme Court still decides on whether or not to grant leave to appeal.

The Planning and Building Act regulates the right for environmental NGOs referred to in Chapter 16, Section 13, of the Environmental Code to appeal a decision to adopt, amend or set aside a detailed development plan likely to have a significant environmental impact given that the planned area may be used for certain types of activity, and a decision to adopt, amend or set aside a detailed development plan that stipulates that an area will no longer be covered by shore protection. The right to standing for environmental organisations applies provided that decisions on the matter can be expected to have an adverse environmental effect.

For individuals, the general rule on standing in the Administrative Procedure Act is applicable. According to case law, an individual may usually appeal building permits and development plans which may affect them personally (they are neighbours or living within or directly adjacent to the area to which a municipal plan applies).

According to Chapter 13 Section 11 of the Planning and Building Act, the appellant is obliged to participate in the administrative procedure with the permitting authority as a precondition for being entitled to take a case to national court. Hence the right to appeal for the persons concerned is, when it comes to urban
detailed development plans, limited to those who have submitted their opinions on the matter during the initial examination period at the municipality and those opinions have not been considered. This rule appears to be contrary to the Aarhus Convention.

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?

Planning cases may only be challenged at court. There are no administrative procedural rules under Swedish law that set out the scope of the review of the Court. The relevant court will review both the substantive and procedural legality of the judgment or decision. The ultimate responsibility for the investigation of the case rests with the court according to the “ex officio principle”. The Court must, through communication with the parties, ensure that the case is examined properly and that any ambiguities are clarified. It is thus obliged and competent to fully examine the facts/merits of the case. The Court may even, on its own initiative, perform investigations at the location in question if this is needed in order to examine the case. The Court’s obligation to examine the case on its own initiative applies not only to material issues, but also to procedural issues.

The scope of the review in planning cases, however, is more restricted than in other administrative cases, and in principle just focuses on the issues raised by the appellant, Chapter 13 Section 17 of the Planning and Building Act.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

The decisions on planning taken by the municipality according to the Planning and Building Act may be appealed directly to the Land and Environment Court and, with leave to appeal, to the Land and Environment Court of Appeal and, finally, to the Supreme Court (leave to appeal needed) if the Land and Environment Court of Appeal provides for this in its judgment (when a precedence is desired).

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.?

When it comes to a decision to adopt, amend or repeal a detailed development plan according to the Building and Planning Act, the appellant is obliged to participate in the administrative procedure with the permitting authority during the public consultation phase as a precondition for being entitled to take a case to national court. A person may only appeal a decision on a detailed development plan if they have submitted their opinions on the matter in writing during the initial examination period at the municipality and those opinion have not been considered.

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 urban detailed development plan does not enter into force until the possibility of appeal has passed, so there is no need for injunctive relief in these cases.

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?

There is no cost involved in bringing a challenge of a comprehensive or a detailed development plan to court. Each party is only responsible for its own costs, even if they lose the case. Because of this, there is no need for rules to safeguard against the cost 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

Plans and programmes not falling under the SEA Directive are, under Swedish law, generally not binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

An exception is municipal comprehensive and regional planning according to the Planning and Building Act, which may be challenged through legal review.

Any member of a municipality or region has the right to have the legality of the municipality's or region's decision on the plans reviewed by appealing the decision directly to the Administrative Court. The scope of the examination of the court is narrow and the “ex officio principle” does not apply. In examining the appeal, the court may not take into account circumstances other than those to which the appellant referred before expiry of the appeal period. An appealed decision shall be set aside if it has not come about legally; the decision concerns something that is not a matter for the municipality or the region; the body which took the decision did not have the right to do so; or the decision is otherwise contrary to law or other constitution. There are no requirements for participation in the public participation phase of the administrative procedure before filing a complaint to the court. There are no costs for bringing a case to court, not even if the case is lost.

The administrative procedures to be followed to comply with the public participation requirement of Article 7 of the Aarhus Convention are mainly found in Chapter 6 of the Environmental Code.

In Sweden, the consulting procedures are an intrinsic part of the planning procedure, and this assessment is not made separately to the decision regarding the plan or programme. The plan or programme shall be approved only if the consultation has taken place and if the direct and indirect impacts of the plan or programme are deemed to be adequately described in accordance with the provisions of the Code, and, if approved, this will be noted in the decision concerning the plan or programme.

Because of this system, the procedure itself cannot be appealed separately. However, the procedural requirements and the information contained in a specific case can be challenged when appealing the plan or programme as such.

Chapter 6 of the Code includes regulation on screening, scoping and final authorisation of the plans and programmes relating to the environment, not only those falling under the SEA Directive. The rules are applicable for all plans and programmes if the implementation of the plan, programme or change can be assumed to have a significant environmental impact. This includes action plans necessary to comply with an environmental quality standard, national and municipal waste plans, municipal comprehensive plans (covering the whole municipality), regional planning, municipal plans for supply, distribution and use of energy, regional plans for transport infrastructure, marine spatial planning, national plans for sustainable hydropower and any other plans or programmes relating to agriculture or forestry, fisheries, energy, industry, transport, regional development, waste management, water management, telecommunications, tourism, spatial planning or land use.

The rules stipulate that the authority responsible for the plan or programme shall consult municipalities, County Administrative Boards and other authorities that, due to their special environmental responsibility, can be assumed to be affected by the plan or programme (Chapter 6, Sections 6 and 9). There are no rules stipulating the participation of the public concerned (neither individuals nor NGOs) when it comes to plans and programmes, only when it comes to environmentally hazardous activities. But nothing prevents an authority from consulting the public as well.

Chapter 6, Section 15, stipulates that the authority or municipality, as early as possible in the work on the proposal for a plan or programme, shall produce the environmental impact assessment and make it and the proposal available to the public and the municipalities and authorities that, due to their special environmental responsibility, can be assumed to be affected. They must be given information on how they can take part in the proposal and the
6) Are there some grounds/arguments precluded from the judicial review phase?

Plans and programmes not falling under the SEA Directive are, under Swedish law, generally not binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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?

Plans and programmes not falling under the SEA Directive are, under Swedish law, generally not binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

4) 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?

Plans and programmes not falling under the SEA Directive are, under Swedish law, generally not binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Plans and programmes not falling under the SEA Directive are, under Swedish law, generally not binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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?

Plans and programmes not falling under the SEA Directive are, under Swedish law, generally not binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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?

Plans and programmes not falling under the SEA Directive are, under Swedish law, generally not binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[4]

Chapter 6 of the Environmental Code includes regulation on screening, scoping and final authorisation of plans and programmes relating to the environment, not only those falling under the SEA Directive. The rules are applicable for all plans and programmes if the implementation of the plan, programme or change can be assumed to have a significant environmental impact. This includes action plans necessary to comply with an environmental quality standard, national and municipal waste plans, municipal comprehensive plans, marine spatial planning, national plans for sustainable hydropower and any other plans or programmes relating to agriculture or forestry, fisheries, energy, industry, transport, regional development, waste management, water management, telecommunications, tourism, spatial planning or land use.

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?

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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)?

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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?

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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.?

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

6) Are there any grounds/arguments precluded from the judicial review phase?
None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

7) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

8) How is the notion of “timely” Implemented by the national legislation?

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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?

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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?

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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 containing 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?

EU legislation is implemented in Sweden through acts adopted by the Parliament (Riksdag) or by ordinances adopted by the Government. By statutory authorisation, many of the central administrative authorities are also responsible for issuing regulations within their field of operation.

The Government and other regulatory bodies regularly apply consultation procedure in connection with the preparation of rules that have general interest.

The Government will then appoint a commission of inquiry. After a commission of inquiry has submitted its report, the Government forwards it to relevant public agencies, organisations and municipalities in order to hear their opinions on the proposals. This is known as referral of a report for consideration.

Anyone, including private individuals, is entitled to submit comments to the Government. The Government can also adopt rules without having to present a proposal to the Riksdag first. Such rules are known as ordinances. The Instrument of Government sets out what must be decided by law and what can be decided in an ordinance.

There is no Constitutional Court in Sweden, nor any abstract norm control. Instead, when a court is dealing with a case, it is obliged to control the legal basis for the decision and must disregard any act or statute which is in conflict with the Constitution or superior norms. During an ongoing individual case there exists a right of judicial review, meaning that courts and other public bodies have the right to override laws that are contrary to the Constitution and thereby also contrary to EU law. The Swedish right of judicial review for courts is regulated in Chapter 11 Section 14 of the Instrument of Government for Government and in Chapter 12 Section 10 of the Instrument of Government for authorities.

Since there is a need for an individual case in order to also bring up questions on implementation of EU environmental legislation and other regulatory acts, the rules on standing are the same as in any other individual environmental case in Sweden. The main rules for individuals may be found in Chapter 16 Section 12 of the Environmental Code and in Section 42 of the Administrative Procedure Act, and the main rules for NGOs may be found in Chapter 16 Section 13 of the Environmental Code. When a case is open, the individual and NGO with standing may also argue that EU legislation has not been implemented correctly into Swedish law. It is also possible in an ongoing case for individuals and NGOs to bring a legal challenge before the court to ask for the possibility to get a preliminary ruling concerning the interpretation of EU legislation according to Article 267 TFEU.

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 are no administrative procedural rules under Swedish law that set out the scope of the review of the Court. The relevant court will review both the substantive and procedural legality of the judgment or decision. The ultimate responsibility for the investigation of the case rests with the court according to the “ex officio principle”. The Court must, through communication with the parties, ensure that the case is examined properly and that any ambiguities are clarified. It is thus obliged and competent to fully examine the facts/merits of the case. The Court’s obligation to examine the case on its own initiative applies not only to material or procedural issues, but also issues such as whether EU legislation is implemented in a correct way. The Court is bound by the claims of the parties, though not the causes of action invoked, and can base its judgment on circumstances other than those invoked by the parties.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Decisions made by the County Administrative Boards according to the Environmental Code and municipal decisions on planning according to the Planning and Building Act can be directly appealed to the Land and Environment Court. In principle, all other decisions from the municipality are appealed via the County Administrative Board prior to challenge in Court.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.? 

There are no requirements under the Swedish Environmental Code regarding participation in the public consultation stage in order to be able to appeal a decision. There are thus no preclusion requirements. Once a decision or judgement has been issued, it may be appealed by anyone who is adversely affected by the decision.

When it comes to a decision to adopt, amend or repeal a detailed plan or area regulations according to the Building and Planning Act, the appellant is obliged to participate in the administrative procedure with the permitting authority as a precondition for being entitled to take a case to national court. A person may only appeal a decision on a detailed development plan if they have submitted their opinions on the matter in writing during the initial examination period at the municipality and those opinions have not been considered.

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?

Normally a permit or plan cannot be utilised until the possibility of appeal has passed. Permit decisions may, however, be combined with a “go-ahead decision” enabling the applicant to start their activity. If a go-ahead decision has been granted, the public concerned can ask the court for an injunction of that decision.
Penalties for the de-facto contempt of the court, e.g. when the judgment of the court is not followed and respected

If the error is small, in view of all the circumstances, no penalty may be pronounced. Such disciplinary sanctions are a warning and a salary deduction.

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?

There are no costs for bringing a case to court according to these rules, not even if the case is lost. Because of this, there is no need for rules to safeguard against the cost 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]

All parties in an ongoing case may petition that the court trying the case request a preliminary ruling from the EU Court. This may be done regardless of which court is reviewing the case. It is up to the court to decide whether a preliminary ruling is necessary.

Other relevant rules on appeals, remedies and access to justice in environmental matters

Remedies against administrative passivity

For the purpose of overseeing compliance with the requirements set out in the Environmental Code and legislation issued under the Environmental Code and the Planning and Building Act, as well as the requirements set out in permits, the law contains provisions concerning supervision.

Both affected individuals and NGOs may at any time make a request to the supervisory authority to take actions against an activity. The supervisory authority is often, but not always, the County Administrative Board, but it may also be the local municipality or another government authority. If the supervision authority then chooses to do nothing, this decision may be appealed to the Land and Environment Court and, with leave to appeal, to the Land and Environment Court of Appeal. The courts can then, if they choose to rule in favour of the appellant, send the case back to the supervisory authority for them to act, or decide e.g. to issue an order on precautionary measures or to prohibit an activity.

Administrative passivity may also be addressed by the Parliamentary Ombudsman (JO) or the Chancellor of Justice (JK), which are both designated to ensure that public authorities and their staff comply with laws and other statutes. They have a disciplinary function and act through opinions and prosecution for administrative misconduct. The Chancellor of Justice may also regulate certain claims for damages directed against the State. The claims for damages that the JK handles are primarily those based on a state authority having made an incorrect decision.

The Chief Parliamentary Ombudsman and the Parliamentary Ombudsmen are required to supervise that those who exercise public authority obey the laws and other statutes and fulfil their obligations in other respects.

The Ombudsmen are required to ensure in particular that the courts and public authorities, in the course of their activities, obey the requirements of the Instrument of Government on objectivity and impartiality, and that the fundamental rights and freedoms of citizens are not encroached upon in public supervision. Supervision is exercised by the Ombudsmen in assessing complaints made by the public and by means of inspections and such other inquiries as the Ombudsmen may find necessary.

The Ombudsmen conclude cases with an adjudication which states an opinion as to whether a measure taken by an authority or an official is in breach of the law or some other statute or is otherwise erroneous or inappropriate. The Ombudsmen may also make statements intended to promote uniform and appropriate application of the law. In the role of extraordinary prosecutor, an Ombudsman may initiate legal proceedings against an official who, in disregarding the obligations of their office or commission, has committed a criminal offence. Cases can be pursued to the Supreme Court if there are exceptional grounds for doing so. Individual complaints should be made in writing. The written complaint should indicate the authority to which the complaint is addressed, or grant injunctive relief, and the institution is therefore not regarded as an effective remedy according to Article 9 of the Aarhus Convention. However, although the JO can only examine a case after it has been decided and their scrutiny is limited to the handling of the case, the opinions have great importance for the understanding of the concept of good governance.

Penalties when public administration fail to provide effective access to justice

Apart from the role of the Ombudsmen, Chapter 20 Section 1 of the Criminal Code (1962:700) states that anyone who intentionally, or through negligence in the exercise of authority, by act or omission, violates what is applicable for the task shall be sentenced to misconduct, a fine or imprisonment for a maximum of two years. If the act, with regard to the perpetrator's powers or the task's connection with the exercise of authority in general, or to other circumstances, is to be regarded as minor, the person shall not be held liable. For instance, municipal officials and politicians in municipal committees and boards are covered by the rules on misconduct in the exercise of their authority. On the other hand, members of state or municipal assemblies, i.e. members of the Riksdag and members of municipal and county council assemblies, are exempt from responsibility for measures they take in this capacity. A public prosecutor can decide to take the accused to District Court.

The Public Employment Act, applicable for all employees of the Parliament and its authorities and for authorities reporting to the Government, stipulates that an employee who intentionally, or through negligence, violates their obligations in their employment, may be given a disciplinary sanction for misconduct. If the error is small, in view of all the circumstances, no penalty may be pronounced. Such disciplinary sanctions are a warning and a salary deduction.

Penalties for the de-facto contempt of the court, e.g. when the judgment of the court is not followed and respected

[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 Hoekschevaards Landschap, ECLI:EU:C:2017:774.
[6] For an example of such a preliminary reference see Case C-281/16, Vereniging Hoekschevaards Landschap, ECLI:EU:C:2017:774.
When it comes to contempt of court by administrations such as municipalities, there are various instruments for controlling municipal activities. However, there are not many different sanctions available apart from those mentioned above. There is, however, a possibility, in certain areas, such as supervision duties under the Environmental Code, for the County Administrative Board to order a municipality to fulfill its obligations regarding supervision (Chapter 26 Section 8).

In summary, it can be stated that there are currently very few legally based opportunities to prevent defiance. The legal situation in Sweden is that the municipalities and their representatives in certain areas can choose to disregard applicable laws and regulations and even court judgments. There are no legal possibilities to demand responsibility or sanction decision-makers other than those mentioned.

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### Access to justice in environmental matters - Sweden

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
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. 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**

The right for individuals and NGOs to challenge environmental decisions, acts, and omissions can mainly be found in three different Swedish acts: the Environmental Code, the Planning and Building Act, and the Administrative Procedure Act.

Legislation is the key tool in Sweden with which principles of environmental policy are converted into practical action. Environmental rules in Sweden come in the form of acts, ordinances (decided by the Government) and regulations decided on by the main authorities for the protection of the environment. A hierarchy of these rules means that ordinances and regulations decided on by authorities can never be contrary to the laws.

The Parliament (Riksdagen) is the national law-making body responsible for adopting all acts. The executive power rests with the Government (regeringen), and the Government is in turn responsible to the Parliament. The Government is assisted in its work by the Government Offices, comprising all ministries, and some 400 central government agencies and public authorities. Administrative functions may furthermore be entrusted to regional or local authorities or delegated to other public as well as private bodies.

Government agencies carry out their tasks independently under the laws and other legislation. The relevant ministry is therefore not permitted to intervene in an individual matter that is being handled by an agency.

The main authorities for the protection of the environment are the Swedish Environmental Protection Agency (Naturvårdsverket), the Swedish Chemicals Agency (Kemikalieinspektionen), the Swedish Agency for Marine and Water Management (Havs- och vattenmyndigheten) and the Swedish Radiation Safety Authority (Strålskyddsmyndigheten).

Sweden is divided into 21 counties (länn) and 290 municipalities (kommuner). Each county has a County Administrative Board (länsstyrelsen).

Constitutionally, each County Administrative Board constitutes a government agency subordinate to the Government with expert staff in various areas, such as environmental protection.

The County Administrative Boards (together with the Land and Environment Courts) are the main licensing authorities in environmental matters. Twelve of the County Administrative Boards have an Environmental Permit Office that issues permits for environmentally hazardous activities in accordance with the Environmental Code. In their decision-making, the Environmental Permit Offices are independent from the County Administrative Boards. The County Administrative Boards are also responsible for “green” issues and supervision concerning water-related activities and larger industrial activities. Additionally, the County Administrative Boards issue permits for waste transportation and disposal, and chemical activities, amongst other things.

Each municipality has an elected assembly, the municipal council (kommunfullmäktige), which is the decision-making body for municipal matters. The municipal council appoints the municipal executive board (kommunstyrelsen), which leads and coordinates the municipal tasks and responsibilities. The Swedish municipalities are responsible for executing and providing a significant proportion of all public tasks and services, including environmental and health protection. The competence to issue plans and permits under the Planning and Building Act resides with the municipalities. For some minor environmental hazardous activities, licensing is carried out at municipality level.

2. **Constitution – main (content of + including references) provisions on environment and access to justice in the national constitution (if applicable) including procedural rights**


The main provisions are found in the Instrument of Government, which also sets out some principles of relevance to access to justice in environmental matters. Chapter 1 Section 1 states the fundamental provision that the public power is exercised under the law. The public institutions shall promote sustainable development leading to a good environment for present and future generations (Chapter 1, Section 2). All courts, the public administration and others performing functions within the public administration shall observe the principle of equality of all persons before the law and be objective and impartial (Chapter 1, Section 9). It is also stipulated that no act of law or other provision may be promulgated in contradiction of Sweden’s obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms. The right to a fair and public hearing before an independent and impartial tribunal must be upheld (European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 6).

3. **Acts, Codes, Decrees, etc. – main provisions on environment and access to justice, national codes, acts**

The main environmental law in Sweden is the Environmental Code (1998:808), which constitutes a framework legislation consisting of the general provisions regarding environmental protection. It applies to all human activities that might harm the environment. The Code contains the environmental principles and provisions providing for environmental quality norms as well as environmental impact assessments. Certain water operations, industrial undertakings,
quarries and other environmentally hazardous activities are subject to permit or notification requirements, as specified in Governmental Ordinances. The Code also contains provisions relating to nature protection, flora and fauna, genetically modified organisms, chemicals and waste. Under the Environmental Code, there are several ordinances decided on by the Government containing more specific rules. Certain activities are also regulated in special sectoral legislation. Planning and building issues are covered by the Planning and Building Act (2010:900). Infrastructure installations, such as railroads and highways, also have regulations of their own, as do mining and forestry. Fauna is protected, in part, through hunting law. By statutory authorisation, many of the central administrative authorities are responsible for issuing regulations in the field of operation. The central administrative authorities are often designated as the Swedish competent authorities, such as the Swedish Environmental Protection Agency and the Swedish Agency for Marine and Water Management. Both the Environmental Code and the Planning and Building Act include special provisions on access to justice. When it comes to sectoral legislation, such as the Game Act, the Forestry Act and the Minerals Act, the provision on access to justice may be found in the general rule in Section 42 of the Administrative Procedure Act.

List of relevant national legislation
- Access to justice found in Chapter 16, Sections 12, 13 and 14
- Access to justice found in Chapter 13
- Administrative Procedure Act (2017:900) [ Förvaltningslag (2017:900)]
- Access to justice found in Section 42
- Judicial Review of Certain Government Decisions Act
- Access to justice found in Sections 1 and 2

4) Examples of national case-law, role of the Supreme Court in environmental cases
The access to justice of the public affected has been developed through case law. The courts most important when it comes to case law in environmental matters are the Land and Environment Court of Appeal and the Supreme Court, both of which may decide on judgments that may become precedents in those cases where their rulings include more general principles. Important case law has also been developed by the Supreme Administrative Court in cases related to i.a. forestry and legal review of Governmental decisions. Judgments from the Supreme Courts or appeals courts are not binding for lower courts, except where they refer to formal issues in a specific case. The judgments from the Supreme Courts, however, are regarded as guiding and there must be reasons of some importance to deviate from what has been decided.

NJA 2004, p. 590 and NJA 2012, p. 921. The Supreme Court stated that the right to appeal must apply to any person liable to be harmed, injured or otherwise inconvenienced as a result of the activity for which a permit is sought. The risk of injury or inconvenience should concern an interest that is protected by the legal order and should not be purely theoretical or completely insignificant.

MÖD 2011:46. The Land and Environment Court of Appeal stated that an individual affected should be given the right to appeal a decision not to request the withdrawal of a permit for environmentally hazardous activities.

MÖD 2000:43 and MÖD 2004:43. Nearby residents were held to have the right to appeal a decision by a supervisory authority not to intervene against environmentally hazardous activities.
The right of environmental NGOs to appeal public authority decisions under other administrative environmental legislation has also been developed in case law.

NJA 2012 p.921. The Supreme Court affirmed that organisations that meet the criteria in Chapter 16, Section 13 of the Environmental Code have the right to appeal, but in cases where an organisation does not meet the criteria an assessment has to be made of all the circumstances in the particular case. The court concluded that a generous assessment should be made of the right of environmental NGOs to appeal, since they can base their right to appeal on representing public interests, even in situations where no individuals can invoke such interests.

Case law has given environmental NGOs the right to also appeal decisions other than those stated explicitly in Chapter 16, Section 13 of the Environmental Code, including supervisory decisions under the Environmental Code with reference to article 9, point 3 of the Aarhus Convention and Sweden's obligations under EU law. The courts have also given the expression 'decision concerning permits or exemptions' a broad interpretation (MÖD 2012:47, MÖD 2012:48, MÖD 2013:6, MÖD 2014:30 and the judgment of the Land and Environment Court of Appeal of 18 March 2014 in cases M 11609-13 and MÖD 2015:17). Recent case law from the Supreme Court has given NGOs the right to appeal decisions on building permits, NJA 2020 p. 190, and a decision to adopt a detailed plan that was alleged to interfere with interest of cultural values, judgment 9 July 2020 Ö 6554-19, with reference to a judgment from the Supreme Administrative Court, HFD 2018 ref. 10 II.

In case T 5637-19 from October 2020, the Supreme Court stated that an NGO with only 5-10 members was considered to fulfil the criteria in Chapter 16, Section 13 and hence given the right to appeal. According to firmly established case law, environmental NGOs have the right to appeal decisions under the Game Ordinance on hunting of species protected by Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, the “Habitats Directive” (see the judgment of the Administrative Court of Appeal in Stockholm in cases 4390-12 and 4396-12 and subsequent judgments).

The Supreme Administrative Court 2014 ref.8. The Supreme Administrative Court gave an environmental NGO that met the criteria in Chapter 16, Section 13 of the Environmental Code the right to appeal the decision of the Swedish Forest Agency to grant a permit for the felling of subalpine forest, partly because decisions on permits for the felling of subalpine forest are covered by article 9, point 3 of the Aarhus Convention.

The Administrative Court of Appeal in Gothenburg in case 1196-16. A decision on a permit for intrusion in historic remains under the Historic Environment Act (1988:950) was held to be covered by article 9, point 3 of the Aarhus Convention. A nature conservation society that met the criteria in Chapter 16, Section 13 of the Environmental Code was therefore held to have the right to appeal the decision.

6) 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?
In Sweden, international conventions do not have direct effect so they must be incorporated in Swedish law to be applicable. However, by ratifying a convention Sweden becomes bound by the convention in terms of international law and national regulations should be interpreted in the light of the convention.

EU regulations apply directly as national law, while EU directives are transposed at the most appropriate level in the hierarchy to meet the given objectives. For provisions of a directive to be transposed into a Swedish ordinance or administrative provision, there must be a statutory delegation in a Swedish act. The provisions on access to justice in EU directives are also incorporated into Swedish law.
Parties involved in administrative or court procedure may, though, rely directly on international environmental agreements in their argumentations.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

Court judgments are not recognised as a formal source of law, but the courts have a role as interpreters of law and other legal regulation. The courts have an independent status within the Swedish constitution. Neither the Parliament nor any other authority may decide on, or otherwise interfere in, matters handled by the courts.

Judgments from the Supreme Courts or appeals courts are not binding on lower courts, except where they refer to formal issues in a specific case. The judgments from the Supreme Courts, however, are regarded as guiding and there must be reasons of some importance to deviate from what has been decided.

There are three kinds of courts in Sweden:

- the general courts, which comprise district courts, courts of appeal and the Supreme Court;
- the general administrative courts; administrative courts, administrative courts of appeal and the Supreme Administrative Court; and
- the special courts, which determine disputes within specific areas such as environment.

Usually the number of levels in the court system, regardless of whether the case concerns administrative decisions or a civil or criminal case, is three. In most cases there is a need for a leave to appeal (review permit) to get access to justice in the highest courts (the Supreme Administrative Court, the Supreme Court and the Land and Environment Court of Appeal). The main rule is that the Supreme Court and the Supreme Administrative Court only grant leave to appeal if the Supreme Court’s judgment or decision can have significance as a precedent, i.e. provide guidance on how the courts should assess similar cases. Apart from the precedent reason, the Land and Environment Court of Appeal may also grant a leave to appeal if there may be a reason to change the decision of the Land and Environment Court and it is needed for the Land and Environmental Court of Appeal to be able to better assess whether the Land and Environmental Court has ruled correctly or there are other special reasons to try the appeal such as risk of severe damage to the environment.

If the higher court finds that none of these conditions are met, it will not try the case.

It should also be noted that decisions by authorities under the Environmental Code may be challenged through the system of Land and Environment Courts, but only up to the Land and Environment Court of Appeal as the final instance. Appealed decisions from authorities under the Planning and Building Act, as well as property cases, may be appealed to the Supreme Court, but only where the Land and Environment Court of appeal so allows, which is mainly if that court deems that there is a need for precedence regarding a disputed issue.

2) Rule 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)?

For matters pertaining to environmental law, as well as matters of property registration, planning and building, Sweden has developed a system of special courts. This system consists of five Land and Environment Courts, and the Land and Environment Court of Appeal. Their jurisdiction covers all kinds of decisions made pursuant to the Environmental Code and the Planning and Building Act. They are also competent in cases concerning damages and private actions against hazardous activities.

The five Land and Environment Courts are each incorporated as a special branch within five designated district courts located in various parts of Sweden, each responsible for their respective part of the country (according to law). The Land and Environment Court of Appeal is part of the Svea Court of Appeal and is responsible for the entire country. The Supreme Court in turn hears virtually all cases, including matters of environmental law, of precedential significance.

The administrative courts try some cases regulated in sectoral legislation concerning hunting, forestry and mining.

3) Specialties as regards court rules in the environmental sector (special environmental tribunals), laymen contributing, expert judges

For matters pertaining to environmental law as well as matters of property registration, planning and building, Sweden has developed a system of special courts. This system consists of five Land and Environment Courts, and the Land and Environment Court of Appeal. Their jurisdiction covers all kinds of decisions made pursuant to the Environmental Code and the Planning and Building Act. They are also competent in cases concerning damages and private actions against hazardous activities.

Installations and activities involving a substantial environmental impact must obtain a permit from the Land and Environment Court, as must most kinds of water operations. In these cases, the court is exercising administrative powers usually allocated to authorities. This is a unique situation for Sweden. The Land and Environment Courts also try civil cases related to the environment, decisions appealed from administrative authorities, and handle cases on imposition of conditional fines after application from the supervisory authorities. It should be noted that most decisions from local authorities are first challenged through administrative appeal to the County Administrative Boards and then to the Land and Environment Court.

The system of Land and Environment Courts is specifically designed to deal with the technical complexity of the matters under their authority. The Land and Environment Courts rule on cases with one legally trained judge presiding over the case and a technically trained judge providing the special competence often needed due to the distinctive nature of the matters. In cases relating to environmental permitting, the two judges are assisted by two technical counsellors. Industry and national public authorities nominate the last two. The underlying philosophy is that experts will contribute their experience of municipal or industrial operations or public environment supervision. Depending on the case at hand and the issues involved, more than one technical judge, and then with additional technical/scientific competence, may participate.

The Land and Environment Court of Appeal rules on cases with three legally trained judges, one of whom presides over the case, and one technically trained judge.

All members of the courts have an equal vote. In the majority of cases, though, the chair has a casting vote where voting is tied.

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

The administrative courts, as well as the Land and Environment Courts, decide cases on their merits in a reformatory procedure, meaning that they may replace the appealed decision with a new one. It should be noted that the administrative court procedure is simpler and less formal than the civil procedure.

Another vital difference is that in the administrative procedure the ultimate responsibility for the investigation of the case rests with the court according to the “ex officio principle”. The principle means both that the examining courts (and authorities) have an obligation to ensure that a satisfactory investigation is made of each individual matter and that the courts may base their judgment on causes of action other than invoked by the parties. The Court must, through communication with the parties, ensure that the case is examined properly and that any ambiguities are clarified. It is thus obliged and competent to fully examine the facts/merits of the case. In administrative cases (challenged decisions from authorities and applications on imposition of conditional fines), the Court may, on its own initiative, perform investigations at the location in question if this is deemed necessary in order to examine the case.

In Sweden, in the judicial review procedure the relevant court will review both the substantive and procedural legality of the judgment or decision. There are no administrative procedural rules under Swedish law that set out the scope of the review of the Court. The legislation forms the framework for this review. It consists of both substantive provisions on environmental protection and procedural rules, both specific to environmental cases and general. The Court has the right to try any issues related to this substantive and procedural law framework, and the Courts’ obligation to examine the case on its own initiative does
not only apply to substantive issues, but also to procedural issues. The Court would thus raise issues regarding the correctness of a decision, whether it has been adopted by the competent authority (or whether the authority has abused its powers), whether the required form of a decision has been respected, and also whether the decision is appropriate in relation to the substantive and formal space given to the deciding authority. Though bound by the claims of the parties setting the framework of the process, in these cases the court in principle is put in the same position as the first deciding authority.

When a permit application is appealed and the court finds that the permit should not have been issued because of infringements of procedural or substantive nature, the court may reject the permit application and the permit will then no longer exist. However, if the Court finds that amendments to the permit conditions make it possible to conduct the activities in accordance with the Environmental Code, the court may add additional conditions to the permit, or amend conditions already prescribed by the authority, instead of revoking the permit. In addition, the court may deliver a new decision instead of the appealed one, repealing or changing the old decision, or remitting it back to the administrative decision-maker. As a main rule, they must not deliver a decision beyond the claims of the parties, but exceptions can be made to the benefit of the individual if this is not detrimental to involved private interests. There is no Constitutional Court in Sweden, nor any abstract norm control. Instead, when a court is dealing with a case, it is obliged to control the legal basis for the decision and must disregard any act or statute which is in conflict with the Constitution or superior norms.

1.3. Organization of justice at administrative and judicial level

1) System of the administrative procedure (ministries and/or specific state authorities)

The Environmental Code

To ensure effective compliance with the general rules of the Environmental Code, many activities and operations are subject to permits. Such activities and operations may not commence without a permit from a competent authority. The permit sets out the scope of the activity concerned and must include the conditions under which the activity may be carried out. If the surveys are not sufficient to decide on “final” conditions, a licence may be issued where certain issues are to be further investigated during a certain period in which provisional conditions on precautionary measures will be applicable. The activities or operations for which permits are compulsory are specified either in the Code or in ordinances issued under the Code based on their typical environmental impact.

The Environmental Code divides competence between the local administration and the Land and Environment Courts. Licensing of very large hazardous activities, such as facilities for nuclear operations, is carried out by the Government. Licensing of larger industrial installations basically following the 2010/75 EU directive on industrial emissions and water activities is carried out by the Land and Environment Courts and licensing of medium-size polluting activities is carried out by the County Administrative Boards Environmental Permit Office. For some minor environmentally hazardous activities, licensing or a notification procedure is carried out at municipality level.

For the purpose of overseeing compliance with the requirements set out in the Environmental Code and ordinances issued under the Code, as well as the requirements set out in permits, the Environmental Code also contains provisions concerning supervision. The supervision is conducted by certain supervisory authorities whose authority and responsibility are set out in the Environmental Code and in an ordinance issued under the Code. With some exceptions, the operative supervisory actions, such as inspections and enforcement, are carried out at regional or local level by the County Administrative Boards or by the municipalities. The County Administrative Boards are generally responsible for the supervision of larger hazardous activities and compliance with legislation based on EU directives. The duties of the County Administrative Board can be transferred to the municipality according to a special procedure. In turn, the municipality is assigned general supervisory responsibility for all other environmentally hazardous activities within the municipality. In addition, there are twelve central government agencies, including the Swedish Environmental Protection Agency, which are assigned operative supervision responsibilities within specific fields, such as chemicals, forestry or agriculture. To ensure compliance with the Environmental Code and ordinances issued under the Code, the supervisory authority may issue an injunction, often combined with conditional fines.

Planning and Building Act

The municipalities are responsible for the planning of land and water areas within their geographical boundaries. It is only the municipality that has the authority to adopt plans and decide whether the planning is to be implemented or not. The municipality must have a current comprehensive plan that covers the entire area of the municipality. The act also contains regulations on detailed development plans, area regulations and building permits.

2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?

Individuals concerned and NGOs meeting the requirements according to the Environmental Code may appeal an administrative environmental decision made by the County Administrative Board or the Environmental Permit Office of the County Administrative Board to the Land and Environment Court. Individuals concerned and NGOs meeting the requirements according to the Environmental Code may also appeal administrative decisions according to sectoral legislations such as the Forestry Act and the Minerals Act.

The appeal must be in writing, stating the claim and reasons, and is sent to the authority, which will check that the appeal was made in time and send it to the court.

The appeal process can take different lengths of time depending on the scope of the case. A final ruling by the court may be expected within somewhere between 6 months and one year.

3) Existence of special environmental courts, main role, competence

Sweden has special courts for matters pertaining to environmental law as well as matters of property registration, planning and building. There are five Land and Environment Courts and one Land and Environment Court of Appeal. Their jurisdiction covers all kinds of decisions made pursuant to the Environmental Code and the Planning and Building Act. They are also competent in cases concerning damages and private actions against hazardous activities. The five Land and Environment Courts are each incorporated as a special branch within five designated district courts located in various parts of Sweden, each responsible for their respective part of the country (according to law). The Land and Environment Court of Appeal is part of the Svea Court of Appeal and is responsible for the entire country.

4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)

The Environmental Code

The routes of appeal in cases concerning licensing, dispensation exemptions or injunctions according to the Environmental Code are as follows:

Local municipality – County Administrative Board – Land and Environment Court – Land and Environment Court of Appeal (leave to appeal needed) County Administrative Board – Land and Environment Court – Land and Environment Court of Appeal (leave to appeal needed)

Land and Environment Court – Land and Environment Court of Appeal (leave to appeal needed) – the Supreme Court (leave to appeal needed)

In certain cases, the Government decides on permissibility for very large hazardous activities, such as facilities for nuclear operations. Decisions by the Government cannot be appealed but may be subject to a legal review by the Supreme Administrative Court.

The applicant and the other parties in the procedure, as well as certain other stakeholders, can appeal against a permit decision. The right to appeal also applies to non-profit organisations or other legal persons with the primary purpose of promoting nature conservation and environmental protection interests or recreational interests, provided they also meet certain other specified requirements.
Municipal decisions on planning and building licensing according to the Planning and Building Act are appealed directly to one of the Land and Environment Courts and may be appealed further to the Land and Environment Court of Appeal (leave to appeal needed). Decisions on licensing according to the Planning and Building Act are first challenged through administrative appeal to the County Administrative Board and then, via the Land and Environment Court, to the Land and Environment Court of Appeal. If that court gives permission to appeal its ruling, the case may end up in the Supreme Court. Leave to appeal is still needed, as at the Land and Environment Court of Appeal.

Other sectoral legislation related to the environment

Some cases are dealt with in a different manner. For example, some decisions on hunting, forestry, mining and infrastructure projects are appealed to the administrative courts or to the Government.

Decisions by the County Administrative Boards on licence hunting according to the Game Act – Administrative Court – Administrative Court of Appeal (leave to appeal needed) – Supreme Administrative Court (leave to appeal needed)

Decisions by the Swedish Forest Agency according to the Forestry Act – Administrative Court – Administrative Court of Appeal (leave to appeal needed) – Supreme Administrative Court (leave to appeal needed)

Decisions by the Mining Inspectorate on exploration permits according to the Minerals Act – Administrative Court – Administrative Court of Appeal (leave to appeal needed) – Supreme Administrative Court (leave to appeal needed)

Decisions by the Mining Inspectorate on exploitation concessions according to the Minerals Act – the Government

Decisions concerning infrastructure projects that are decided by national authorities can be appealed to the Government.

5) Extraordinary ways of appeal. Rules for introducing preliminary references

Judicial review by the Supreme Administrative Court

The Supreme Administrative Court is the supreme general administrative court and considers determinations on appeal from any of the four administrative courts of appeal in Sweden. The Supreme Administrative Court can also, under certain circumstances, examine whether a decision made by the Government is in contravention of the rule of law. This institution is known as judicial review pursuant to the Judicial Review of Certain Government Decisions Act.

According to this act, a prerequisite for judicial review is that the decision involves an examination of the individual's civil rights or obligations as referred to in Article 6.1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, or, if the applicant is an environmental NGO, the government decision refers to Article 9.2 of the Aarhus Convention.

Preliminary rulings from the EU Court

All parties in an ongoing case may petition that the court trying the case request a preliminary ruling from the EU Court. This may be done regardless of which court is reviewing the case. It is up to the court to decide whether or not a preliminary ruling is necessary.

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?

In Sweden, there are no out-of-court solutions such as mediation in environmental cases.

In civil cases, however, e.g., compensation for environmental damage, it is mandatory for the court to try to mediate, either by itself or by involving an external mediator.

7) How can other actors help (ombudsperson (if applicable), public prosecutor), accessible link to the sites?

The Ombudsmen

The Parliamentary Ombudsmen (JO) and the Chancellor of Justice (JK) are both designated to ensure that public authorities and their staff comply with laws and other statutes and fulfill their obligations in other respects. They have a disciplinary function and act through opinions and prosecution for administrative misconduct.

The Ombudsmen ensure in particular that the courts and public authorities, in the course of their activities, act with objectivity and impartiality and that the fundamental rights and freedoms of citizens are not encroached upon in public administration.

Supervision is exercised by the Ombudsmen in assessing complaints made by the public and by means of inspections and such other inquiries as the Ombudsmen may find necessary.

Public prosecutor

The regulation on environmental crimes is under general public prosecution.

The public has very limited access to criminal proceedings, as the power to prosecute is the prerogative of the public prosecutor.

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)?

There are provisions in the Environmental Code and in administrative law that make it possible to appeal against the decisions of public authorities in general. These decisions may concern permits, other approvals, exemptions and supervision.

Appealable judgments and decisions may be appealed by anyone who is the subject of a decision against them. It has not been specified in Swedish law who should be considered a person concerned; this is decided on a case by case basis. Under Swedish law, it is generally not specified that ‘person’ refers to both natural and legal persons. Decisions and judgments may be directed to legal persons and it is possible that legal persons may suffer harm from a permit decision and could therefore also have standing on that ground.

The preparatory work of the Environmental Code explains that the concept of standing shall be interpreted widely and shall be decided on a case by case basis by the court. According to case law, any person who may suffer harm or be subjected to some other detriment as a result of the activity for which a permit is being sought has the right to be a party and to appeal a decision if the risk of harm or detriment concerns an interest that is protected by the legal system and is not solely theoretical or wholly insignificant.

NGOs who meet the requirements stipulated in the Environmental Code may challenge many administrative decisions. The requirements are that the NGO is a non-profit association whose purpose according to its statutes is to safeguard nature conservation or environmental protection interests. The association furthermore must have conducted activities in Sweden for at least three years and have at least 100 members or, by some other means, show that its activities are supported by the public. In respect of shore protection, the provisions also apply to non-profit associations whose purpose according to their statutes is to promote outdoor interests.

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?

Rules on legal standing can be found in the Environmental Code, Chapter 16, Sections 12 and 13, in the Planning and Building Act and in sectoral legislation. Some of this sectoral legislation lacks specific regulation on standing. In these cases, the general rule on standing found in Section 42 of the Administrative Procedure Act is applicable.

The general right of environmental NGOs to appeal environmental matters, including permit decisions, is regulated specifically in both the Environmental Code and in a number of sectoral legislations, such as the Minerals Act. These environmental NGOs also have an explicit right to apply for judicial review of permit decisions by the Government according to the Act on judicial review of certain government decisions. Regarding sectoral legislation which does not
specifically refer to the rule of standing for NGOs in the Environmental Code, such as the Forestry Act and the Game Act, the right for NGOs to appeal has been opened up by case law.

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.)

The standing rules according to the Environmental Code, the Planning and Building Act, and the Administrative Procedure Act are the same regardless of whether the case concerns standing for administrative review, standing for judicial review in the court of first instance or standing for appealing decisions of courts of first instance.

*The Environmental Code:*

**Chapter 16 Section 12**

Appeals may be made against appealable judgments or decisions by:

- any person who is the subject of a judgment or decision against them;
- local employees’ associations that organise workers in the activity to which the decision relates in the case of judgments and decisions concerning permits for environmentally hazardous activities;
- national employees’ organisations within the meaning of the Codetermination at Work Act (1976:580), the corresponding employers’ organisations and consumer associations in the case of decisions taken by a County Administrative Board or a central administrative authority pursuant to an authorisation issued in accordance with chapter 14, provided that the decision does not relate to an individual case; and
- authorities, municipal committees or other bodies which have a right of appeal pursuant to specific provisions in this Code or to rules issued in pursuance thereof or pursuant to the Act (2010: 897) on border river agreements between Sweden and Finland.

The provisions of this section shall be without prejudice to the right of appeal provided by the Code of Judicial Procedure.

**Chapter 16 Section 13**

Appealable judgments and decisions concerning permits, approvals or exemptions issued pursuant to this Code, concerning withdrawal of the status of protected areas pursuant to Chapter 7, or concerning supervision pursuant to Chapter 10 or questions relating to provisions adopted pursuant to this Code, may be appealed by a non-profit association or other legal person:

- whose primary purpose is to safeguard nature conservation or environmental protection interests;
- that is not run for profit;
- that has conducted activities in Sweden for at least three years; and
- that has at least 100 members or, by some other means, shows that its activities are supported by the public.

The right to appeal pursuant to the first paragraph also applies if the appeal only refers to a condition or other provision in the judgment or decision, and also if the judgment or decision is the result of an assessment pursuant to Chapter 22, Section 26 or Chapter 24, Section 2, 3, 5, 6 or 8 of this Code, or an assessment pursuant to Chapter 7, Section 13, 14 or 16 of the Water Operations (Special Provisions) Act (1998:812). However, the right to appeal pursuant to the first paragraph does not apply to judgments or decisions relating to the Swedish Armed Forces, the Swedish Fortifications Agency, the Swedish Defence Materiel Administration or the National Defence Radio Establishment.

Anyone who wishes to appeal pursuant to the first or second paragraph must do so within the time limit set for the parties and for other concerned persons.

**Chapter 16 Section 14**

The provisions of section 13 on the right of certain non-profit associations to appeal also apply in respect of shore protection to a non-profit association which, according to its statutes, has the purpose of safeguarding recreational interests.

*The Planning and Building Act*

The Planning and Building Act regulates the right for environmental NGOs referred to in Chapter 16, Section 13, of the Environmental Code to appeal a decision to adopt, amend or set aside a detailed development plan likely to have a significant environmental impact given that the planned area may be used for certain types of activity, and a decision to adopt, amend or set aside a detailed development plan which means that an area will no longer be covered by shore protection.

For individuals, the general rule on standing in the Administrative Procedure Act is applicable. According to case law, an individual may usually appeal building permits and development plans which may affect them personally (they are neighbours or living within or directly adjacent to the area to which a municipal plan applies).

**Chapter 13 Section 8**

Provisions on who may appeal a decision referred to in Sections 2 a, 3, 5 and 6 can be found in Section 42 of the Administrative Procedure Act.

**Chapter 13 Section 11**

A decision to adopt, amend, or repeal a detailed development plan or area regulations may only be appealed by someone who, prior to the expiration of the review period, has presented opinions in writing that have not been approved.

Curtailment of the right to appeal as determined by the first paragraph does not apply if:

- the decision has gone against the affected party through the proposal being amended after the review period; or
- the appeal is based on the decision not having been established according to the regulations prescribed by law.

**Chapter 13 Section 12**

A non-profit organisation or other legal entity of the kind referred to in Chapter 16, Section 13 of the Environmental Code may appeal a decision to adopt, amend or repeal a detailed development plan that can be assumed to result in a significant environmental impact owing to the fact that the planned area may be used for activities or measures indicated in Chapter 4, Section 34 of this Act.

**Chapter 13 Section 13**

A non-profit organisation or other legal entity of the kind referred to in Chapter 16, Section 13 of the Environmental Code, or a non-profit organisation of the kind referred to in Chapter 16, Section 14 of the Environmental Code, may appeal a decision to adopt, amend or repeal a detailed development plan that entails an area no longer being covered by shore protection in accordance with Chapter 7 of the Environmental Code.

*The Administrative Procedure Act*

**Section 42**

A person whom the decision concerns may appeal against it, provided that the decision affects them adversely and is subject to appeal. The Administrative Procedure Act also gives provisions regarding who may appeal against decisions according to:

- the Minerals Act (1991:45)
- the Forestry Act (1979:429)
- the Heritage Conservation Act (1988:950)
- the Game Act (1987:259)
An individual may apply for judicial review of such decisions by the Government which include an examination of the civil rights or obligations of the individual within the meaning of Article 6 (1) of the European Convention of 4 November 1950 on the Protection of Human Rights and Fundamental Freedoms.

Section 2
An environmental organisation referred to in Chapter 16, Section 13 of the Environmental Code may apply for judicial review of such permit decisions by the Government covered by Article 9 (2) of the Convention of 25 June 1998 on access to information, public participation in decision-making processes and access to judicial review in environmental matters.

4) What are the rules for translation and interpretation if foreign parties are involved?
The main rule is that the language in courts and administrative authorities is Swedish, though there is a special regulation (Act 2009:724 on National Minorities and National Minority Languages) giving citizens in certain municipalities in the north of Sweden the right to speak i.a. Finnish or Sami in court.

The general rules on translation and interpretation in administrative authorities and courts are codified in the respective procedural rules. According to the Administrative Procedure Act, Section 13, an authority shall use an interpreter and ensure that documents are translated if necessary in order for the individual to be able to exercise their right when the authority has contact with someone who does not have mastery of Swedish.

According to the Code of Judicial Procedure, Chapter 5, Section 6, for a party, witness or other person who is to be heard before the court and does not have mastery of Swedish, the court may employ an interpreter. If a suspect or a prosecutor in a criminal case does not have mastery of Swedish, an interpreter should be hired for a court hearing. By reference to Section 48 of the Court Matters Act, this provision is also applicable in administrative cases at the Land and Environment Courts.

If a party, witness or other person who is to be heard before the court does not speak Swedish, the court shall, if necessary, employ an interpreter. The court may also, in other instances where necessary, hire an interpreter or translate documents (according to Section 50 of the Administrative Court Procedure Act).

The court may, if necessary, according to the Code of Judicial Procedure, Chapter 33, Section 9, translate documents that are sent in or sent out by the court. The court is obliged to translate a document in a criminal case, or the most important parts of it, for the suspect or at the request of an appellant, if a translation is essential to enable the suspect or appellant to exercise their right. The translation may be made orally if this is not inappropriate for the purposes of the document or the case or any other circumstance. By reference to Section 48 of the Court Matters Act, this provision is also applicable in administrative cases at the Land and Environment Courts.

1.4. Evidence and experts in the procedures

1) Evaluation of evidence – are there any limits in obtaining or evaluating evidence, can the court request evidence on its own motion?
Both administrative authorities and all Swedish courts involved in environmental cases have extensive obligations to examine a case and ensure that it is examined to the extent needed, and, for this purpose, to ask the parties questions throughout the procedure. The Court may even carry out investigations at a location if it deems it necessary. New facts are thus added to the case throughout the procedure and the Court must also consider any additional facts provided by the Parties. There is thus no partial preclusion requirement. It should be noted that this does not apply in civil cases tried by the Land and Environment Courts.

As the ultimate responsibility to investigate the case according to the “ex officio principle” in the Environmental Code lies with the administration and the Land and Environment Courts, which both have technicians participating in the decision-making, there are no stipulations in Swedish law that an individual or an environmental NGO should have to present expert opinions, even if the proceedings are initiated by them. Accordingly, a Swedish administrative authority or court can never order an individual or an environmental NGO to produce such experts (although a court may require such an expert opinion from an applicant for a permit or an operator of an environmentally hazardous activity). Also, there are no requirements under Swedish law that individuals or environmental NGOs should have to present or bear the costs of experts or witnesses.

2) Can one introduce new evidence?
The ex officio principle at both administrative and judicial levels means there are no limits to how and when new evidence can be introduced. Having said that, it is still primarily up to the party to be responsible for presenting the evidence. This can be done both at the very beginning of a case and later during the court procedure. Evidence may also be introduced in the next instance during an appeal. It should be noted that administrative cases are handled differently from civil cases, where the possibility to present new evidence is more restricted. Written documents which are relied upon as evidence must be submitted to the court without delay. The same applies to items which are relied upon as evidence and can be moved to court. If necessary, the court may order the party which relied on the evidence to submit this within a specified time. Such an order must include information that the case may be decided even if the party has not provided the evidence. At a hearing, witness hearings may be held. The testimony may be required to be given under oath.

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts.
In administrative cases, the court often at its own initiative refers a case or specified questions to authorities, e.g. national authorities, with expert knowledge within certain fields. This is also practised at appeal level.

Any party may present experts to strengthen their legal action. Any party may also ask the court to call for expert witnesses, such as experts from environmental authorities.

It is very common for an applicant for a permit to present multiple experts to speak on their behalf. There may also be situations where it is of great advantage, albeit not essential, for individuals and environmental NGOs to be able to present experts of their own or expert reports to prove the veracity of their claim. Mostly such reports are made by experts working within the NGOs themselves and consequently they are mostly free of charge. Another way to obtain expert reports is to resort to independent researchers from universities or to other outside experts who may offer to make such a report for free or for travel expenses and, if needed, compensation for accommodation. Sometimes, though, if the case concerns a very large and/or complicated issue, the environmental NGOs pay to engage an outside expert.

There are no publicly available lists and registries of experts.

3.1) Is the expert opinion binding on judges, is there a level of discretion?
Expert opinions are not binding on the judges and can be disregarded.

3.2) Rules for experts being called upon by the court
According to Chapter 22 Section 12 of the Environmental Code, the Land and Environment Court, where a special investigation or valuation is necessary for assessment of the case, may appoint one or more experts to deliver an opinion in the case after carrying out a preliminary investigation. Such an
investigation shall be carried out as soon as possible. If it is necessary in view of the nature of the case or the purpose of the investigation, the court shall notify the parties by suitable means of the time when the investigation will take place. This possibility is available when the court is trying first instance permit cases. It is not a general option for environmental cases. However, the rule is also applicable when the Land and Environment Court of Appeal tries cases which are appealed.

If a case concerns an activity or a measure that affects the aquatic environment, the court shall obtain an opinion from the County Administrative Board that is the relevant water authority if the investigation in the case gives reason to assume that any factor of importance for the environmental quality standard does not conform to the basis for such a standard and the non-compliance is relevant to the ability to determine reasonable and appropriate environmental conditions.

3.3) Rules for experts called upon by the parties
An appeal shall include the grounds of appeal and in what respect the reasons for the decision are, in the appellant's view, incorrect, and the evidence relied on and what is to be proved by each specific piece of evidence. This may include expert opinions if the party so wishes.

In civil cases, the plaintiff has to present the claims, causes of action and evidence that is invoked. This may be completed later on during the process. Experts called upon by parties are regarded during the process as witnesses and not as experts called upon by the court.

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 in relation to expert opinions and expert witnesses.

In administrative cases, the court will cover costs for witnesses called by the court. Experts assisting a party, though, are in principle not regarded as witnesses. The party invoking an expert opinion has to do so at its own expense, and its costs will not be compensated or covered by the opposite party even if the former party wins the process.

In civil cases, the costs will initially be covered by the party that has invoked the witness/expert. In the end, the loser pays principle will apply in civil cases.

1.6. Legal professions and possible actors, participant 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

Anyone who is a party in an environmental case may use a legal representative or assistant. This person must be suitable for the assignment, but does not have to be a lawyer. Swedish environmental legislation does not, however, require legal representation, neither for the administrative nor the judicial review procedure, and not even for appeals to appeals or to the Supreme Court.

Most of the environmental NGOs which operate at national level (e.g. Greenpeace Sweden, the Swedish Carnivore Association, SOF-Birdlife, the Swedish Botanical Society, and others) and local level have no legal representatives employed. The biggest environmental NGO in Sweden, the Swedish Society for Nature Conservation, is the only Swedish environmental NGO which currently has three employed legal advisors.

There are no publicly accessible internet links to a registry or website of all specialised lawyers in the environmental field. However, the Swedish Bar Association has a search function on its website. Lawyers who are not members of the Association are naturally not included.

1.1. Existence or not of pro bono assistance

There is no organised pro bono assistance available. There are only a few law firms engaged in representing the public concerned in environmental cases. Furthermore, there are practically no public interest lawyers or law clinics dealing with environmental cases in Sweden.

Attorneys are free to set their own fees, but there are no legal limitations for lawyers to take on this kind of pro bono work.

In civil cases, property cases and applications for permits for water operations the court may, if it considers the fees to be unreasonable, reduce the compensation for litigation costs either at the request of the losing party or on its own initiative. In other administrative cases, each party has to cover its own costs, irrespective of the outcome, and the court will not intervene regarding costs.

2) Expert registries or publicly available websites of bars or registries that include the contact details of experts

No expert registries or publicly available websites of bars or registries that include the contact details of experts exist.

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible

The list below is not exhaustive. In alphabetical order:

- Birdlife Sweden
- Climate Action
- Greenpeace Sweden
- Nordv
- Protect the Forest
- Swedish Botanical Society
- Swedish Outdoor Association
- Association for Protection of the Swedish Landscape
- River Rescuers
- Swedish Carnivore Association (SCA)
- Swedish Society for Nature Conservation
- Urbergsgruppen
- WWF

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)

As a general rule, for the administrative authorities and the administrative courts an appeal of a decision must have been received by the decision-making authority or administrative court within three weeks of the date on which the appellant received the decision through that authority. However, if the appellant is a party representing the public, the appeal must have been received within three weeks from the date of the decision being notified. The decision-making authority or administrative court then makes sure that the appeal was made within the right time limit and sends the appeal to the court or authority which will try the case.

When it comes to decisions and judgments from the Land and Environment Courts, with the exception of preliminary decisions during the preparation of the case the time for appeal is linked to the date of the ruling.

2) Time limit to deliver decision by an administrative organ
3) Is it possible to challenge the first level administrative decision directly before court?

The routes of appeal in cases concerning licensing, dispensation exemptions or injunctions are as follows:

- Local municipality – County Administrative Board – Land and Environment Court – Land and Environment Court of Appeal (leave to appeal needed) [1].
- County Administrative Board – Land and Environment Court – Land and Environment Court of Appeal (leave to appeal needed).
- Land and Environment Court – Land and Environment Court of Appeal (leave to appeal needed) – the Supreme Court (leave to appeal needed).

Many environmental cases start at the County Administrative Board or a Land and Environment Court, which means that the decisions may be challenged directly to court.

The Government, in certain cases according to the Environmental Code, decides on permissibility for very large hazardous activities, such as facilities for nuclear operations. The Government also tries certain appeals according to the Code and sectoral legislation, such as the Minerals Act. Decisions by the Government cannot be appealed but may be subject to a legal review by the Supreme Administrative Court.

4) Is there a deadline set for the national court to deliver its judgment?

There are no set rules for the national courts to deliver judgments.

In first instance permit cases at the Land and Environment Courts, the Environmental Code provides that the Land and Environment Court shall deliver the judgment as soon as possible in view of the nature of the case and other circumstances (Chapter 22, Section 21 of the Environmental Code). This also applies when the Land and Environment Court of Appeal tries a case. If a main hearing has been held, a judgment shall be delivered within two months of the conclusion thereof, unless exceptional circumstances exist.

In other administrative cases there are no such rules. In civil cases, the general rule is that the judgment should be delivered within 14 days from the main hearing. It should be noted that, according to the Priority Review Act, a party may ask for priority of a case handled at a court.

5) Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)

There are no fixed legal time limits applicable during the procedure. The administrative organ or the court trying a case decide on a case to case basis the time limits and deadlines for submitting evidence, opinions and other material needed.

1.7.2. Interim and precautionary measures, enforcement of judgements

1) When does the appeal challenging an administrative decision have suspensive effect?

Under Swedish law, appeals have suspensive effect unless otherwise provided by the law. Normally a decision according to the Environmental Code and the Planning and Building Act can only be executed when the decision can no longer be contested through a legal remedy. There are some exceptions to the rule according to special legislation, such as protective hunting according to the Game Act and exploration permits according to the Minerals Act.

Normally a permit according to the Environmental Code cannot be utilised until the possibility of appeal has passed. Permit decisions may, however, be combined with a “go-ahead decision” enabling the applicant to start their activity. As with permits, orders from a supervisory authority do not take legal effect until they are finally decided on appeal. If there is an urgent need, the authority can decide that the order shall take effect even if it is appealed.

2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?

As long as the matter has not been delivered to the superior authority, the first deciding authority may revise and stop an execution of its own decision, if this is not to the detriment of a private opposing party.

If a go-ahead decision has been granted or the case concerns a decision where the rule on an appeal’s suspensive effect is not applicable, the public concerned can ask the authority for an injunction of that decision. According to the Administrative Procedure Act, Section 48, an authority trying an appeal may decide on injunctive relief.

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?

A request for injunctive relief may be made at any time during the procedure, but is normally made at the same time as the appeal itself. Such a request may also be repeated if not successful.

4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?

Under Swedish law, appeals have suspensive effect unless otherwise provided by the law. Normally a decision according to the Environmental Code and the Planning and Building Act can only be executed when the decision can no longer be contested through a legal remedy. In those cases where this does not apply, the Environmental Code, as well as the Planning and Building Act, gives the supervisory authority the possibility, if urgent, to decide that a prohibition or an order shall be immediately binding.

There are some exceptions to the rule according to special legislation, such as protective hunting according to the Game Act and exploration permits according to the Minerals Act.

5) Is the administrative decision suspended once challenged before court at the judicial phase?

Appeals normally have suspensive effect unless otherwise provided by the law.

During the court procedure, the court, if requested by one of the parties, can decide on interim measures either to allow or restrict an activity.


Normalt kan ett tillstånd enligt miljöbalken anläggas för att avsevärt minskas kraft. Tillståndet kan dock kombineras med ett verkställighetsförordning som gör det möjligt för den sökande att starta sin verksamhet trots att tillståndet överklagas. Liksom vad som gäller för tillstånd får ett föreläggande från en tillsynsmyndighet inte rättslig verkan förrän det vunnit laga kraft. Om det finns ett brådskande behov kan myndigheten dock besluta att beslutet ska träda i kraft genast.

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?
If a go-ahead decision has been granted or the case concerns a decision where the rule on an appeal’s suspensive effect is not applicable, the public concerned can ask the court for an injunction of that decision. This may be done during the whole procedure but is normally done at the same time as the appeal itself.

According to the Court Matters Act, Section 26, a court that is to hear an appeal may decide that the appealed decision may not be enforced for the time being. The legal provision on such “inhibition” is rather vague; the details are found in case law. According to the Environment Court of Appeal and the Supreme Court, inhibition shall be granted when the prospects for the success of the appeal are good. An inhibition may also be granted if the appellant has a legitimate interest in having the decision scrutinised by the court or there are vital interests at stake, for example the risk of irrevocable damage.

There are no requirements, or legal possibilities, to ask the claimant for a financial deposit. There is, however, one exception. If the applicant for a permit for a water operation asks for a decision on an immediate enforceable permit, they must provide a financial deposit.

1.7.3. Costs – Legal aids – 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.

The rules on costs for trials concerning environmental matters are provided in Chapter 25 of the Environmental Code.

As a general rule, the procedures related to administrative environmental matters in Sweden are free of charge. There are no application or court fees, no obligation to pay the opponent’s costs, no bonds to be paid for obtaining injunctive relief or other costs to be covered, irrespective of whether the case is subject to an administrative or a judicial review procedure.

For as experts’ and lawyers’ fees, these have to be calculated on a case by case basis after contact with them.

Each party has to cover its own costs in administrative cases.

The loser pays principle is not applicable as in civil cases. In civil cases, there is also a court fee for the plaintiff, around 300 euros.

2) Cost of Injunctive relief/interim measure, is a deposit necessary?

Injunctive relief and interim measures are free of charge.

If, however, the applicant for a permit for a water operation asks for a decision on an immediate enforceable permit, they must provide a financial deposit.

3) Is there legal aid available for natural persons?

Considering that the procedures related to environmental cases in Sweden are free of charge, there is little legal aid available. According to the Legal Aid Act (1996:1619), an applicant may, under certain conditions, get legal aid and certain costs associated with the process paid. The act, however, due to the official principle, has very little significance in cases that are appealed to the Land and Environment Courts. One of the criteria for being awarded legal aid is that the applicant needs legal aid in addition to advice and that this need cannot be met in any other way. Because of these criteria, there is almost no possibility for individuals to obtain legal aid in environmental cases.

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?

Environmental NGOs or other legal persons may never obtain legal aid according to the Swedish Legal Aid Act.

5) Are there other financial mechanisms available to provide financial assistance?

Some of the national authorities provide grants for environmental NGOs which they can use at their own discretion. Most importantly, the Swedish Environmental Protection Agency each year distributes funds to organisations to be used for taking legal action in order to develop case law in the environmental area. Furthermore, the Swedish Transport Administration and the Swedish Consumer Agency provide grants to NGOs to increase public influence in different decision-making processes in the environmental field.

6) Does the ‘loser pays’ principle apply? How is it applied by courts, are there exceptions?

The majority of environmental disputes are pursued through cost-free administrative procedures where the appellate levels have an obligation to ex officio examine the case.

The loser pays principle does normally not apply. Each party only has to bear its own costs, but Swedish environmental legislation does not require legal representation, neither for the administrative nor the judicial review procedure, and not even for appeals to the Land and Environmental Court of Appeal or the Supreme Court. The only exception to the general rule of a free environmental procedure is found in the permitting procedure for water operations.

The applicant has to pay the litigation costs of all those who will be affected by the activity. This circle of people, however, is narrower than the public concerned and consists of those whose real estate will be affected by the activity, for example by flooding, loss of fishing water and so on.

In civil cases concerning economic damages, the general rules on legal procedure apply, which means that the losing party has to pay all the winning party’s legal costs; the loser pays principle in full. Civil cases in environmental matters in Sweden are quite rare. Many civil cases relate to intrusion in the landowner’s rights, e.g. to establish a nature reserve, and in such cases the main rule is that the landowner will have their costs covered irrespective of the outcome.

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?

Since no such costs exist in administrative environmental cases, there is no need for rules on exemptions.

In civil cases, the loser pays principle is not absolute, as the rules give the court space to consider facts related to how the process was pursued, if there were reasons for initial claims due to the action of the opposing party etc., and cases where restrictions are imposed on how the landowner may use the land or the land is expropriated for public interests.

1.7.4. Access to information on access to justice – provisions related to Directive 2003/4EC

1) Where are the national rules on environmental access to justice available? Internet link to be provided. Are there other forms of structured dissemination?

The right for individuals and NGOs to challenge environmental decisions, acts and omissions is mainly found in three different Swedish laws; the Environmental Code, the Planning and Building Act, and the Administrative Procedure Act. Generally they state that individuals must be concerned and NGOs must fulfil the requirements set out in the Code in order to have standing.

There is no structured dissemination on where to find the rules on access to justice available in Sweden. However, rudimentary information may be found on the websites of some of the main authorities for the protection of the environment, such as the Swedish Environmental Protection Agency and the National Board of Housing, Building and Planning. Some general information on access to justice can also be found on the website of the Swedish Courts.

2) During different environmental procedures how is this information provided? From whom should the applicant request information?

During the preparation of a matter at an authority or a case at a court, the main rule is that documents are open to the public. The registries where the respective instance is obliged to register all incoming documents in the particular case are also open. Certain information can be kept secret according to provisions in the Public Access to Information and Secrecy Act. For the parties in a case or a matter before an authority, the space to keep document secrets is very restricted.

In permit cases related to water operations and environmentally harmful operations, the Land and Environment Courts and the County Administrative Boards appoint a person or authority to keep a copy of all documents for the public to access instead of visiting the court or the County Administrative Board, also for
such applications that do not need an EIA. This is of particular importance if the proposed activity is located far from the court or the County Administrative Board.

As a general rule, judgments and decisions in cases before courts and authorities must be documented in writing. In addition, there are provisions for judgments to be kept available at the court’s office and at the custodian, when notified.

To a large extent, judgments are promulgated in the press and on the website of the court taking the decision in application cases. This applies equally to the County Administrative Boards’ decisions and other authorities.

The Ordinance (2003:234) on the Time for the Provision of Judgments and Decisions contains provisions on the time for delivery of documents, on how documents are to be provided and on information for individuals also. A judgment or decision in a case before a public court shall be sent to the parties on the day of the decision.

The Swedish public principle also means that anyone has the opportunity to read the decision text. Also, in the Administrative Procedure Act and the Code of Judicial Procedure there are provisions on the issuing of judgments and decisions. Provisions in the Environmental Code, the Judicial Code, the Administrative Procedure Act, the Law on Judicial Matters and the Administrative Procedure Act further regulate what a judgment or decision should contain. Every appealable decision and judgement must be accompanied by information on access to justice information.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?

The same rules on access to information on access to justice apply regardless of whether the case concerns an administrative environmental impact assessment or a civil case according to the Environmental Code, or a case on planning according to the Planning and Building Act.

Plans and programmes not falling under the SEA Directive are, under Swedish law, generally not binding on the public, only indicative or binding on authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. Thus, there are no rules on access to information on access to justice for these kinds of plans and programmes.

4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment?

It is mandatory for authorities giving an administrative decision and courts to provide access to justice information in the decision and/or judgment.

5) Is translation, interpretation provided to foreign participants? What are the rules applicable?

There is no structured dissemination on where to find the rules on access to justice available in Sweden, neither in Swedish nor in any other language. However, rudimentary information on where to find the websites of some of the main authorities for the protection of the environment, such as the Swedish Environmental Protection Agency, and the National Board of Housing, Building and Planning. Some general information on access to justice can also be found on the websites of the Swedish Courts. This information may be found in English.

For individuals involved in an ongoing case, the Administrative Procedure Act, Section 13, states that an authority shall use an interpreter and ensure that documents are translated if necessary in order for the individual to be able to exercise their right when the authority has contact with someone who does not have mastery of Swedish.

The court may, if necessary, according to the Code of Judicial Procedure, Chapter 33, Section 9, translate documents that are sent in or sent out by the court. The court is obliged to translate a document in a criminal case, or the most important parts of it, for the suspect or at the request of an appellant, if a translation is essential to enable the suspect or appellant to exercise their right. The translation may be made orally if this is not inappropriate for the purposes of the document or the case or any other circumstance. By reference to Section 48 of the Court Matters Act, that provision is also applicable in administrative cases at the Land and Environment Courts.

1.8 Special procedural rules


Activities subject to the EIA requirements of the EIA Directive are subject to regulation regarding environmental impact assessments, permits etc. according to the Environmental Code or other specific legislation. Among other things, the application for a permit must include an EIA and a technical description of the planned activity or operation.

Provisions regulating when an EIA is required and what information it must contain are set out in Chapter 6 of the Environmental Code and in an underlying ordinance. Neither the Planning and Building Act nor sectoral environmental legislation have specific rules on the procedure or the content of the EIA, but refer to the rules of the Code.

An EIA must be prepared before the application for a permit is made and should be submitted as a supplement to the application. When preparing the permit application and the EIA, the applicant is obliged to consult the County Administrative Board, the supervisory authority and the private individuals likely to be particularly affected by the activity. For activities which typically have a significant environmental impact, the applicant is also obliged to consult central government agencies and the municipality, the public and the organisations that are likely to be affected by the activity. Prior to the consultation, the applicant should provide information about the activity with regard to location, scope, design and possible environmental impacts. Furthermore, there are mandatory provisions concerning the minimum details that an EIA must contain. Upon receiving the EIA, the permitting authority is obliged to publicly announce the EIA and make it available to the general public, who should be given the opportunity to comment on it.

Not all activities that are within the scope of the EIA Directive fall within the scope of environmentally hazardous activities under the Environmental Code. Some activities that require environmental impact assessment under the Directive (building of industrial areas, shopping malls, parking spaces, subways or tramways, tourist attractions such as ski slopes and lifts, marinas for leisure boats, holiday villages, hotel complexes, camping sites and theme parks) are therefore dealt with under the Planning and Building Act. The environmental impact assessment required under the Directive for the above-mentioned activities is carried out under the Planning and Building Act within the framework of decisions on detailed urban development plans. It is proposed that from 1 July 2021 certain steps related to the EIA will also be conducted in a subsequent building permits procedure, however this is not related to the regulation of the EIA Directive.

In Sweden, the EIA is thus an intrinsic part of the permitting procedure, and this assessment is not made separately to the decision regarding the permit for an activity. The EIA shall be approved only if the direct and indirect impacts of the planned activity are deemed to be adequately described in accordance with the provisions of the Code, and if approved this will be noted in the decision concerning the permit.

1) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

Because of the system described above, the EIA, or any part of it, such as screening, scoping or final authorisation of the EIA itself, cannot be appealed separately. However, the EIA, including both the procedural requirements and the information it contains in a specific case, can be challenged when appealing the permit as such.

2) Rules on standing relating to scoping (conditions, timeframe, public concerned)

Because of the system described above, the EIA, or any part of it, such as screening, scoping or final authorisation of the EIA itself, cannot be appealed separately. However, the EIA, including both the procedural requirements and the information it contains in a specific case, can be challenged when appealing the permit as such.
3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?

Because of the system described above, the EIA, or any part of it, such as screening, scoping or final authorisation of the EIA itself, cannot be appealed separately. However, the EIA, including both the procedural requirements and the information it contains in a specific case, can be challenged when appealing the permit as such.

The final decision on authorisation and, if any, preliminary decisions, e.g. on permissibility or the start of construction works, may be appealed following the general rules, that is three weeks from delivering the decision or three weeks after receiving the decision if from the County Administrative Board.

4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO?

The EIA, including both the procedural requirements and the information it contains in a specific case, can be challenged when appealing the environmental permit as such according to the Environmental Code. Decision of the County Administrative Boards may be appealed to the Land and Environment Court and to the Land and Environment Court of Appeal (leave to appeal needed). Decisions of the Land and Environment Court may be appealed to the Land and Environment Court of Appeal (leave to appeal needed) and to the Supreme Court (leave to appeal needed).

The Government, in certain cases according to the Environmental Code, decides on permissibility for very large hazardous activities, such as facilities for nuclear operations. The Government also tries certain appeals according to the Code and sectorial legislation, such as the Minerals Act. Decisions by the Government, including EIA, cannot be appealed, but may be subject to a legal review by the Supreme Administrative Court.

Permit judgments and decisions, including the EIA, may be appealed by anyone who is the subject of a decision against them according to Chapter 16 Section 12 of the Environmental Code. Permits and decisions may also be appealed by environmental NGOs according to Chapter 16 Section 13 of the Code. No foreign NGO can appeal, since there is a requirement that the organisation has to have been operating in Sweden for at least three years.

The provision referred to may be regarded as discriminatory and would probably be set aside in court. In a decision of 21 December 2018 from the Supreme Administrative Court, case 4840-18, a Polish NGO was dismissed, but on the grounds that it had not showed that it had the support of the public. In principle, the organisation’s reference to the Polish public seems to have been accepted.

Decisions on urban detailed development plans, both those subject to an EIA and those not, are adopted by the municipality according to the Planning and Building Act and may be appealed to the Land and Environment Court and, with leave to appeal, to the Land and Environment Court of Appeal. The Land and Environment Court of Appeal may allow appeal of its ruling to the Supreme Court (leave to appeal needed).

As regards appeals of decisions on urban detailed development plans, persons with the right to appeal are those whom the decision concerns, provided that the decision affects them adversely and is subject to appeal (Chapter 13 Section 8 of the Planning and Building Act). NGOs which meet the requirements in Chapter 16 Section 13 of the Environmental Code also have legal standing according to the Planning and Building Act. A party challenging such a decision must also have made statements against the plan and/or EIA for the plan during the public consultation stage, otherwise the challenge would be precluded (Chapter 13 Section 11 of the Planning and Building Act).

5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?

There are no administrative procedural rules under Swedish law that set out the scope of the review of the Court. The relevant court will review both the substantive and procedural legality of the judgment or decision. The ultimate responsibility for the investigation of the case rests with the court according to the “ex officio principle”. The Court must, through communication with the parties, ensure that the case is examined properly and that any ambiguities are clarified. It is thus obliged and compelled to fully examine the facts/merits of the case. The Court may even perform investigations at the location in question if this is needed in order to examine the case. The Court’s obligation to examine the case on its own initiative applies not only to material issues, but also to procedural issues. The claims of the parties will set the frame for the process, however the court is not bound by the causes of action invoked and may base its judgment on circumstances other than those invoked.

When a decision on an urban detailed development plan which includes an EIA is appealed to the court and the court finds that the decision contains substantive or procedural infringements, the court repeals the decision on the adoption of the plan. It should be noted that the court does not have the right to change the detailed development plan. The scope for the court in these cases is more narrow, similar to a legal review and in principle restricted to the causes of action invoked by the party. This is regulated in Chapter 13 Section 17 of the Planning and Building Act.

6) At what stage are decisions, acts or omissions challengeable?

The EIA, including both the procedural requirements and the information it contains in a specific case, can be challenged when appealing the permit as such.

7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

No matter who makes the decisions concerning activities under the EIA Directive, the County Administrative Board or the Land and Environment Court when it comes to permits according to the Environmental Code, or the municipality when it comes to certain plans according to the Planning and Building Act, an appeal may be filed directly with the court of appeal according to the route of appeal described above.

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 127?

There are no requirements under the Swedish Environmental Code regarding participation at the public consultation stage in order to be able to appeal a decision. There are thus no preclusion requirements. Once a decision or judgement on a permit has been issued, it may be appealed by anyone who is adversely affected by the decision.

When it comes to a decision to adopt, amend or repeal a detailed plan which includes an EIA according to the Planning and Building Act, the appellant is obliged to participate in the administrative procedure with the permitting authority as a precondition for being entitled to take a case to national court. A person or NGO may only appeal a decision on an urban detailed development plan if they submitted their opinions on the matter in writing during the initial examination period at the municipality and those opinions have not been considered.

9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

Swedish law requires equal opportunities of the parties in environmental proceedings. Each party has the same legal rights to call witnesses and experts and to challenge argumentation and experts presented by the other party.

10) How is the notion of “timely” implemented by the national legislation?

There are no clear provisions protecting the interest of the public concerned to have their cases handled in a timely manner by an administrative organ, except for a very general statement in the Administrative Procedure Act that a case must be handled as simply, quickly and cost-effectively as possible without compromising the rule of law. However, if an authority assesses that the decision in a case initiated by an individual party will be materially delayed, the authority shall inform the party thereof. In such a notification, the authority shall report the reason for the delay. If a case initiated by an individual party has not been settled in the first instance within six months, the party may request in writing that the authority shall decide the case. The Authority shall, within four weeks from the date of such a request, either decide the matter or, in a special decision, reject the request. Such a decision to reject a request that the case be decided may be appealed to the court or administrative authority competent to review an appeal against the decision in the case.

In court, a party may apply for priority of a case according to the Priority Review Act.
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?

Normally a permit or an urban development plan cannot be utilised until the possibility of appeal has passed. Permit decisions may, however, be combined with a “go-ahead decision” enabling the applicant to start their activity. If a go-ahead decision has been granted, the public concerned can ask the court for an injunction of that decision.


1) Country-specific IPPC/IED rules related to access to justice

All activities subject to the requirements of the IPPC/Industrial Emissions Directive require a permit according to the Environmental Code. Before such a permit can be issued, an EIA must be performed. The rules under the Environmental Code on access to justice are general, and thus also apply to these cases.

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?

There are provisions in the Environmental Code that make it possible to appeal the final decisions and judgments on permits. Both individuals and environmental NGOs can appeal environmental decisions, but this right is limited in some cases. Preliminary decisions, e.g. regarding permitting or construction works, taken during the preparation of the case may also be challenged. According to Chapter 16 Section 12 of the Environmental Code, appeals may be made against appealable judgments or decisions by any person who is the subject of a judgment or decision against them.

NGOs which meet the requirements stipulated in Chapter 16 Section 13 of the Environmental Code may challenge many administrative decisions. The requirements are that the NGO is a non-profit association whose purpose according to its statutes is to safeguard nature conservation or environmental protection interests. The association furthermore must have conducted activities in Sweden for at least three years and have at least 100 members or by some other means show that its activities are supported by the public. In respect of shore protection, the provisions also apply to non-profit associations whose purpose according to their statutes is to promote outdoor interests (Chapter 16 Section 14 of the Code).

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

In Sweden, the EIA is an intrinsic part of the permitting procedure, and this assessment is not made separately to the decision regarding the permit for an activity. Because of the Swedish system, the EIA is carried out together with the IED/IEDPC process, which means that no part, such as screening, scoping or final authorisation of the EIA itself, can be appealed separately. However, the EIA, including both the procedural requirements and the information it contains in a specific case, can be challenged when appealing the permit as such.

4) Rules on standing relating to scoping (conditions, timeframe, public concerned)

In Sweden, the EIA is an intrinsic part of the permitting procedure, and this assessment is not made separately to the decision regarding the permit for an activity. Because of the Swedish system, the EIA is carried out together with the IED/IEDPC process, which means that no part, such as screening, scoping or final authorisation of the EIA itself, can be appealed separately. However, the EIA, including both the procedural requirements and the information it contains in a specific case, can be challenged when appealing the permit as such.

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?

The permit can be appealed. Preliminary decisions, e.g. regarding permitting or construction works, taken during the preparation of case may also be challenged. The routes of appeal in cases concerning licensing are as follows:

- County Administrative Board – Land and Environment Court – Land and Environment Court of Appeal (leave to appeal needed)
- Land and Environment Court – Land and Environment Court of Appeal (leave to appeal needed) – the Supreme Court (leave to appeal needed)

The Government, in certain cases according to the Environmental Code, decides on permissibility for very large hazardous activities such, as facilities for nuclear operations. Decisions by the Government cannot be appealed but may be subject to a legal review by the Supreme Administrative Court. As a general rule, an appeal of a decision must have been received by the decision-making authority within three weeks of the date on which the appellant received the decision through that authority. However, if the appellant is a party representing the public, the appeal must have been received within three weeks from the date of the decision being notified. The time limit regarding judgments from the Land and Environment Courts follows the general rule for district courts in civil cases, that is three weeks from the passing of the judgment. The decision-making authority or court then makes sure that the appeal was made within the right time limit and sends the appeal to the court or authority which will try the case.

6) Can the public challenge the final authorisation?

In order to challenge the final authorisation, you need to show that you are a party concerned according to Chapter 16 Section 12 of the Environmental Code or an NGO which meets the requirements in Chapter 16 Section 13 of the Code.

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?

There are no administrative procedural rules under Swedish law that set out the scope of the review of the Court. The relevant court will review both the substantive and procedural legality of the judgment or decision. The ultimate responsibility for the investigation of the case rests with the court according to the “ex officio principle”. The Court must, through communication with the parties, ensure that the case is examined properly and that any ambiguities are clarified. It is thus obliged and competent to fully examine the facts/merits of the case. The Court may even perform investigations at the location in question if this is needed in order to examine the case. The Court’s obligation to examine the case on its own initiative applies not only to material issues, but also to procedural issues. The claims of the parties will set the frame for the process, however the court is not bound by the causes of action invoked and may base its judgment on circumstances other than those invoked.

8) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Regardless of who makes the decisions, the County Administrative Board or a Land and Environment Court, an appeal may be filed directly with a court; the Land and Environment Court if the licensing authority is the County Administrative Board or the Land and Environment Court of Appeal if the permit is issued by the Land and Environment Court.

9) 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?

There are no requirements under the Swedish Environmental Code regarding participation at the public consultation stage in order to be able to appeal a decision. There are thus no preclusion requirements. Once a decision or judgement on a permit has been issued, it may be appealed by anyone who is adversely affected by the decision.

10) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

Swedish law requires equal opportunities of the parties in environmental proceedings. Each party has the same legal rights to call witnesses and experts and to challenge argumentation and experts presented by the other party.
11) How is the notion of "timeliness" implemented by the national legislation?
There are no clear provisions protecting the interest of the public concerned to have their cases handled in a timely manner by an administrative organ, except for a very general statement in the Administrative Procedure Act that a case must be handled as simply, quickly and cost-effectively as possible without compromising the rule of law. However, if an authority assesses that the decision in a case initiated by an individual party will be materially delayed, the authority shall inform the party thereof. In such a notification, the authority shall report the reason for the delay. If a case initiated by an individual party has not been settled in the first instance within six months, the party may request in writing that the authority shall decide the case. The Authority shall, within four weeks from the date of such a request, either decide the matter or, in a special decision, reject the request. Such a decision to reject a request that the case be decided may be appealed to the court or administrative authority competent to review an appeal against the decision in the case. In court, a party may apply for priority of a case according to the Priority Review Act.

12) 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?

13) Is information on access to justice provided to the public in a structured and accessible manner?

1.8.3. Environmental liability

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?

2) In what deadline does one need to introduce appeals?

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?

4) Are there specific requirements regarding ‘plausibility’ for showing that environmental damage occurred, and if yes, which ones?

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)?

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?

7) Which are the competent authorities designated by the MS?

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?
A decision by a municipality must undergo administrative appeal at the County Administrative Board prior to a possibility to have it tried in court.
A decision by a County Administrative Board can be appealed to the Land and Environment Court and the Land and Environment Court of Appeal (leave to appeal needed) even if it states that the authority will take no action. The same rules on standing apply as for permits according to the Environmental Code (Chapter 16 Sections 12 and 13).

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?

Chapter 6 of the Environmental Code and the Ordinance on Environmental Assessments include regulation on involving other countries in the EIA process. If a harmful activity or measure is likely to have a significant environmental impact in another country, or if a country that may be significantly affected by the activity or measure so requests, the Swedish Environmental Protection Agency shall:

- inform the competent authority of the other country about the activity or measure, its possible cross-border consequences and the type of decision that may be made; and
- give the competent authority of the other country reasonable time to comment on whether it wants to participate in the environmental assessment.

If the other country wishes to participate in the environmental assessment, the Agency shall give the other country the opportunity to participate in a consultation process on the environmental impact assessment and the final permit application.

2) Notion of public concerned?

When consultations are to take place with another country according to Chapter 6 Section 13 or 33 of the Environmental Code, the Swedish Environmental Protection Agency shall agree with the responsible authority in that country on how the consultation is to be carried out so that the authorities and the public concerned in the other country are given the opportunity to submit comments within a reasonable time, which should be at least 30 days. For the purpose of completing consultations with other countries, the Swedish Environmental Protection Agency may announce information in Sweden, in another country in the European Union and in another country that is a party under the Espoo Convention on Environmental Impact Assessments in a Transboundary Context. Before an announcement is made in another country, the Agency must consult that country's responsible authority.

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)?

When it comes to participating during consultation with other countries, foreign NGOs are part of the public concern.

The general rule on standing for NGOs can be found in Chapter 16 Section 13 of the Environmental Code. This rule, however, excludes foreign NGOs, since it clearly states that an NGO needs to have been operating in Sweden for at least three years. Due to the 1974 Nordic Environmental Protection Convention, special legislation exists, however, on non-discrimination of Nordic environmental NGOs.

As the current Swedish legislation does not provide standing for foreign NGOs, there are no specific procedural rules on when to appeal, procedural assistance etc.

In the EU context, the current Swedish provision is to be regarded as discriminatory. In a decision of 21 December 2018 from the Supreme Administrative Court, case 4840-18, a challenge from a Polish NGO was dismissed, but on the grounds that the organisation had not shown that it had support by the public. The judgment with reasoning regarding the support by the public in Poland indicates that a court would set aside the current provision and not dismiss a foreign NGO on the ground that it has not been operating in Sweden.

The problem has been discussed in Governmental bill regarding EIAs, and the provision has been found discriminatory and thus should be altered, but so far nothing has happened.

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)?

If an individual living in another country can show that they are a person whom the judgment or decision concerns and that the decision affects them adversely according to Chapter 16 Section 12 of the Environmental Code or Section 42 of the Administrative Procedure Act, they have the same rights as an individual living in Sweden, including the right to injunctive relief where such is possible.

As for legal aid and pro bono help, there is no such help available for any party in environmental matters. The general rules will apply and are motivated by the ex officio principle for the decision-maker to examine the case.

5) At what stage is the information provided to the public concerned (including the above parties)?

If a harmful activity or measure can be assumed to have a significant environmental impact in another country, or if a country that may be significantly affected by the activity or action so requests, the Swedish Environmental Protection Agency shall inform the other country of the activity or measure. If the other country wishes to participate in the environmental assessment, the Agency shall give the other country the opportunity to participate in a consultation process on the environmental impact assessment and the final permit application.

When consultations are to take place with another country, the Swedish Environmental Protection Agency shall agree with the responsible authority in that country on how the consultation is to be carried out so that the authorities and the public concerned in the other country are given the opportunity to submit comments.

6) What are the timeframes for public involvement including access to justice?

When consultations are to take place with another country according to Chapter 6 Section 13 or 33 of the Environmental Code, the Swedish Environmental Protection Agency shall agree with the responsible authority in that country on how the consultation is to be carried out so that the authorities and the public concerned in the other country are given the opportunity to submit comments within a reasonable time.

A decision may be appealed within three weeks from when the decision or judgement is made.

7) How is information on access to justice provided to the parties?

Section 33 of the Administrative Procedure Act stipulates that an authority that announces a decision in a case shall, as soon as possible, notify the party of the complete content of the decision, unless this is clearly unnecessary. If the party is entitled to appeal the decision, they must also be informed of the procedure. The authority shall at the same time inform the party of dissenting opinions that have been recorded in accordance with section 30 or in accordance with special provisions in another constitution. A notice of how to appeal must contain information about what requirements are placed on the form and content of the appeal and what applies in terms of filing and appeal time.

A similar rule can be found in Section 30 of the Court Matters Act. In cases where a decision can be appealed, the parties shall be informed of this. If the decision means that the case has been decided, the parties shall be informed of what they must observe in an appeal. If the case has not been decided, the parties shall be informed that they may, on request, obtain such information from the court. If leave to appeal is required on appeal, the parties shall also be informed of this and of the grounds on which such leave may be granted.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?

According to the Administrative Procedure Act, Section 3, an authority shall use an interpreter and ensure that documents are translated if necessary in order for the individual to be able to exercise their right when the authority has contact with someone who does not have mastery of Swedish.
The court may, if necessary, according to Code of Judicial Procedure, Chapter 33, Section 9, translate documents that are sent in or sent out by the court. The court is obliged to translate a document in a criminal case, or the most important parts of it, for the suspect or at the request of an appellant, if a translation is essential to enable the suspect or appellant to exercise their right. The translation may be made orally if it is not inappropriate for the purposes of the document or the case or any other circumstance. By reference to Section 48 of the Court Matters Act, that provision is also applicable in administrative cases at the land and environment courts.

[1] There are some exceptions to this main rule: Decisions on environmental sanction fees and on legally binding land use plans are challenged directly to the Land and Environment Court and not via the County Administrative Board.

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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?

On a high level, the Swedish review procedures cover most of the provisions of the Aarhus Convention. There are, however, some limitations in the access to justice due to leave to appeal obligations and standing restrictions for environmental organisations, which gives rise to conformity concerns. There is also a lack of information regarding the possibility of the public concerned to appeal permit decisions under the Environmental Code.

The Environmental Code constitutes a framework legislation that consists of the general provisions regarding environmental protection. It applies to all human activities that might harm the environment. The Code contains the environmental principles and provisions providing for environmental quality norms as well as environmental impact assessments. Certain water operations, industrial undertakings, quarries and other environmentally hazardous activities are subject to permit or notification requirements in Government ordinances. The Code also contains provisions relating to nature protection, flora and fauna, genetically modified organisms, chemicals and waste. Thus, the Code regulates issues concerning the EIA, the IPPC/IED Directives and the ELD Directive, as well as other environmental decisions, acts and omissions concerning specific activities falling within the scope of EU environmental legislation. The general rules on legal standing in Chapter 12 Sections 13 and 14 of the Environmental Code are also applicable in those cases that fall outside the scope of EIA, IPPC/IED and ELD.

According to Chapter 16 Section 12 of the Environmental Code, appeals may be made against appealable judgments or decisions by any person who is the subject of a judgment or decision against them.

NGOs which meet the requirements stipulated in Chapter 16 Section 13 of the Environmental Code may challenge many administrative decisions. The requirements are that the NGO is a non-profit association whose purpose according to its statutes is to safeguard nature conservation or environmental protection interests. The association furthermore must have conducted activities in Sweden for at least three years and have at least 100 members or by some other means show that its activities are supported by the public. In respect of shore protection, the provisions also apply to non-profit associations whose purpose according to their statutes is to promote outdoor interests (Chapter 16 Section 14 of the Code).

When a permit has been granted through a judgement by the Land and Environment Court, this judgment may be appealed, with leave to appeal, to the Land and Environment Court of Appeal. In second instance, the judgment may, with leave to appeal, be appealed to the Supreme Court. This limits the right to access to a review procedure for decisions issued by the Land and Environment Court in the first instance. Consequently, in situations where the initial permit decision is taken by the Land and Environment Court and is appealed to the Land and Environment Court of Appeal, the Swedish review system does not appear to comply with the Convention.

Rules on natural habitat protection originating in the Habitat Directive and in the Bird Directive have been implemented both in Chapter 7 of the Environmental Code and in the Ordinance on Area Protection. Permits are required to conduct activities or take measures that can significantly affect the environment in a Natura 2000 site. Such permits are issued by the County Administrative Boards for smaller activities and measures, but if the activity or measure also requires permits according to EIA- and/or IPPC/IED-related rules, an overall assessment is made and the licensing authority may then be the County Administrative Board or the Land and Environment Court, depending on the type of activity in question.

Rules on species protection originating in the Habitat Directive and in the Bird Directive have been implemented both in Chapter 8 of the Environmental Code and in the Species Protection Ordinance, the Game Act and the Fishing Act. The Species Protection Ordinance includes regulation on protection of wild birds, wild animal species and plant species protected in the stated directives. In individual cases, the County Administrative Boards may, under certain circumstances, grant exemption from the prohibitions. Decisions on exemptions or omissions concerning species protection can be appealed under the same regulations as those applicable in other cases under the Environmental Code. The authorities' decisions are appealed to the Land and Environment Court and, after leave to appeal, to the Land and Environment Court of Appeal.

Decisions on hunting are, if the requirements based on the Habitat Directive and on the Bird Directive are met, taken by the County Administrative Boards according to the Game Act and the Game Ordinance. The decision can be appealed to the Administrative Court and, with leave to appeal, to the Administrative Court of Appeal and the Supreme Administrative Court. Rules on standing can be found in Section 42 of the Administrative Procedure Act. A person whom the decision concerns may appeal against it, provided that the decision affects them adversely and is subject to appeal. According to established case law, environmental NGOs also have the right to appeal decisions under the Game Ordinance on hunting of species protected by the Habitats Directive and the Bird Directive.

In order to start a mine in Sweden, three different permits are needed. An exploration permit gives access to the land and an exclusive right to explore within the permit area, while an exploitation concession gives the holder the right to exploit a proven, extractable mineral deposit for a period of 25 years according to the Minerals Act. A permit according to the Environmental Code is also needed. Exploration for minerals may affect water quality and nature. However, the rules on standing when it comes to exploration permits are limited through case law. The general rule for individuals can be found in Section 42 of the Administrative Procedure Act. In case law, the Administrative Court of Appeal has ruled that only those who own the land where the exploration will take
place and others with special rights, such as land tenants and holders of hunting and fishing rights, in the same area have standing. NGOs have no standing and cannot appeal an exploration permit, not even if the exploration affects nature or water. When it comes to permits according to the Environmental Code, the ordinary rules in Chapter 16 Sections 12, 13 and 14 apply.

Chapter 16 Section 13 stipulates that an NGO must have been conducting activities in Sweden for three years in order to have legal standing. This requirement of a three-year period of conducting activities in Sweden appears to be contrary to the Aarhus Convention and general EU law principles of non-discrimination. This restriction means that no environmental organisations from other EU Member States may have standing before the Swedish courts. There may be industrial emission activities that affect the environment in other Member States, but environmental organisations from these other Member States would not be able to bring a case regarding these activities in Sweden. (There is an Environmental Protection Convention between Denmark, Finland, Norway and Sweden, which at least ensures that environmental organisations from these countries will have standing before Swedish courts). In the EU context, the current Swedish provision is to be regarded as discriminatory. In a decision of 21 December 2018 from the Supreme Administrative Court, case 4840-18, a challenge from a Polish NGO was dismissed, but on the grounds that the organisation had not showed that it had support by the public. The judgment with reasoning regarding the support by the public in Poland indicates that a court would set aside the current provision and not dismiss a foreign NGO on the grounds that it has not been operating in Sweden. The problem has been discussed in a Governmental bill regarding EIAs, and the provision has been found discriminatory and thus should be altered, but so far nothing has happened.

The Planning and Building Act refers to the general rules in Section 42 of the Administrative Procedure Act and, by reference to the rules in Chapter 16 Sections 13 and 14, NGOs have been given the right to standing, but in principle only in cases regarding detailed municipal land use plans. The narrow scope, though, has been expanded through recent case law from the Land and Environment Court of Appeal and the Supreme Court. According to Chapter 13 Section 11 of the Planning and Building Act, the appellant is obliged to participate in the administrative procedure with the permitting authority as a precondition for being entitled to take a case to national court. Hence, the right to appeal for persons concerned and NGOs is, when it comes to urban detailed development plans, limited to those who have submitted their opinions on the matter during the initial examination period at the municipality and those opinions have not been considered. This rule appears to be contrary to the Aarhus Convention.

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 are no administrative procedural rules under Swedish law that set out the scope of the review of the Court. The relevant court will review both the substantive and procedural legality of the judgment or decision. The ultimate responsibility for the investigation of the case rests with the court according to the “ex officio principle”. The Court must, through communication with the parties, ensure that the case is examined properly and that any ambiguities are clarified. It is thus obliged and competent to fully examine the facts/merits of the case. The Court may even perform investigations at the location in question if this is needed in order to examine the case. The Court’s obligation to examine the case on its own initiative applies not only to material issues, but also to procedural issues. The claims of the parties will set the frame for the process, however the court is not bound by the causes of action invoked and may base its judgment on circumstances other than those invoked.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Regardless of who makes the decisions, the County Administrative Board or a Land and Environment Court, an appeal may be filed directly with a court; the Land and Environment Court if the licensing authority is the County Administrative Board, or the Land and Environment Court of Appeal if the permit is issued by the Land and Environment Court.

If the first decision is taken by a local authority, with few exceptions an appeal must first be made through administrative appeal at the County Administrative Board prior to challenging the decision at court.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?

There are no requirements under the Swedish Environmental Code regarding participation at the public consultation stage in order to be able to appeal a decision. There are thus no preclusion requirements. Once a decision or judgment on a permit has been issued, it may be appealed by anyone who is adversely affected by the decision.

An exception to this general rule is decisions of a municipality regarding detailed development plans under the Planning and Building Act. To challenge such decisions, the appellant must have raised the objections during the preparatory procedure in the consultation phase.

5) Are there some grounds/arguments precluded from the judicial review phase?

No grounds or arguments are precluded from the judicial review phase.

The absence of litigation costs in administrative cases means that each party has to cover its own costs. This may result in an unequal situation, but this is intended to be regulated by the ex officio principle and the burden on the court to investigate the case, not just to clarify foggy parts.

6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

Swedish law requires equal opportunities of the parties in environmental proceedings. Each party has the same legal rights to call witnesses and experts and to challenge argumentation and experts presented by the other party.

The absence of litigation costs in administrative cases means that each party has to cover its own costs. This may result in an unequal situation, but this is intended to be regulated by the ex officio principle and the burden on the court to investigate the case, not just to clarify foggy parts.

7) How is the notion of “timely” implemented by the national legislation?

In the Swedish judicial system, there are no binding time limits within which a court must handle a case. Sweden has incorporated the European Convention on Human Rights (ECHR) into Swedish law through the Act on the European Convention for the Protection of Human Rights and Fundamental Freedoms. Article 6(1) of the ECHR states that everyone shall have the right to ‘a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law’.

There is a possibility for a party to ask for priority of a case according to the Priority Review Act.

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?

Normally a permit or an exemption cannot be utilised until the possibility of appeal has passed. Hence there is no need for injunctive relief in these cases. There is, though, a possibility to decide that such decisions, as well as decisions from the supervisory authority, shall be directly executable. If appealed, the higher instance (irrespective of whether this is a County Administrative Board or a court) can decide on injunctive relief following the general rules.

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?

There are no costs for bringing a case to court according to these rules. Each party only has to bear its own costs, but the Swedish environmental legislation does not require legal representation, neither for the administrative procedure nor for the judicial review process, and not even for appeals to the Environmental Court of Appeal or the Supreme Court. The only exception to
the general rule of a free environmental procedure is found in the permitting procedure for water operations. The applicant here has to pay the litigation costs of all those who will be affected by the activity.

In civil cases concerning damages, the general rules on legal procedure apply, which means that the losing party has to pay all the winning party’s legal costs; the loser party pays principle in full. In civil cases, the litigant has to pay a court fee, around 300 Euros.

Because of this there is no need for rules to safeguard the cost being prohibitive.

1.2. Decisions, acts or omissions concerning the administrative procedure 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?

Chapter 6 Sections 3 to 19 of the Environmental Code sets out the rules for strategic environmental assessments for plans and programmes falling under the SEA Directive. The rules are applicable to all plans and programmes drawn up for a number of sectors, setting out the framework for future authorisations for the projects listed in Annexes I and II to Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, and all plans and programmes which have been deemed to require an assessment in accordance with the Habitat Directive.

In Sweden, the SEA is an intrinsic part of the planning procedure, and this assessment is not made separately to the decision regarding the plan or programme. The SEA shall be approved only if the direct and indirect impacts of the plan or programme are deemed to be adequately described in accordance with the provisions of the Code, and, if approved, this will be noted in the decision concerning the plan or programme.

Because of this system, the SEA, or any part of it, such as screening, scoping or final authorisation of the EIA itself, cannot be appealed separately. However, the EIA, including both the procedural requirements and the information it contains in a specific case, can be challenged when appealing the plan as such.

Spatial planning

Sweden has no cross-sector planning for land on the national level; however, there is national-level maritime planning. By 2021 there will be three maritime spatial plans for separate geographical zones. National transportation infrastructure planning also affects the conditions of municipal and regional physical planning.

Like the national planning, the regional planning is relatively limited. The Planning and Building Act stipulates that the municipalities are responsible for the planning of the use of land and water within their geographical boundaries.

The municipality must have a current comprehensive plan that covers the entire area of the municipality. In this plan, the municipality shall present the basic characteristics of its intended use of land and water areas. The plan also has to indicate how the municipality intends to take into account national and regional goals, plans and programmes of significance for sustainable development within the municipality. The stipulations in a comprehensive plan are not legally binding. But if statements are clear and well developed, the practice of the courts show that these plans can have a strong guiding effect.

If the land is unexploited, then an urban detailed development plan process generally needs to be initiated. A detailed development plan enables the municipality to regulate the use of land and water areas in a particular area and is regularly required for all operations listed in Annexes I and II of the EIA Directive and for all public and environmental private projects which have been deemed to require an assessment in accordance with the Habitat Directive.

The detailed development plan regulates what are public spaces, development districts and water areas, and how they are to be used and designed. The stipulations in a detailed development plan are binding for adjudication of subsequent building permit applications.

According to the Planning and Building Act, Chapter 13, Section 1, a municipal decision on comprehensive plans may be appealed by any member of a municipality to the Administrative Court and, with leave to appeal, to the Administrative Court of Appeal and the Supreme Administrative Court within three weeks of the decision. In these cases, the administrative courts only try the legality of the municipality’s or region’s decision. There is no requirement to participate in the public participation stage of the administrative procedure. There is no cost involved in bringing a challenge of a comprehensive plan to court. Each party is only responsible for its own costs, even if it loses the case. The comprehensive plan does not enter into force until the possibility of appeal has passed. Hence there is no need for injunctive relief in these cases.

Municipal decisions on detailed development plans according to the Planning and Building Act, Chapter 13, Section 2, are appealed directly to one of the Land and Environment Courts and may be appealed further to the Land and Environment Court of Appeal (leave to appeal needed). In its judgment, the Land and Environment Court of Appeal may decide to grant permission to appeal the judgment to the Supreme Court, if the decision is of interest as a precedent. The Supreme Court still decides whether or not to grant leave to appeal.

The Planning and Building Act regulates the right for environmental NGOs referred to in Chapter 16, Section 13, of the Environmental Code to appeal a decision to adopt, amend or set aside a detailed development plan likely to have a significant environmental impact given that the planned area may be used for certain types of activity, and a decision to adopt, amend or set aside a detailed development plan that stipulates that an area will no longer be covered by shore protection. The right to standing for environmental organisations applies provided that decisions on the matter can be expected to have an adverse environmental effect.

For individuals, the general rule on standing in the Administrative Procedure Act is applicable. According to case law, an individual may usually appeal building permits and development plans which may affect them personally (they are neighbours or living within or directly adjacent to the area to which a municipal plan applies).

According to Chapter 13 Section 11 of the Planning and Building Act, the appellant is obliged to participate in the administrative procedure with the permitting authority as a precondition for being entitled to take a case to national court. Hence the right to appeal for the persons concerned is, when it comes to urban detailed development plans, limited to those who have submitted their opinions on the matter during the initial examination period at the municipality and those opinions have not been considered. This rule appears to be contrary to the Aarhus Convention.

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?

Planning cases may only be challenged at court.

There are no administrative procedural rules under Swedish law that set out the scope of the review of the Court. The relevant court will review both the substantive and procedural legality of the judgment or decision. The ultimate responsibility for the investigation of the case rests with the court according to the “ex officio principle”. The Court must, through communication with the parties, ensure that the case is examined properly and that any ambiguities are clarified. It is thus obliged and competent to fully examine the facts/merits of the case. The Court may even, on its own initiative, perform investigations at the location in question if it is needed in order to examine the case. The Court’s obligation to examine the case on its own initiative applies not only to material issues, but also to procedural issues.
The scope of the review in planning cases, however, is more restricted than in other administrative cases, and in principle just focuses on the issues raised by the appellant, Chapter 13 Section 17 of the Planning and Building Act.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
The decisions on planning taken by the municipality according to the Planning and Building Act may be appealed directly to the Land and Environment Court and, with leave to appeal, to the Land and Environment Court of Appeal and, finally, to the Supreme Court (leave to appeal needed) if the Land and Environment Court of Appeal provides for this in its judgment (when a precedence is desired).

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.?
When it comes to a decision to adopt, amend or repeal a detailed development plan according to the Building and Planning Act, the appellant is obliged to participate in the administrative procedure with the permitting authority during the public consultation phase as a precondition for being entitled to take a case to national court. A person may only appeal a decision on a detailed development plan if they have submitted their opinions on the matter in writing during the initial examination period at the municipality and those opinion have not been considered.

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 urban detailed development plan does not enter into force until the possibility of appeal has passed, so there is no need for injunctive relief in these cases.

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?
There is no cost involved in bringing a challenge of a comprehensive or a detailed development plan to court. Each party is only responsible for its own costs, even if they lose the case.

Because of this, there is no need for rules to safeguard against the cost 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

Plans and programmes not falling under the SEA Directive are, under Swedish law, generally not binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

An exception is municipal comprehensive and regional planning according to the Planning and Building Act, which may be challenged through legal review. Any member of a municipality or region has the right to have the legality of the municipality's or region's decision on the plans reviewed by appealing the decision directly to the Administrative Court. The scope of the examination of the court is narrow and the "ex-officio principle" does not apply. In examining the appeal, the court may not take into account circumstances other than those to which the appellant referred before expiry of the appeal period. An appealed decision shall be set aside if it has not come about legally; the decision concerns something that is not a matter for the municipality or the region; the body which took the decision did not have the right to do so; or the decision is otherwise contrary to law or other constitution. There are no requirements for participation in the public participation phase of the administrative procedure before filing a complaint to the court. There are no costs for bringing a case to court, not even if the case is lost.

The administrative procedures to be followed to comply with the public participation requirement of Article 7 of the Aarhus Convention are mainly found in Chapter 6 of the Environmental Code.

In Sweden, the consulting procedures are an intrinsic part of the planning procedure, and this assessment is not made separately to the decision regarding the plan or programme. The plan or programme shall be approved only if the consultation has taken place and if the direct and indirect impacts of the plan or programme are deemed to be adequately described in accordance with the provisions of the Code, and, if approved, this will be noted in the decision concerning the plan or programme.

Because of this system, the procedure itself cannot be appealed separately. However, the procedural requirements and the information contained in a specific case can be challenged when appealing the plan or programme as such.

Chapter 6 of the Code includes regulation on screening, scoping and final authorisation of the plans and programmes relating to the environment, not only those falling under the SEA Directive. The rules are applicable for all plans and programmes if the implementation of the plan, programme or change can be assumed to have a significant environmental impact. This includes action plans necessary to comply with an environmental quality standard, national and municipal waste plans, municipal comprehensive plans (covering the whole municipality), regional planning, municipal plans for supply, distribution and use of energy, regional plans for transport infrastructure, marine spatial planning, national plans for sustainable hydropower and any other plans or programmes relating to agriculture or forestry, fisheries, energy, industry, transport, regional development, waste management, water management, telecommunications, tourism, spatial planning or land use.

The rules stipulate that the authority responsible for the plan or programme shall consult municipalities, County Administrative Boards and other authorities that, due to their special environmental responsibility, can be assumed to be affected by the plan or programme (Chapter 6, Sections 6 and 9). There are no rules stipulating the participation of the public concerned (neither individuals nor NGOs) when it comes to plans and programmes, only when it comes to environmentally hazardous activities. But nothing prevents an authority from consulting the public as well.

Chapter 6, Section 15, stipulates that the authority or municipality, as early as possible in the work on the proposal for a plan or programme, has to conduct an environmental impact assessment and make it and the proposal available to the public and the municipalities and authorities that, due to their special environmental responsibility, can be assumed to be affected. They must be given information on how they can take part in the proposal and the environmental impact assessment, as well as how and within what time comments can be submitted. The time for submitting comments must be reasonable.

In a decision to adopt a plan or programme, there shall be an account of how the environmental aspects have been integrated into the plan or programme; how the environmental impact assessment and comments received have been taken into account; the reasons why the plan or programme has been adopted instead of the options considered; and the measures planned to monitor and follow up the significant environmental impact of the implementation of the plan or programme (Chapter 6, Section 16). The plan or programme shall be made available to the public and the authorities and municipalities that, due to their special environmental responsibility, can be assumed to be affected.

There are also general rules in the Administrative Procedure Act that an authority must provide the individual with assistance such that they can protect their interests. The assistance shall be provided to the extent that is appropriate with regard to the nature of the issue, the individual's need for assistance and the authority's activities. It should be given without undue delay (Section 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?

Plans and programmes not falling under the SEA Directive are, under Swedish law, generally not binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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?

Plans and programmes not falling under the SEA Directive are, under Swedish law, generally not binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Plans and programmes not falling under the SEA Directive are, under Swedish law, generally not binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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.?

Plans and programmes not falling under the SEA Directive are, under Swedish law, generally not binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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?

Plans and programmes not falling under the SEA Directive are, under Swedish law, generally not binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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?

Plans and programmes not falling under the SEA Directive are, under Swedish law, generally not binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation

Chapter 6 of the Environmental Code includes regulation on screening, scoping and final authorisation of plans and programmes relating to the environment, not only those falling under the SEA Directive. The rules are applicable for all plans and programmes if the implementation of the plan, programme or change can be assumed to have a significant environmental impact. This includes action plans necessary to comply with an environmental quality standard, national and municipal waste plans, municipal comprehensive plans (covering the whole municipality), regional planning, municipal plans for supply, distribution and use of energy, regional plans for transport infrastructure, marine spatial planning, national plans for sustainable hydropower and any other plans or programmes relating to agriculture or forestry, fisheries, energy, industry, transport, regional development, waste management, water management, telecommunications, tourism, spatial planning or land use.

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?

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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)?

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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?

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

4) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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.?

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

6) Are there some grounds/arguments precluded from the judicial review phase?

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

7) Fair, equitable — what meaning is given to equality of arms in the national jurisdiction?

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

8) How is the notion of “timely” implemented by the national legislation?

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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?
None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

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?

None of the plans and programmes mentioned above are, according to Swedish law, binding for the public, only indicative or binding for authorities. They are not therefore considered to be such decisions as are appealable by individuals or NGOs. There is no legal remedy against these legal instruments.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts

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?

EU legislation is implemented in Sweden through acts adopted by the Parliament (Riksdag) or by ordinances adopted by the Government. By statutory authorisation, many of the central administrative authorities are also responsible for issuing regulations within their field of operation.

The Government and other regulatory bodies regularly apply consultation procedure in connection with the preparation of rules that have general interest. The Government will then appoint a commission of inquiry. After a commission of inquiry has submitted its report, the Government forwards it to relevant public agencies, organisations and municipalities in order to hear their opinions on the proposals. This is known as referral of a report for consideration.

Anyone, including private individuals, is entitled to submit comments to the Government. The Government can also adopt rules without having to present a proposal to the Riksdag first. Such rules are known as ordinances. The Instrument of Government sets out what must be decided by law and what can be decided in an ordinance.

There is no Constitutional Court in Sweden, nor any abstract norm control. Instead, when a court is dealing with a case, it is obliged to control the legal basis for the decision and must disregard any act or statute which is in conflict with the Constitution or superior norms. During an ongoing individual case there exists a right of judicial review, meaning that courts and other public bodies have the right to override laws that are contrary to the Constitution and thereby also contrary to EU law. The Swedish right of judicial review for courts is regulated in Chapter 11 Section 14 of the Instrument of Government for Government and in Chapter 12 Section 10 of the Instrument of Government for authorities.

Since there is a need for an individual case in order to also bring up questions on implementation of EU environmental legislation and other regulatory acts, the rules on standing are the same as in any other individual environmental case in Sweden. The main rules for individuals may be found in Chapter 16 Section 12 of the Environmental Code and in Section 42 of the Administrative Procedure Act, and the main rules for NGOs may be found in Chapter 16 Section 13 of the Environmental Code. When a case is open, the individual and NGO with standing may also argue that EU legislation has not been implemented correctly into Swedish law. It is also possible in an ongoing case for individuals and NGOs to bring a legal challenge before the court to ask for the possibility to get a preliminary ruling concerning the interpretation of EU legislation according to Article 267 TFEU.

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 are no administrative procedural rules under Swedish law that set out the scope of the review of the Court. The relevant court will review both the substantive and procedural legality of the judgment or decision. The ultimate responsibility for the investigation of the case rests with the court according to the “ex officio principle”. The Court must, through communication with the parties, ensure that the case is examined properly and that any ambiguities are clarified. It is thus obliged and competent to fully examine the facts/merits of the case. The Court’s obligation to examine the case on its own initiative applies not only to material or procedural issues, but also issues such as whether EU legislation is implemented in a correct way. The Court is bound by the claims of the parties, though not the causes of action invoked, and can base its judgment on circumstances other than those invoked by the parties.

3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

Decisions made by the County Administrative Boards according to the Environmental Code and municipal decisions on planning according to the Planning and Building Act can be directly appealed to the Land and Environment Court. In principle, all other decisions from the municipality are appealed via the County Administrative Board prior to challenge in Court.

4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure — to make comments, participate at hearing, etc.?

There are no requirements under the Swedish Environmental Code regarding participation in the public consultation stage in order to be able to appeal a decision. There are thus no preclusion requirements. Once a decision or judgement has been issued, it may be appealed by anyone who is adversely affected by the decision.

When it comes to a decision to adopt, amend or repeal a detailed plan or area regulations according to the Building and Planning Act, the appellant is obliged to participate in the administrative procedure with the permitting authority as a precondition for being entitled to take a case to national court. A person may only appeal a decision on a detailed development plan if they have submitted their opinions on the matter in writing during the initial examination period at the municipality and those opinions have not been considered.

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?

Normally a permit or plan cannot be utilised until the possibility of appeal has passed. Permit decisions may, however, be combined with a “go-ahead decision” enabling the applicants to start their activity. If a go-ahead decision has been granted, the public concerned can ask the court for an injunction of that decision.

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?

There are no costs for bringing a case to court according to these rules, not even if the case is lost. Because of this, there is no need for rules to safeguard against the cost 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?[8]

All parties in an ongoing case may petition that the court trying the case request a preliminary ruling from the EU Court. This may be done regardless of which court is reviewing the case. It is up to the court to decide whether a preliminary ruling is necessary.
In summary, it can be stated that there are currently very few legally based opportunities to prevent defiance. The legal situation in Sweden is that the duty under the Environmental Code, for the County Administrative Board to order a municipality to fulfil its obligations regarding supervision (Chapter 26 Section 1 of the Environmental Code) is that the Board can only order an inspection or a report. There are not many different sanctions available apart from those mentioned above. There is, however, a possibility, in certain areas, such as supervision of municipalities, to take the accused to District Court.

Penalties when public administration fail to provide effective access to justice

Apart from the role of the Ombudsmen, Chapter 20 Section 1 of the Criminal Code (1962:700) states that anyone who intentionally, or through negligence in the exercise of authority, by act or omission, violates what is applicable for the task shall be sentenced to misconduct, a fine or imprisonment for a maximum of two years. If the act, with regard to the perpetrator's powers or the task's connection with the exercise of authority in general, or to other circumstances, is to be regarded as minor, the person shall not be held liable. For instance, municipal officials and politicians in municipal committees and boards are covered by the rules on misconduct in the exercise of their authority. On the other hand, members of state or municipal assemblies, i.e. members of the Riksdag and members of municipal and county council assemblies, are exempt from responsibility for measures they take in this capacity. A public prosecutor can decide to take the accused to District Court.

The Public Employment Act, applicable for all employees of the Parliament and its authorities and for authorities reporting to the Government, stipulates that an employee who intentionally, or through negligence, violates their obligations in their employment, may be given a disciplinary sanction for misconduct. If the error is small, in view of all the circumstances, no penalty may be pronounced. Such disciplinary sanctions are a warning and a salary deduction.

Penalties when the judgment of the court is not followed and respected

When it comes to contempt of court by administrations such as municipalities, there are various instruments for controlling municipal activities. However, there are not many different sanctions available apart from those mentioned above. There is, however, a possibility, in certain areas, such as supervision duties under the Environmental Code, for the County Administrative Board to order a municipality to fulfil its obligations regarding supervision (Chapter 26 Section 8).

In summary, it can be stated that there are currently very few legally based opportunities to prevent defiance. The legal situation in Sweden is that the municipalities and their representatives in certain areas can choose to disregard applicable laws and regulations and even court judgments. There are no legal possibilities to demand responsibility or sanction decision-makers other than those mentioned.
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## Access to justice in environmental matters - United Kingdom

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#### Introduction

The UK consists of England, Scotland, Wales and Northern Ireland. It also has international responsibility for Gibraltar, Guernsey, Jersey, and the Isle of Man. The relevant law for England and Wales, Northern Ireland and Scotland is set out in the main text. Please see separate Annexes for information on Gibraltar, Guernsey, Jersey and the Isle of Man.

#### Constitutional foundations

The UK does not have a single codified written constitution. Environmental actions in respect of the decisions of a public authority may be brought under Article 8 of, or Article 1 of Protocol 1 to, the European Convention on Human Rights where there is interference with the peaceful enjoyment of a possession. The Convention is implemented in the UK by the Human Rights Act 1998. While parties may not rely directly on the provisions of an international treaty that has not been implemented in UK law by an Act of Parliament or secondary legislation, a court will try and construe legislation in a way that accords with the UK’s international obligations.

Courts and administrative bodies do not apply the Aarhus Convention directly except for those provisions of it that have been implemented by an Act or Order, or through EU law, which is directly applicable in domestic law – Morgan v Hinton Organics (Wessex) Ltd [2009] EWCA Civ 107. However in Walton v Scottish Ministers [2012] UKSC 44 it was said that decisions of the Aarhus Compliance Committee should be treated with respect.

It should be noted that upon signature (confirmed upon ratification) the United Kingdom made the following statement in relation to the Aarhus Convention: “The United Kingdom understands the references in article 1 and the seventh preambular paragraph of this Convention to the ‘right’ of every person ‘to live in an environment adequate to his or her health and well-being’ to express an aspiration which motivated the negotiation of this Convention and which is shared fully by the United Kingdom. The legal rights which each Party undertakes to guarantee under article 1 are limited to the rights of access to information, public participation in decision-making and access to justice in environmental matters in accordance with the provisions of this Convention.”

#### Courts

There are no specialist environmental courts in the UK. In England and Wales (E&W) and Northern Ireland (N.I.) environmental criminal cases begin in the magistrates’ court – presided over by lay magistrates or a District Judge. Serious cases are tried in the Crown Court by a judge and jury. In Scotland minor criminal cases are dealt with by the Justice of the Peace courts, while more serious cases are tried in the Sheriff court by a Sheriff, alone or with a jury. The most serious cases are heard in the High Court of Justiciary by a judge and jury.

Magistrates (Sheriffs) can hear statutory nuisance cases – nuisances that are defined by statute - where the aim is to abate the nuisance rather than recover damages. Civil cases in E&W and N.I. such as nuisance actions are usually tried in the county court by a circuit judge in E&W and by a county court judge in NI. Cases that are more complicated or of high value are tried in the High Court by a high court judge. The Technology and Construction Court is a division of the High Court in E&W which specialises in technically complex issues. In Scotland smaller claims are heard in the Sheriff Court and more valuable ones in the Outer House of the Court of Session.

Cases where a judicial review is brought against decisions of the government or local government are heard in E&W and N.I. by the administrative division of the High Court by a high court judge. In Scotland they are heard in the Court of Sessions.

Judges are drawn from the legal profession and have to have been in practice for a certain amount of years before they can apply to become a judge. Many in E&W start as Recorders – part time judges – before going on to become Circuit or High Court Judges. In Scotland they often start as part-time Sheriffs or have been senior lawyers and in NI they start as deputy sitting part time. Judges are independent of the state. There are no specialist environmental judges, although judges dealing with environmental cases have naturally built up expertise in that area.

#### Tribunals

In E&W, where a planning decision is disputed the applicant – but not any objectors – may appeal against the decision. The appeal will be heard by an inspector from the Planning Inspectorate. These inspectors will also hear an applicant’s or permit holder’s appeals from decisions in respect of environmental permits, water abstraction licences and other environmental regulatory matters. In Scotland such appeals are dealt with either by a Reporter appointed by the Directorate for Planning and Environmental Appeals or, in respect of certain planning applications, by the planning authority’s Local Review Body, depending on the scale of the development and each planning authorities own procedures. In Northern Ireland appeals are heard by Commissioners from the Planning Appeals Commission.

Where someone is in breach of certain environmental legislation in E&W the relevant Agency can impose civil sanctions rather than take criminal proceedings – Environmental Civil Sanctions (England) Order 2010 (SI 2010/1157 (W. 2010/1821). Appeals in respect of such sanctions are heard by the First Tier (Environment) Tribunal. The legislatures of Northern Ireland and Scotland are considering similar provisions.
There is no forum shopping for different types of court available in civil actions in the UK. However a claimant may be able to bring an action in different local courts if he lives in one area but the harm occurred in another area. In Scotland claimants may in certain cases have a choice between bringing an action in the Sheriff Court or the Court of Session. In criminal cases (E&W) a defendant may choose to be tried in the magistrates’ court or the Crown Court if the offence is one that can be heard by that court.

**Appeals and extraordinary remedies**

Appeals from magistrates in E&W and N.I. are heard by a judge in the crown (county N.I.) court. If the appeal is as to the law, then the defendant can require the magistrates to state a case for the High Court. Appeals from the crown or county court are to the Court of Appeal (Criminal) Division. Appeals from the Court of Appeal go to the Supreme Court.

Appeals from a county court decision in a civil case will go either to a high court judge or the Court of Appeal, depending on the nature of the case. Anyone wishing to appeal must get permission from the court. Appeals from a high court decision in a civil or administrative case go to the Court of Appeal and again permission is required.

In Scotland civil appeals from the sheriff are heard by the Court of Session (Inner House). Appeals from there go to the UK Supreme Court. Criminal appeals from the sheriff are heard by the High Court of Justiciary. There is a separate avenue in Scotland for ECHR appeals to go to the Supreme Court.

There are extraordinary remedies in UK law such as injunctions/interdicts, mandatory orders and prohibiting orders. These are discussed below.

**Cassation**

In the UK where a judicial review is made of an administrative decision the court only has power to uphold that decision, to quash it or to require an authority to redress a failure to act. The court cannot put itself in the place of the administrative body and take the decision for it. In criminal cases, appeal courts will impose the sentence they think appropriate, they do not send the case back to the lower court (E&W). In planning / environmental permit appeals the administrative decision maker can change the substance of the original decision.

**Judicial procedures**

In the UK criminal prosecutions are brought by public prosecutors (and in E&W by public authorities or private individuals). They are started by the issue of an information in the magistrates’ court (E&W), summons in the magistrates court (NI) or by complaint to the Sheriff court or justice of the peace court or an indictment in the Sheriff court or High Court (Scotland). Environmental cases (E&W) will usually be brought by the Environment Agency, the Natural Resources Body for Wales or by local authorities.

Civil actions in E&W and N.I. to recover damages are dealt with by county courts or the High Court under the Civil Procedure Rule 1988 which set out the way in which cases should be brought and determined. In Northern Ireland, the County Court Rules (Northern Ireland) 1981 or the Rules of the Court of Judicature (Northern Ireland) 1980 apply. In Scotland the procedure is provided for in the Sheriff Court Ordinary Cause Rules or the Rules of the Court of Session. Environmental cases are usually actions for nuisance or allege negligence.

Actions to judicially review the decision of a public authority are started in the High Court under rule 54 of the Civil Procedure Rules in E&W, Order 53 of the Rules of the Court of Judicature (Northern Ireland) 1980 or rule 58 of the Rules of the Court of Session. Environmental cases are dealt with procedurally in the same way as other judicial reviews.

**Judicial action from own motion**

UK courts use an adversarial approach, rather than an inquisitorial one, reflecting the country’s common law heritage. Thus cases have to be brought by parties and the courts cannot initiate an action by their own motion. Where a case is before the court, the court can raise issues of its own motion but the parties must be allowed to address the judge on them.

**III Access to Information**


**Remedies**

Where an applicant for information considers that the relevant authority has failed to comply with a request the first step is to go back to the authority under regulation 11 (E&W and N.I.) or 16 (Scot) and ask it to review its decision. If the applicant is still dissatisfied after this process then a complaint can be made in E&W and N.I.to the Information Commissioner's Office under section 50 of the 2000 Act or to the Scottish Information Commissioner under section 47 of the 2002 Act. Appeals against the Commissioner's decision are usually made in E&W and N.I. to the First-tier Tribunal or in Scotland to the Court of Session.

If an authority refuses a request it must write to the applicant and explain why the request was refused. It must say what exemptions apply (reg 14(3)&(4) E&W and N.I.(13 (b) & (c) Scot)) and what the applicant can do if he or she wants to challenge the decision – reg. 14(5) or13(e)

**Procedure**

The Regulations impose a duty upon a public authority that holds environmental information to make it available on request. That duty is subject to a number of exceptions found in regulations 12 and 13 E&W and N.I. (10 & 11 Scot). A refusal of a request for environmental information must be made in writing as soon as possible and no later than 20 days (or 40 days in a complex case, reg. 7 (both)) after the date of receipt of the request, reg. 14 (13 Scot). A person whose request has been refused may ask the authority to review their decision. The review decision must be notified as soon as possible, and not later than 40 days after receipt of the request for a review, reg.11 (16 Scot). If the refusal to disclose is maintained the person whose request has been refused (“the complainant”) may apply for a decision from the Commissioner, section 50 of the 2000 Act as applied by reg. 18 (E&W and N.I.)(Section 47, Scot). The Commissioner will issue a formal decision notice under section 50(3) (49(5), Scot) on the application. The complainant or the public authority may appeal to the Tribunal against the Commissioner's decision notice, section 54 as applied ibid - to the Court of Session,( section 56, Scot). In E&W and N.I. an appeal to the Tribunal is governed by the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009. A notice of appeal must be received by the Tribunal within 28 days of the Commissioner's decision notice, rule 28(1). There is a further appeal on a point of law from the Tribunal to the Upper Tribunal.

The Commissioners will see the disputed information and have powers of entry and inspection (section 55 E&W and N.I.) (section 54 Scot) to obtain further information if they consider the provisions of the legislation are not being complied with. Where the release of information is contested in court, the court will view the information and rule as to whether it should be released, having regard to its contents.

Courts order information to be disclosed in civil and criminal proceedings. This will be under rule 31 of the Civil Procedure Rules (E&W) (Rule 9a, Sheriff Court Ordinary Cause Rules (Scot) or Parts 21-26 of the Criminal Procedure Rules (E&W) Chapter 7a Criminal Procedure Rules (Scot).

**IV Access to Justice in Public Participation**

**Administrative procedures**

Environmental licences such as permits for waste management sites or water abstraction licences are issued by the Environment Agency (E), the Department of the Environment in NI through the Northern Ireland Environment Agency, the Scottish Environment Protection Agency, or the Natural Resources Body in Wales (“the Agencies”). The Agencies also enforce environmental protection legislation such as the Transfrontier Shipment of Waste Regulations 2007 and the Producer Responsibility Obligations (Packaging Waste) Regulations 2007. The regulation of the marine environment is mainly in
the hands of the Marine Management Organisation (E&W and N.I.) who will issue licences under Part 4 of the Marine and Coastal Access Act 2009. For
devolved consents, Marine Scotland has a similar role in waters adjacent to Scotland. Nature conservation matters such as establishing and supervising
Sites of Special Scientific Interest (in N.I known as Areas of Special Scientific Interest) are handled by Natural England, the Northern Ireland Environment
Agency, by Scottish Natural Heritage and in Wales by the Natural Resources Body.

These bodies are concerned with major environmental issues. Local authorities will also have a role to play. They will licence some installations that can
cause air pollution, monitor the quality of drinking water and be involved in nature conservation issues. They play a major role in the remediation of
contaminated land under Part IIA of the Environmental Protection Act 1990. The Environmental Protection Act 1990 does not extend to N.I. Contaminated
Land in N.I is covered by part III of the Waste and Contaminated Land (N.I) Order 1996 which has not been commenced.

The decisions of these bodies, whether local or national like the Agencies, are generally subject to appeal to the government (Secretary of State, Scottish or
Welsh Ministers). Thus for example a decision by the Agencies to refuse a water abstraction licence/CAR licence (controlled activities regulations licence) can
be appealed to the Secretary of State or the Ministers by the unsuccessful applicant. In N.I such appeals lie to the Planning Appeals Commission.

Appeals to the Secretary of State, the Ministers or the Planning Appeals Commission are only available to applicants for the licence etc. or the person who is
the subject of an enforcement notice. They are rarely allowed to go direct to court. Any other individual who has an interest in the matter and who wishes to
question a first instance decision can seek leave to bring a judicial review in respect of it.

Judicial review of administrative procedures

Generally any alternative remedies should be exhausted before making an application for judicial review. This is not a decisive rule, but the applicant must
have permission from the court to bring the action and permission may be refused if alternative remedies have not been exhausted – e.g R (Davies & ors) v
Financial Services Authority [2003] EWCA Civ 1128. In Scotland, the Court of Session Rules, Chapter 58.3 provide that reviews cannot be brought if the
matter could be dealt with by appeal or review under or by virtue of any enactment.

Judicial review in E&W, Scotland and N.I will look at procedural impropriety. That can involve issues like failing to adequately consult those who may be
affected by a scheme – R(Greenpeace Ltd) v Secretary of State [2007] EWHC 311 (Admin) – failure to follow procedural steps required by the relevant
legislation or rules – R (Kerr) v Cambridge City Council [2011] EWHC 1623 (Admin) - and failure to give adequate reasons for the decision – R (London

The courts will look at the legality of the substantive decision. A public authority must act within the powers granted to it by Parliament – Stewart v Perth and
Kinross Council [2004] SC (HL) 71. If it does not, the exercise of a purported power is ultra vires – outside the body’s powers - and will be quashed. However
courts will not second guess a democratically elected authority or a body like the Environment Agency that is appointed by Parliament to exercise statutory
powers; as the authority to exercise that power has been given to the Agency, not the courts. But if the substantive decision is so unreasonable that no
reasonable authority, properly advised, would have taken it then a court may quash it – R (Technoprint Ltd) v Leeds City Council [2010] EWHC 581 (Admin).

Generally courts will not verify material and technical findings and calculations in a judicial review. Unless a party raises the issue these matters are
considered to have been rightly determined by the public authority. If there is a dispute it may be dealt with on the documents or, in rare cases, by cross-

Review of land use planning decisions

(Scotland) Act 1997). In E&W, regional strategies are required by Part 5 of the Local Democracy, Economic Development and Construction Act 2009 while
local development documents will be made under Part 3 (Part 6 (W)) of the Planning and Compulsory Purchase Act 2004. The Planning Act 2006 sets out a
special regime for major projects such as airports or large reservoirs. In Northern Ireland such projects may be dealt with under article 31 of the Planning
(Northern Ireland) Order 1991. In Scotland the 1997 Act provides for the National Planning Framework (Part 1A) and for strategic and local development plans (Part II).

In England, Wales and Northern Ireland, all these strategies or plans will usually be subjected to a public inquiry. An inspector (Commissioner N.I. Reporter
(S)) will hold the inquiry and report to the Secretary of State (E) or Ministers (N.I. S&W). The Secretary of State or Ministers may require an authority to
reconsider parts of the plan.

In Scotland, the National Planning Framework will be published following public consultation and parliamentary consideration; and strategic and local
development plans will be subject to examinations, carried out by reporters, into unresolved issues arising from public consultation.

Once a strategy or plan has been formally approved by the authority any legal challenge must be made to it within six weeks of that approval. The challenge can
only be made by a “person aggrieved” by the relevant document on the grounds that it is not within the appropriate power or that a procedural
requirement has not been complied with. The case is dealt with by the High Court (E&W and N.I.) or the Court of Session (S) - Planning Act 2004, section
113, T&C&P(S)A 1997, s. 238. The High Court can quash the relevant document wholly or in part or remit to the adopting authority with relevant directions –
PA 2008, s.113 (7) – (7C), while the Court of Session may quash it wholly or in part – s. 238(2)(b). Actions are brought under Part 54 of the Civil Procedure
Rules (E&W) (Order 53 of the Rules of the Court of Judicature (Northern Ireland) 1980, Chapter 58 of the Rules of the Court of Session (S)) and evidence is
by relevant documents and written statements – see e.g. Heard v Broadland District Council & ors [2012] EWHC 344 (Admin).

Environmental Impact Assessment (EIA)

EIA is prescribed for applications for planning permission for certain developments in England by the Town and Country Planning (Environmental Impact
Assessment) Regulations 2011 - SI2011/1824 and in N.I by the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012 (N.I 2012
59, S 2011/139 W. SI 1999/293). These development regulations are supplemented by others dealing with specific regimes such as the Water Resources

Screening decisions can be reviewed by the courts on an application for judicial review. An application (E&W) must be brought within three months of the
relevant decision – R(U & Ptnrs (East Anglia)Ltd) v Broads Authority [2011] EWHC 1824 (Admin). The review is brought under Part 54 of the Civil Procedure
Rules (E&W), (Chapter 58 of the Court of Session Rules) Order 53 of the Rules of the Court of Judicature (Northern Ireland) 1980). The review can be in
respect of a failure to follow proper procedure – R (Birch) v Bamsley MBC [2010] EWCA Civ 1180 – failure to give adequate reasons as to why no EIA is
required – R (Batemian) v South Cambridge DC [2011] EWCA Civ 157 – or because there was insufficient information on which the planning authority could
determine whether EIA was required or not – R (Cooperative Group Ltd) v Northumberaland County Council [2010] EWHC 373 (Admin).

Scoping decisions can also be reviewed by the courts. The rules are the same as for any other judicial review of an EIA decision. However the Regulations
provide for the planning authority to give a scoping opinion on request by the developer. If it fails to do so the remedy is to ask the Secretary of State (Minister)
to give a relevant direction. Thus scoping reviews are likely to be rare if an opinion has been sought; although an objector could challenge the
opinion or direction.

Final decisions can also be challenged in judicial review proceedings in the same way as other EIA judicial reviews. A review of a final decision may consider
the adequacy of the EIA but the courts are reluctant to find a document that has been through the EIA process to be inadequate – R (Edwards &
 Pallikaropoulos) v Environment Agency [2008] UKHL 22. The courts consider that the Regulations recognise that an environmental statement may well be
deficient, and make provision through the publicity and consultation processes for any deficiencies to be identified so that the resulting "environmental information" provides the local planning authority with as full a picture as possible. There may be cases where the document purporting to be an environmental statement could not reasonably be described as an environmental statement as defined by the Regulations but they are likely to be few and far between – R (Blewett) v Derbyshire County Council [2003] EWHC 2775 (Admin).

The court will look at the procedural legality of EIA decisions. They will not go into the merits of the case unless it can be shown that the resulting decision was irrational – R (Bowen West) v SoS for Communities and Local Government [2012] EWCA Civ 321 The court will look at further evidence in relation to material and technical findings etc. A mistake of fact giving rise to unfairness is a valid ground for review but any such mistake would have to have made a material difference to the relevant decision – Eley v SoS for Communities and Local Government [2009] EWHC 660 (Admin).

An application for review can be made by anyone "aggrieved" by the decision T&CPA 1990, s. 288(1) (T&CP(S)A 1997, s. 239 - as applied by regulation 42 of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011). While normally participation in the decision sought to be challenged is required, it may not be a decisive factor if the applicant has a substantial interest that is prejudiced by the decision – Ashton v SoS for Communities and Local Government & ors [2010] EWCA Civ 800. Non-governmental organisations may have a sufficient interest but may have to have participated in the process for their application for judicial review to be permitted.

A court can grant an interim injunction to halt a project where it is alleged that the EIA was inadequate pending the resolution of that issue – Belize Alliance of Conservation NGOs v Department of the Environment [2003] UKPC 63. An application for an injunction will be made as the relief sought in judicial review proceedings. Usually the applicant will have to offer the court an undertaking that it will meet any losses caused to the developer if an injunction is refused. In E&W and NI if, in a case to which the Aarhus Convention applies, the court is satisfied that an injunction is necessary to prevent significant environmental damage and to preserve the factual basis of the proceedings, it must, in considering whether to require an undertaking and its terms, have particular regard to the need for the order overall such as would make continuing with the case prohibitively expensive for the applicant and to make any necessary directions to ensure that the case is heard at the earliest opportunity. (Practice Direction 25, Civil Procedure Rules (E&W)) and the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 (NI)) The court will consider the balance of convenience between the parties in determining the application – R (Save Britain’s Heritage) v SoS for Communities and Local Government & or [2010] EWCA Civ 1500. There are no special rules in respect of injunctions in EIA cases.

**IPPC Decisions**

In E&W IPPC decisions are made under the Environmental Permitting (England and Wales) Regulations 2010 – 2010/675. In Northern Ireland they are made under the Pollution Prevention and Control (NI) Regulations 2013 – SR 2013/160. In Scotland they are made under the Pollution Prevention and Control (Scotland) Regulations 2000 (SSI 2000/323) and Pollution Prevention and Control (Scotland) Regulations 2012 (SSI 2012/360).

IPPC decisions can be reviewed in the courts in the same way as other administrative decisions. A person seeking to challenge a decision must have sufficient standing. The challenge is made under Part 54 of the Civil Procedure Rules (E&W), (Order 53 of the Rules of the Court of Judicature (Northern Ireland) 1980, Chapter S8 of the Court of Session Rules (S)). Evidence is given in accordance with the relevant Rules and is usually by written witness statement and documents.

The courts will consider whether the correct procedures have been followed – R (Rockware Glass) v Chester City Council [2006] EWCA Civ 992. They will consider whether the relevant plant falls within the Regulations – Scottish Power Generation (No.2) v Scottish Environment Protection Agency 2005 SLT 641. They will not consider the substantive merits of the decision on the basis that this would be to usurp the function of the body entrusted by Parliament to make that decision. They will look at the technical evidence and if the decision was based on a material error that affected the decision they may quash that decision.

In R (Edwards) v The Environment Agency [2004] EWHC 736 Mr Edwards was a resident in a town in which a cement factory was seeking a permit under IPPC Regulations. He did not make any representations to the Agency during the consultation. He brought proceedings for a judicial review of the decision. Even though he was temporarily homeless at the time it was held he had a sufficient interest as a resident to bring the action.

Injunctive relief is available in judicial review proceedings in the same way as for EIA cases. There are no special rules applicable to IPPC procedures besides those generally applying nationally.

**V Access to Justice against Acts or Omissions**

**Civil claims**

A civil – as opposed to criminal – claim can be brought against someone whose activities adversely affect private property. This will usually be an action in nuisance that must be brought by someone who enjoys exclusive possession of the property. The principles in determining whether a nuisance has been suffered by the claimant were set out in Barr v Biffa [2012] EWCA Civ 312. The English (W and NI) law of nuisance is set out in text books such as Clerk & Lindsell on Torts 20th edn. Chapter 20. In these jurisdictions there is no requirement to establish fault on the part of the Defendant. In Scotland the test for nuisance is slightly different - what can reasonably be described as intolerable behaviour or as something which would not be tolerated by a reasonable person – Robb v Dundee City Council 2002 SC 301. In addition there must be an averment of fault - RHM Bakeries (S) Ltd v Strathclyde RC 1985 SC (HL) 17

Where contaminants flow from one person’s land to another’s the person whose land is contaminated may have an action in trespass. It may also be negligent to cause environmental harm so that, if damage is caused and the person causing the damage owes a duty of care to the person suffering from it, he will be liable. In all cases the courts may award pecuniary damages and may also issue an injunction to stop it happening again.

Claims in nuisance, trespass or negligence can be directly made against state bodies where their activities have caused the harm – Dennis v Ministry of Defence [2003] EWHC 793 (QB). However if the cause of the harm is the result of a body carrying out operations authorised by statute it will have to be shown that it was acting negligently – Allen v Gulf Oil Refining Ltd 1981 AC 1001. If the allegation of negligence amounts to saying that the relevant body should have spent public funds to prevent the harm a court may hold that the issue is not justiciable as decisions as to spending funds are for that body – Dobson v Thames Water Utilities Ltd [2011] EWCA 3253 (TCC). Where the issue of an environmental permit or planning permission results in harm to someone, the state body that issued the permit or permission is rarely liable in negligence as the body usually owes no duty of care to the affected person.

Authorities are not usually liable to compensate an individual simply for breaching a duty – Bourgoin SA v Ministry of Agriculture Fisheries and Food [1986] QB 716. However where in a judicial review the court finds a breach of duty it may award damages as long as damages are not the sole relief claimed. In addition damages may be awarded where a breach of the claimant's human rights is found. A claim against a state body can include a claim for an injunction.

**Environmental liability**

The EU Directive on Environmental liability (2004/35/EC) is implemented in England by the Environmental Damage (Prevention and Remediation) Regulations 2009 – SI 2009/153 (W. 2009/995) In Northern Ireland they are implemented by SR 2009/252 and in Scotland by the Environmental Liability (Scotland) Regulations (SSI 2209/266). The competent authorities for the purposes of the Directive are in E&W usually the Environment Agency or the
Natural Resources Body for Wales, but can be Natural England for habitats or species on land or the Secretary of State for the sea. In N.I. the Department of the Environment is the authority while in Scotland it will usually be SEPA but Scottish Natural Heritage for harm to protected species and habitats on land or inland waters and the Scottish Ministers for harm in the coastal sea or territorial waters.

The Regulations provide for an “interested person” – which would include a non-governmental body promoting environmental protection – to be able to request the competent authority to take action under them. A request must be made in writing and set out the person’s interest (E&W and N.I.) and give enough information to enable the authority to identify the nature and location of the incident.

A court review of decisions made by competent authorities on requests for action under the Regulations will be the same as for any other judicial review. The court will ensure that correct procedures were followed. It will review the legality of the decision. It may intervene on technical or other errors if those errors were material and that affected the decision it may quash that decision.

An action to enforce liability will be brought under Part 54 of the Civil Procedure Rules (E&W), (Order 53 of the Rules of the Court of Judicature (Northern Ireland) 1980, Chapter 58 of the Court of Session Rules (S))). The applicant for judicial review issues a claim form in the High Court (E&W) in accordance with Part 54 or Order 53 (N.I.) or in Scotland a petition under Chapter 58 of the Rules. Evidence is given in accordance with the relevant Rules and is usually by written witness statement and documents.

VI Other Means of Access to Justice

In E&W and S an action for statutory nuisance – a nuisance as defined in the relevant statute - can be brought in a magistrates’ or sheriff court under Part III of the Environmental Protection Act 1990. Section 79(1) of the Act sets out what constitutes a statutory nuisance. Under section 82 an individual can bring his action in the relevant court if he is “aggrieved” by the nuisance. The court can make an order for the abatement of the nuisance and, under section 82, fine the Defendant. In N.I. this procedure is available under Part 7 of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011.

The Parliamentary Ombudsman (E&W), The Assembly Ombudsman (N.I.) or the Scottish Public Services Ombudsman investigate issues of maladministration by government bodies. In E&W, the Local Government ombudsmen will do the same for local authorities, while in N.I. this will be done by the Northern Ireland Ombudsman – the SPSPO investigates local authorities in Scotland. The E&W ombudsmen can act jointly and did so in a case of maladministration involving the Environment Agency and two local authorities who were ordered to pay the claimants a total of £95,000 in respect of a failure to deal properly with an illegal waste site. Complaints to the E&W Parliamentary Ombudsman must be referred to her by a Member of Parliament – Assembly Ombudsman by an Assembly member. A complaint to the Local Government Ombudsman, NI Ombudsman or SPSPO should only be made after the relevant body has been given a chance to deal with the issue. The ombudsmen can ask the body for an apology, repayment of money due, for example, tax or benefit, compensation, for example, for delays, improved procedures or better administrative procedures at the relevant body.

Public prosecutions in respect of environmental offences (E&W) will usually be brought by the competent authority in relation to that offence – for example the Environment Agency. These authorities have powers to investigate offences and enter land or buildings to take samples and interview people in relation to a suspected offence.

A private prosecution can be brought in E&W in respect of many environmental offences – Prosecution of Offences Act 1985, section 6 - but some may only be brought by or with the consent of the Director of Public Prosecutions. In Scotland private prosecutions are very rare and need the consent of the Lord Advocate. In Northern Ireland private prosecutions may need the consent of the Director of Public Prosecutions.

Most national or local government bodies will also have internal complaints mechanisms. If the result is unsatisfactory the complainant can go to the relevant Ombudsman or seek a judicial review. There are specific complaints organisations for utilities such as water services - the Consumer Council for Water (E&W) or the Water Industry Commission for Scotland, the Consumer Council for Water (N.I.)

VII Legal Standing

Non-governmental organisations may have a sufficient interest but would probably – the case law does not provide certainty - have to have participated in the process for their application for judicial review to be permitted. In practice, there are few examples of individuals and NGOs being denied standing. An unincorporated association such as a member’s club has no legal personality and so cannot sue or be sued. Actions by or against such associations are brought by or against the chairman or some other member. However such organisations may be amenable to judicial review – R v Panel on Take-overs and Mergers ex p. Datafin [1987] QB 815.

Legal Standing

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<td>Only developer / permit holder may bring appeal</td>
<td>Take part in an appeal</td>
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<td>Yes</td>
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To bring a private civil action in nuisance – such as noise or odour - the claimant must have exclusive possession of the property affected by the nuisance. However a ‘statutory nuisance’ action under section 82 of the Environmental Protection Act 1990 can be brought by a person “aggrieved” by the nuisance. Anyone has standing to bring a private criminal prosecution where such an action is available.

There are no different rules for sectoral legislation. In the UK judicial review procedures apply to all judicial reviews. Although legislation like the Environmental Permitting (England and Wales) Regulations 2010 (SI 2010/875 Schedule 5, Part 1) in E&W makes special provision for public consultation, the definition of “public consultee” is “a person whom the regulator considers is affected by, is likely to be affected by, or has an interest in, an application.” There is no difference here between the ordinary judicial review standard of “sufficient interest.” The term “sufficient interest” for judicial review cases was considered in Axa General Insurance Ltd v The Lord Advocate [2011] UKSC 46.

There is no formal actio popularis in UK law. However the rights of NGOs or individuals to intervene in administrative decisions means that there is effectively such an action.

A state body is a legal entity just like a private company. The Environment Agency, for example is a body corporate. It can bring or defend legal actions. Thus the Agency could in theory bring an action for the judicial review of a decision by another government body. The same is true of ombudsmen or public prosecutors like the Crown Prosecution Service. However this is very unlikely to ever happen in practice and the courts do not favour this type of action and expect government bodies to resolve their differences without recourse to legal action.

VIII Legal Representation
The UK has an adversarial system reflecting its common law heritage. In environmental judicial review proceedings (E&W) the claimant’s lawyer will formulate the application for permission to bring the action, setting out the grounds on which it is based. Usually the application is dealt with on the claimant’s evidence without a hearing. However if there is an oral hearing, the defendant’s lawyer may attend and explain to the court why it is considered that permission should not be granted. If permission is granted, the defendant will file its evidence. Both lawyers will file a skeleton argument with the court, presenting an outline of their case. At the hearing each lawyer will supplement the skeleton argument with oral submissions.

It is not compulsory to have a lawyer in any environmental hearing, whether at a planning or other inquiry or a judicial review.

Lawyers who specialise in environmental law can be found using directories such as Chambers & Partners or the Legal 500. These directories are issued every year. The Environmental Law Foundation (ELF) specialises in environmental law and the UK Environmental Law Association (UKELA) is a body of environmental lawyers. The Planning and Environmental Bar Association (PEBA) is a body of barristers in E&W who do environmental and planning cases.

IX Evidence

In criminal cases evidence is by witnesses giving evidence orally and subject to cross-examination. In civil claims written witness statements are provided on which the witnesses are cross-examined on oath (E&W). In Scotland evidence is given orally by witnesses. In administrative hearings such as planning inquiries witnesses statements are provided on which the witnesses are cross examined but rarely under oath. In judicial review hearings the evidence is all written witness statements or documents with no cross-examination (E&W). In Scotland most judicial reviews are decided at the First Hearing on the basis of legal argument, but if there is a hearing on evidence, that would be given orally by witnesses.

The evidence of the witnesses in major criminal cases is evaluated by a jury. While the judge may comment on the evidence of fact, the jury is the sole arbiter of the facts in the case. In all other trials the magistrate, judge or inspector (reporter) evaluates the evidence given. He or she must take into account all the material relied on and give reasons for preferring one side to the other.

It is for the parties to provide the evidence for the court. On a judicial review the administrative body whose decision is being reviewed has a duty to disclose all relevant documents – a duty of candour. New evidence can be introduced if material. The court can request evidence from one party or the other but usually does not.

Parties can instruct experts to give evidence in a case. For example in a civil claim each party may instruct experts on the operation of the relevant facility and how harm from it can be avoided. The court may order that such evidence is to be given by a joint expert (E&W).

Expert evidence is not binding on the judge. It is for the judge to evaluate all the evidence and accept or reject it. In criminal cases the role of the expert is to provide the judge or jury with the necessary scientific criteria for testing the accuracy of their conclusions, so as to enable the judge or jury to form their own independent judgment by the application of those criteria to the facts proved in evidence.

X Injunctive Relief

In some legislation it is provided that the bringing of an appeal will not have the effect of suspending a decision or notice – e.g. Environmental Permitting (England and Wales) Regulations 2010, reg. 31. In other legislation it is stated that the relevant notice will have no effect until the appeal is finally determined or withdrawn – Town and Country Planning Act 1990, s. 175(4) (in Scotland, 1997 Act s. 131(3)). In judicial review proceedings the applicant can ask the court for an interim order to stay the effect of the relevant decision until the case is decided.

Where the legislation states that the bringing of the appeal does not suspend the decision or notice, that decision or notice will have immediate effect. In cases where the usual rule is that the notice is of no effect until the appeal is determined the authority may be able to serve another notice to halt the activity immediately – e.g. a stop notice in planning cases – Town and Country Planning Act 1990, section 183 (in Scotland 1997 Act, s 140). However it may have to compensate someone adversely affected by the stop notice if the enforcement notice is overruled. Where the legislation gives an authority a discretion as to whether or not to suspend the notice pending appeal – e.g Statutory Nuisance (Appeals) Regulations 1995, reg. 3 – the authority must properly consider the balance between the public interest in the notice having immediate effect and the consequences of that to the person served with the notice – Cromarty Firth Port Authority v Ross and Cromarty District Council 1997 S.L.T. 254.

A civil – as opposed to criminal - court can grant an interim injunction – interdict in Scotland - to halt a project where it is alleged that the administrative decision was inadequate pending the resolution of that issue – Belize Alliance of Conservation NGOs v Department of the Environment [2003] UKPC 63.

There are no special rules in respect of injunctions in environmental cases. Local and other authorities, as well as issuing enforcement and other notices, may be able to bring an action for an injunction against someone who is in breach of the relevant legislation – e.g. Environmental Protection Act 1990, s. 81 (5).

Injunctions (interdicts) can also be awarded in cases between individuals or other legal entities. Injunctions are usually awarded to stop an activity but mandatory injunctions are occasionally awarded to require someone to do something. Where there is a risk of impending damage a quia timet injunction – an injunction where harm is feared but has not eventuated - may be granted but these are rare.

An application for an injunction (interdict) will be made as the relief sought in judicial review proceedings or in a claim between individuals etc. The time limits for asking for an injunction are those for bringing the claim. An application for an urgent interim injunction can be made before proceedings are issued. Where an interim injunction (interdict) is sought, usually the applicant will have to offer the court an undertaking that it will meet any losses caused to the defendant if an injunction is refused. In E&W and NI if, in a case to which the Aarhus Convention applies, the court is satisfied that an injunction is necessary to prevent significant environmental damage and to preserve the factual basis of the proceedings, it must, in considering whether to require an undertaking and its terms, have particular regard to the need for the order overall such as would make continuing with the case prohibitively expensive for the applicant and to make any necessary directions to ensure that the case is heard at the earliest opportunity. ([Practice Direction 25, Civil Procedure Rules (E&W)] and the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 (NI). The court will consider the balance of convenience between the parties in determining the application – R (Save Britain’s Heritage) v SoS for Communities and Local Government & or [2010] EWCA Civ 1500. Courts have the power to suspend the operation of an injunction. The person subject to the injunction may make an application to discharge it.

A decision by a court to award an injunction (interdict) can be appealed to a higher court. Usually the appellant will need leave from either the court that issued the injunction or the appeal court.

XI Costs

An applicant seeking access to justice in environmental matters may have to pay court fees, lawyers’ fees, expert witness’ fees, expenses for other witnesses and the costs involved in preparing documents, plans, etc.

Court fees

There are no court fees in respect of criminal cases at first instance but an appeal to a higher court may involve a fee.

The court fee for starting a judicial review claim is £80 (E&W). For starting a civil claim in E&W the fee varies according to the amount claimed. If the claim is worth between £1,000 - £1,500, the fee is £70. If it is worth between £15,000 - £50,000 the fee is £340. An application for leave to appeal to the Court of Appeal is £235 with a further £465 at a later stage. Claimants may be eligible for fee remission depending on their circumstances.

All petitions to the Inner or Outer House of the Court of Session in Scotland cost £180, appeals to the High Court of Justiciary are £300.

In Northern Ireland a notice of motion for judicial review costs £200. A civil claim in the High Court costs a fee of £300. Filing a notice of appeal is £500.
Costs

The level of costs may vary considerably, depending on the nature and complexity of the case, the experience of the lawyer and the amount of documents. In E&W solicitors' fees for cases that will be disputed are known as "contentious costs." The solicitor will usually charge an hourly rate depending on the grade of fee earner. Thus a para-legal might charge £80 an hour while a partner might charge £200 an hour. A barrister in the case will charge a brief fee and hourly fees for drafting or other work. In Scotland 'costs' are known as 'expenses.' To give an idea of costs in judicial review cases in Allen v Secretary of State for Communities and Local Government [2012] EWHC 671 (Admin) the successful applicant was awarded £9,456 plus VAT for a one day case. In Road Sense v Scottish Ministers [2011] CSOH 10 the expenses of one side were estimated at £82,000 to £90,000 for a four day hearing. This range of costs is similar in all UK jurisdictions.

Costs in civil claims may be higher, reflecting the common law legal systems in the UK, which are based on case law rather than a civil code and the corresponding absence of an investigative role for judges (meaning that a heavier burden falls on parties and their legal representatives to present relevant case law before the courts). In a case in nuisance – Bontoft v East Lindsey District Council [2008] EWHC 2923 (QB) - one side's costs were £195,000 for a six day trial. Costs can be increased in cases done under a conditional fee agreement but the legislation allowing such agreements was repealed in April 2013. In Scotland these are 'speculative fees' which are governed by the Act of Sederunt (Fees of Solicitors in Speculative Actions) 1992/1879 and the Act of Sederunt (Fees of Advocates in Speculative Actions) 1992/1897.

Injunctions

There is no different level of fee in injunction (interdict) cases. Usually the party seeking an injunction (interdict) will have to give an undertaking in damages, although see the Civil Procedure Rules, Practice Direction 25 (E&W) and the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 (NI).

Under the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 (NI) and the amended Practice Direction 25A of the Civil Procedure Rules (E&W) the court must, in Aarhus Convention cases, have particular regard to the need for the terms of the order overall not to be such as would make continuing with the case prohibitively expensive for the applicant when considering whether to require an undertaking by the applicant to pay damages.

Awards of costs (expenses S)

The general rule in UK jurisdictions is that costs (expenses Scot.) follow the event or the loser pays – e.g Civil Procedure Rules (E&W) Part 44.3. However the courts have a wide discretion in awarding costs. The starting point is that the loser pays but the successful party's costs can be reduced if that party has failed on some issues in the case or has raised irrelevant matters. In addition courts favour the use of ADR and a party that unreasonably fails to engage in ADR may suffer costs consequences – Halsey v Milton Keynes General NHS Trust [2004] EWCA Civ 576. The court in making a costs order will also look at the conduct of the parties from the start of the proceedings and consider whether any reduction in costs should be made because improper conduct.

Under Part 36 of the Civil Procedure Rules (E&W) one party can make an offer to the other to settle the claim, usually by offering a sum of money – Minute of Tender (Scot.) If the offer or tender is rejected but the person rejecting it fails to obtain a more advantageous judgment then there may be costs penalties. Special costs rules now apply throughout the United Kingdom for certain environmental cases limiting the exposure of losing parties to the other side's costs.

XII Financial Assistance Mechanisms

There are no special exemptions from court fees or costs in respect of environmental matters in UK jurisdictions. There are such exemptions from fees for those on low incomes.

UK courts have been applying Article 9.4 of the Aarhus Convention – which includes a requirement that environmental cases should not be "prohibitively expensive" – by means of Protective Costs Orders (E&W and NI) or Protective Expenses Orders (Scot.) The law around these orders is relatively new and is still being developed. The Aarhus Convention is now specifically applied to costs in judicial review proceedings in E&W by the Civil Procedure (Amendment) Rules 2013, Part 45; in Scotland, by similar rules applying to all environmental cases, made in March 2013; and in NI by the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013, which sets out specific rules for fixed protected costs orders for proceedings to which the Convention applies.

According to these rules:

1. At first instance, an appeal that is subject to the Aarhus Convention may not be ordered to pay costs exceeding £5,000 for individuals and £10,000 legal persons and persons representing associations. Costs recovery against a losing defendant is capped at £35,000.

2. On appeal, the rules of the Civil Procedure Rules 52.9A governing costs recovery apply, whereby the court can make an order limiting the costs.

3. The Supreme Court may also make an order limiting costs recovery in an Aarhus case based on the Costs Practice Direction (as per last amendment in November 2013).

Prior to those rules, the award of a PCO in judicial review cases were governed by the 'Corner House' principles which were set out in R (Corner House Research) v The Secretary of State for Trade and Industry [2005] EWCA Civ 192 at para. 74:

(1) A protective costs order must be made at any stage of the proceedings, on such conditions as the court thinks fit, provided that the court is satisfied that:

(i) the issues raised are of general public importance; (ii) the public interest requires that those issues should be resolved; (iii) the applicant has no private interest in the outcome of the case; (iv) having regard to the financial resources of the applicant and the respondent(s) and to the amount of costs that are likely to be involved, it is fair and just to make the order; and (v) if the order is not made the applicant will probably discontinue the proceedings and will be acting reasonably in so doing.

(2) If those acting for the applicant are doing so pro bono this will be likely to enhance the merits of the application for a PCO.

(3) It is for the court, in its discretion, to decide whether it is fair and just to make the order in the light of the considerations set out above.

These principles are modified in environmental cases to remove the public interest requirement and the emphasis on the claimant's means – Road Sense v Scottish Ministers [2011] CSOH 10 the expenses of one side were estimated at £82,000 to £90,000 for a four day hearing. This range of costs is similar in all UK jurisdictions.

Legal Aid

Civil legal aid in E&W is provided by the Community Legal Service (CLS). There is no discrete area of funding for environmental cases. However funding can be obtained through the 'public interest' category. Thus the CLS will only fund for judicial review proceedings concerning the need for a public inquiry into the decommissioning of nuclear submarines as the case had a significant public interest. But many potential actions will fail this test as either not benefiting the wider public or not raising any new issues of law. Thus an application for funding to challenge the decision of the Environment Agency to grant an operating licence for an incinerator near the applicant's home was refused. The Scottish Legal Aid Board has a similar criteria of "wider public interest." The Legal Aid Board may be available for defendants but not for those wishing to bring a private prosecution.

Funding decisions by the CLS are determined by its "Funding Code." Section 7 of the Code deals with judicial review. Section 7.5 states that "Where the case does not appear to have a significant wider public interest, to be of overwhelming importance to the client or to raise significant human rights issues, Legal Representation will be refused if: (i) prospects of success are borderline or poor; or (ii) the likely costs do not appear to be proportionate to the likely benefits of the proceedings having regard to the prospects of success and all the circumstances." This would apply for all individuals. NGOs are unlikely to be able to get legal aid. In Scotland the grant of legal aid is determined by the Civil Legal Aid Handbook, Part IV, Chapter 3 of which is concerned with assessing probable cause and reasonableness.
Pro Bono

Pro bono work in the UK is facilitated through the ProBono UK.net website. This provides access to information about how to get free legal advice. In E&W the Solicitors Pro Bono Group – “LawWorks” also has a website showing where to go for help. For barristers in E&W, the Bar Pro Bono unit acts as a clearinghouse to match barristers to cases. The Unit receives applications for assistance through advice agencies and solicitors. The Unit aims to help in cases where the applicant cannot afford to pay for the assistance sought or obtain public funding, has a meritorious case, and needs the help a barrister can provide. Neither of these organisations specialise in environmental work but can put an individual in touch with those who do.

LawWorks Scotland provides a similar service in Scotland to LawWorks in E&W; although the two bodies are separate entities. The Faculty of Advocates has a Free Legal Services Unit whose work includes planning and environmental cases.

The Northern Ireland Pro Bono Group provides advice and representation by barristers and solicitors who have volunteered to join a panel and who cover the full range of legal specialisations. Volunteers have offered their services free of charge up to 3 days or 20 hours each year. The cases most likely to meet the criterion of the Pro Bono Unit will be appeals, applications for leave to appeal, judicial review applications, specific steps in proceedings, tribunal hearings and advisory work.

Legal clinics

There are no legal clinics specialising in environmental cases in E&W or NI. However Citizens Advice Bureaux and Law Centres will either help with environmental cases or pass the matter on to someone who can help. The Environmental Law Centre Scotland offers advice to the public on environmental issues.

Public Interest organisations

The Environmental Law Foundation is the leading organisation in the UK providing free legal advice to local communities with environmental concerns. For almost two decades it has pioneered the provision of free advice to vulnerable communities facing a range of environmental threats including adverse impacts of pollution and loss of green space and biodiversity. The Public Law Project is a national legal charity which aims to improve access to public law remedies for those whose access to justice is restricted by poverty or some other form of disadvantage. It will do some environmental cases.

XIII Timeliness

Planning applications must be determined within eight weeks although if they require EIA the time limit is extended to sixteen weeks. Authorities determining IPPC applications must usually make a decision within three months, although there are other time limits in the Regulations. Applications for other licences may not have a legal requirement for determination within a specific time but authorities are encouraged to say how long it will take to issue the licence. If a planning decision or environmental permit application is not determined within the required time it will be deemed to have been refused. That enables the applicant to appeal to the Secretary of State or Ministers, or in certain circumstances to a Local Review Body in Scotland.

Court procedures

Prior to 1 July 2013, judicial review applications on environmental matters in E&W must have been brought within three months of the relevant decision. The Civil Procedure Rules stated (S4.5) proceedings must be filed promptly and in any event not later than three months after the grounds to make the claim first arose. However the “promptly” aspect has been considered insufficiently precise. Thus where EU legislation is being considered the claimant has three months – R (U & Ptnrs (East Anglia) Ltd) v Broads Authority [2011] EWHC 1824 (Admin). Since 1 July 2013, the time limits for filing a claim form for judicial review has been amended to six weeks in relation to a decision under the “planning acts” (the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990, the Planning (Hazardous Substances) Act 1990 and the Planning (Consequential Provisions) Act 1990). (The Civil Procedure (Amendment No. 4) Rules 2013 ).

Time limits for the bringing of civil actions in nuisance, trespass or negligence are set out in the Limitation Act 1980 (E&W). Under section 2 of the Limitation Act 1980 an action founded on a tort – such as nuisance – must be brought within six years from the date on which the cause of action accrued. Under section 6 of the Prescription and Limitation (Scotland) Act 1973 any claim must be brought within five years. Under article 6 of the Limitation (Northern Ireland) Order 1989 the time is six years. Time starts to run from either the date of the injury or the date – if later - the claimant knew the injury was attributable, in whole or in part, to the act or omission that is alleged to constitute negligence, nuisance or breach of duty. “Knowledge” here means a reasonable belief in the facts leading to attribution – Ministry of Defence v AB & Ors [2012] UKSC 9.

Where an individual intends to bring an action under section 82 of the Environmental Protection Act 1990 in a magistrates’ or sheriff court, notice of the action must be given 21 days before proceedings are commenced. (S. 82(6)). Given the nature of the proceedings the nuisance will still be existing at this time.

Duration of cases

The duration of the case depends on the complexity of the legal and factual issues. Judicial review cases - where there is no oral evidence heard – can take from half a day to four or five days. Environmental civil proceedings where both sides call witnesses and experts can take much longer. A relatively simple noise nuisance case might take two or three days. Dobson v Thames Water Utilities Ltd [2011] EWHC 3253 (TCC) involved more than ten witnesses of fact on each side and four experts on each side dealing with different disciplines. The case lasted six weeks.

In criminal cases, the enforcement agency’s investigation may take months or even years from the date of the crime to the issuing of proceedings. Usually there is an initial hearing in a magistrates’ or Sheriff’s court within three weeks of the date proceedings were issued. If a guilty plea is to be made the court will usually deal with it within a month; although in NI, England & Wales magistrates may send the case to a Crown Court if they consider their sentencing powers are not sufficient to deal with the offence. A summary trial in the magistrates’ or sheriff’s court may take from one to three days; although longer cases are possible.

A serious case will be referred by the magistrates to the Crown Court. In a Crown Court with a jury cases will go to Pre-Trial Review which may take more than one hearing so extending the case for several months. The trial itself can be from one day to a month or more – a recent prosecution for waste offences resulted in a six week trial.

Deadline for judgments

There are no set deadlines for judges to give judgments. In straightforward cases (E&W) the judge may give an oral judgment immediately following the hearing. In more complex cases judgment may be reserved and will usually follow in writing within two to six months. Longer than six months is possible but not common.

As there are no set deadlines there are no sanctions against courts delivering decisions in delay. However in cases involving issues of human rights there is an expectation that decisions will issue promptly.

XIV Other issues

Environmental decisions are either challenged during the EIA process or when a decision is issued. If a public inquiry is held before decisions are issued members of the public will be able to address the inquiry.

Although there is currently no single UK government website regarding access to justice in environmental matters, information on various aspects is available through the central government website (http://www.gov.uk/) and the websites of the Scottish Government and Northern Ireland Executive. Information and opinions are also available from NGOs like UKELA or Friends of the Earth and groups like the UK Environmental Law Association (UKELA).
Alternative Dispute Resolution exists in the UK. It is strongly encouraged by the civil courts. The pre-action protocol for judicial review (E&W) states that “both the Claimant and Defendant may be required by the Court to provide evidence that alternative means of resolving their dispute were considered. The Courts take the view that litigation should be a last resort, and that claims should not be issued prematurely when a settlement is still actively being explored.” It is accessible to the public through leaflets such as the Legal Services Commission “Alternatives to Court” CLS Direct Information Leaflet 23. Mediation is frequently used in civil claims between individuals or corporates. Mediation is available in judicial review cases but is not much used – Public Law Project: 2009 Mediation and Judicial Review.

XV Being a Foreigner
There are no specific anti-discrimination clauses regarding language or country of origin found in the procedural laws of the UK. However the courts are public bodies and thus bound by the Equality Act 2010 which makes it unlawful to discriminate on the basis of race or nationality. The Act imposes a race equality duty with which the courts must comply. Courts have guidance on equal treatment of all those who come before them in “Bench Books” that are issued to judges – e.g *The Equal Treatment Bench Book for England and Wales.*

Use of different languages is facilitated in court procedures. Internally languages like Welsh are provided for in hearings. Other languages can be used with an interpreter. Courts will have advisory leaflets available in a number of languages.

In criminal cases and some tribunal proceedings the court service will arrange for an interpreter and will pay the fee; although in criminal cases if the defendant is convicted the fee may be part of the costs of the case he or she is ordered to pay. In civil cases it is for the parties to make such arrangements and pay the fees.

XVI Transboundary Cases
As the UK consists of islands with only the Ireland / Northern Ireland land borders, transboundary cases are very rare. Under regulation 24 of the Infrastructure Planning (EIA) Regulations 2009 development likely to have significant transboundary effects on the environment in another EEA state must be notified to that state. The state may then participate in the procedure under the Regulations. There are no procedural rules for the participation although EU legislation like the Mediation Directive has been implemented in court rules in the UK. Civil liability is determined under conventions such as the International Convention on Civil Liability for Oil Pollution Damage 1969 where relevant. Otherwise Part III of the Private International Law (Miscellaneous Provisions) Act 1995 deals with the applicable law. Section 11(2)(a)(ii) provides that the law of the country where the damage occurred is the applicable law.

There are no decisions in UK law on whether a foreign national who is adversely affected by a project in the UK would have sufficient interest to participate in a public inquiry or a judicial review in relation to the project. However if he or she would otherwise have a sufficient interest it might be contrary to the Equality Act 2010 to deny participation. If it was accepted that the person had sufficient interest the procedure would be the same as for anyone else. Legal aid is unlikely to be available given the criteria of “significant wider public interest” discussed above.

If a person has a ‘sufficient interest’ in proceedings then he or she may participate in them. Although there are no decisions of UK courts on this, if a person in the foreign state could be adversely affected by the proposal there is no reason why he or she could not have a significant interest for the purposes of judicial review.

The appropriate forum is the court that is the more preferable for securing the ends of justice - *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460. This is likely to be the country whose law is applicable to the dispute. In the UK under section 11 of the Private International Law (Miscellaneous Provisions) Act 1995 the applicable law is usually the country where the injury or damage occurred but this can be displaced in accordance with section 12. If a UK court has accepted jurisdiction in a dispute that decision can be challenged but it will be for the challenger to show that the decision was wrong.

As Gibraltar has a land border with Spain, there is the possibility for transboundary cases to arise. Please see Annex A for details.

Related links

**Access to justice**


**Ombudsmen offices and prosecutor offices**


**Environmental experts**


Expert database (Free) – use keyword ‘environment’ [http://www.expertsearch.co.uk/](http://www.expertsearch.co.uk/)

**Environmental lawyers**

Chambers & Partners [http://www.chambersandpartners.com/UK](http://www.chambersandpartners.com/UK)

Bar Associations

Planning and Environmental Bar Association [http://www.peba.org.uk/](http://www.peba.org.uk/)

Advocates (Scot) specialising in environmental matters [http://www.advocates.org.uk/stables/specialareas/P003.html](http://www.advocates.org.uk/stables/specialareas/P003.html)


**Pro-Bono environmental law offices**


**National and International NGOs**

Friends of the Earth [http://www.foe.co.uk/](http://www.foe.co.uk/)


Royal Society for the Protection of Birds [https://www.rspb.org.uk/](https://www.rspb.org.uk/)
### Annex A: Gibraltar

#### I Constitutional Foundations

**Constitutional Foundations**

Gibraltar’s written constitution is set out in the Gibraltar Constitution Order 2006. There are no express environmental provisions in the constitution. If a constitutional right is breached in consequence of an environmental harm, article 16 provides access to the Supreme Court.

#### II Judiciary

**Judiciary**

Gibraltar is a British Overseas Territory in Europe. The Gibraltar Constitution Order 2006 allows Gibraltar self-government in all matters excluding external affairs, defence and internal security for which the UK Government remains ultimately responsible. HM Government of Gibraltar is responsible for the implementation of EU obligations in Gibraltar.

**Introduction**

There are no specialist environmental courts in Gibraltar. The court system mirrors that of England and Wales, with environmental criminal cases usually beginning in the Magistrates’ Court, and more serious cases being tried in the Supreme Court by a judge and jury.

Under Part II of the Public Health Act, statutory nuisance cases can be heard in the Magistrates’ Court. Where the Government considers the remedies afforded by the Magistrates’ Court would be inadequate, it may bring proceedings in the Supreme Court under section 89 of the Public Health Act.

Cases where judicial review is brought against decisions of the Government are heard by the Supreme Court, by virtue of section 12 of the Supreme Court Act. Under rule 6 of the Supreme Court Rules 2000 judicial review is brought applying the Civil Procedure Rules applicable in England and Wales.

Judges are appointed by the Governor of Gibraltar on the advice of the Judicial Services Commission. As in England and Wales, judges are drawn from the legal profession. There are no specialist environmental law judges.

**Tribunals**

In Gibraltar, planning permission is issued by the Development and Planning Commission (“the Commission”). A person may appeal a decision of the Commission to the Development Appeals Tribunal if-

- a. they are an applicant for a permit who is aggrieved by the refusal of the Commission to grant the permit or the imposition of a condition on a permit;
- b. they are a person on whom a completion notice, stoppage order or modification order has been served;
- c. they are a person who has objected to an application, and they are aggrieved by a decision of the Commission; or
- d. they are a person affected by a completion notice, stoppage order or modification order.

**Forum Shopping**

There is no forum shopping for different types of court available in civil actions in Gibraltar. In criminal cases a defendant may choose to be tried in the Magistrates’ Court or the Supreme Court if the offence is one that can be heard by that court.

**Appeals and extraordinary remedies**

Appeals from the Magistrates’ Court in Gibraltar are heard by a judge in the Supreme Court. Appeals from the Supreme Court are to the Court of Appeal. Appeals from the Court of Appeal are heard by the Privy Council.

There are extraordinary remedies in Gibraltar law such as injunctions, mandatory orders and prohibiting orders.

**Cassation**

The position in Gibraltar reflects that of England and Wales.

**Judicial procedures**

In Gibraltar criminal prosecutions are brought by public authorities or private individuals. They are started in the Magistrates’ Court. Civil actions are usually dealt with by the Supreme Court. Statutory nuisance is usually heard by the Magistrates’ Court, but can be heard by the Supreme Court in certain circumstances.

**Judicial action from own motion**

As in the UK, the Gibraltar courts use an adversarial approach. Courts are unable to initiate an action by their own motion.

### III Access to Information

**Access to Information Cases**

**Access to Justice in Public Participation**

**Other Means of Access to Justice**

**Legal Standing**

**Evidence**

**Injunctive Relief**

**Costs**

**Financial Assistance Mechanisms**

**Timeliness**

**Other Issues**

**Being a Foreigner**

**Transboundary Cases**

**Introduction**

As in the UK, the Gibraltar courts use an adversarial approach. Courts are unable to initiate an action by their own motion.
The relevant provisions of Directive 2003/4/EC on public access to environmental information are implemented in Gibraltar by the Freedom of Access to Information on the Environment Regulations 2005 ("FAIER").

Remedies
Where an applicant for information considers that the authority has failed to comply with a request or any other requirements of FAIER, he may make representations to the authority under regulation 11 of FAIER. Where an applicant for information is still dissatisfied either with the information disclosed by an authority, the withholding of information by an authority or the lack of response to an application for environmental information, that applicant may apply to the Gibraltar Regulatory Authority for a determination requiring the disclosure of information under regulation 16 of FAIER. If either the applicant or the party on whom a determination has been made is still dissatisfied after this process, then the determination may be appealed in the Magistrates’ Court under regulation 17 of FAIER. If an authority refuses a request it must write to the applicant as soon as possible and explain why the request was refused. It must say what exemptions apply (reg 12(4)&(5) or 13 of FAIER), the matters considered by the public authority in reaching its decision, and what the applicant can do if he or she wants to challenge the decision – reg. 11 or 17 of FAIER.

Procedure
FAIER imposes a duty upon a public authority that holds environmental information to make it available on request. That duty is subject to a number of exceptions found in regulations 12 and 13 of FAIER. A refusal of a request for environmental information must be made in writing as soon as possible and no later than 1 month after the date of receipt of the request, reg. 14 of FAIER. A person whose request has been refused may ask the authority to review its decision. The review decision must be notified as soon as possible, and not later than 2 months after receipt of the request for a review, reg.11 of FAIER. Where the refusal to disclose is maintained the person whose request has been refused ("the complainant") may apply for a determination from the Gibraltar Regulatory Authority as specified above.

IV Access to Justice in Public Participation

Administrative procedures
The Government’s Department of the Environment has responsibility for the regulation of and granting of licences in respect of environmental issues. Some of these powers are delegated to other organisations such as the Animal Welfare Centre (responsible for maintenance of the animal impounding services) or the Environmental Agency (responsible, amongst other things, monitoring air quality, waste and shipment of waste and integrated pollution control, control of waste, and pesticide control). The natural environment is protected by the comprehensive legal framework in particular through the Nature Protection Act 1991. Under this Act, significant areas of Gibraltar’s terrestrial and maritime environment have been designated as special areas of conservation under the Habitats and Wild Birds Directives (92/43 EEC, 2009/147/EC). The Act also provides for the designation of both terrestrial and marine protected areas other than those required by EU obligations.

The Government may appoint Wildlife Wardens to regulate these protected areas.

Where not provided for in any enactment, decisions of emanations of the State may be challenged through Judicial Review as set out below.

Judicial review of administrative procedures
The rules and procedures of judicial review in Gibraltar reflect those of England and Wales.

Review of land use planning decisions
Land use planning in Gibraltar is provided for under the Town Planning Act 1999. Development works cannot be carried out except under the authority of a permit granted by the Development Planning Commission ("the Commission"). Applications for a permit must be submitted to the Commission for approval. The Commission shall consider applications and either grant a permit, refuse a permit or grant a permit subject to conditions. Where the Commission refuses a permit or inserts a condition in the permit, the applicant for that permit may appeal the decision to the Development Appeals Tribunal. Appeals must be submitted in writing within 28 days of notification or the issue of the permit. Proceedings will be held by the Tribunal where it will hear the evidence and reach a decision. The decision of the Development Appeals Tribunal is final.

Environmental Impact Assessment (EIA)
EIA is prescribed for applications for planning permission for certain developments in Gibraltar by the Town Planning (Environmental Impact Assessment) Regulations 2000.

IPPC Decisions
In Gibraltar IPPC decisions are made under the Pollution Prevention and Control Regulations 2013.

Decisions of the Environmental Agency ("the Agency") under these Regulations may be appealed to the Minister with responsibility for the Environment (reg. 55). Appeals can only be brought by persons who have made an application under these Regulations. The Minister may affirm the decision of the Agency, direct the Agency to grant a permit or vary conditions of the permit, quash any or all of the conditions, direct the Agency to effect a transfer or accept a surrender or quash, affirm or vary a notice.

Where a person is dissatisfied with the determination by the Minister, he may appeal to the Magistrates’ Court on a point of law.

V Access to Justice against Acts or Omissions

Civil claims
The relevant law concerning the bringing of civil claims (in particular an action in nuisance) in Gibraltar reflects that of England and Wales.

Environmental liability
The EC Directive on Environmental liability (2004/35/CE) is implemented in Gibraltar by the Environmental Liability Regulations 2008. The competent authority for the purposes of this legislation is the Minister with responsibility for the Environment or such other person as he may delegate.

Under regulation 16, interested parties may notify the competent authority of any environmental damage of which there is an imminent threat. The notification must be accompanied by a statement explaining why the party will be affected by or has an interest in the damage. It must also give sufficient information for the competent authority to identify the location and nature of the incident. The competent authority must consider the notification and inform the interested party of the action it intends to take.

VI Other Means of Access to Justice
In Gibraltar an action for statutory nuisance – a nuisance as defined in the relevant statute - can be brought in a Magistrates’ Court under Part II of the Public Health Act. Where the Government considers summary proceedings inadequate, it may take proceedings in the Supreme Court. Section 81 of the Act sets out what constitutes a statutory nuisance. Under section 88 an individual aggrieved by a nuisance can make a complaint to a justice of the peace and thereby initiate proceedings. The court can make an order for the abatement of the nuisance under section 82 and where this notice is ignored; make a nuisance order under section 83.

The Gibraltar Public Services Ombudsman investigates complaints in relation to administrative action taken by public authorities. The Public Services Ombudsman is established by the Public Services Ombudsman Act 1998. Complaints may be made by a person aggrieved and, except in special
VII Legal Standing
The legal standing of non-governmental organisations and unincorporated associations in Gibraltar, and the rules for bringing a private civil action in nuisance, reflect that of England and Wales.

VIII Legal Representation
Gibraltar has an adversarial system. It is not compulsory to have a lawyer in any environmental hearing, whether at a planning or other inquiry or a judicial review.

IX Evidence
Rules relating to evidence in criminal and civil cases in Gibraltar reflect those of England and Wales.

X Injunctive Relief
Where legislation states that the bringing of the appeal does not suspend the decision or notice, that decision or notice will have immediate effect. In cases where the usual rule is that the notice is of no effect until the appeal is determined, the authority may be able to serve another notice to halt the activity immediately – e.g. a stoppage order in planning cases - Town Planning Act 1999, section 40. Where the Appeal Tribunal thinks fit, it may suspend the stoppage order pending the determination of the appeal, section 41.

XI Costs
An applicant seeking access to justice in environmental matters may have to pay court fees, lawyers' fees, expert witness' fees, expenses for other witnesses and the costs involved in preparing documents, plans etc.

Awards of costs
The rules in relation to costs in Gibraltar follow those of England and Wales.

XII Financial Assistance Mechanisms
Under the Supreme Court Rules 2000, the Civil Procedure Rules of England and Wales, including those rules relating to costs, are applicable to Gibraltar except where alternative rules are provided for under Gibraltar law.

Civil legal assistance in Gibraltar is provided by the Registrar of the Supreme Court. The provision of legal aid and assistance is governed by the Legal Aid and Assistance Act and the Legal Aid and Assistance Rules.

XIII Timeliness
The Environmental Agency must determine an IPPC application within 3 months of receiving the application. This period may be extended if an agreement is reached between the Environmental Agency and the applicant.

Applications for other licences may not have a legal requirement for determination within a specific time but authorities are encouraged to say how long it will take to issue the licence.

If a planning permit application is not determined within the required time it will be deemed to have been refused and the applicant may appeal to the Development Appeals Tribunal.

Court procedures
The time limitations for the bringing of judicial review applications in Gibraltar reflect those of England and Wales.

Time limits for the bringing of civil actions in nuisance, trespass or negligence in Gibraltar are set out in the Limitation Act. Under section 4 of the Limitation Act an action founded on a tort – such as nuisance – must be brought within 6 years from the date on which the cause of action accrued. In some circumstances, a civil action in negligence may be brought after the standard 6 year limitation period has expired.

Duration of cases
The duration of the case depends on the complexity of the legal and factual issues.

Deadline for judgments
There are no set deadlines for judges to give judgments. In some cases the judge will give judgment immediately after the advocates have addressed the Court. In other cases judgment will be given later.

As there are no set deadlines there are no sanctions against courts delivering decisions in delay.

XIV Other Issues
Representations on the environmental effect of a development can be made to the Development and Planning Commission during the EIA or planning permission process.

Alternative Dispute Resolution exists in Gibraltar. It is strongly encouraged by the civil courts. The pre-action protocol of England and Wales for judicial review applies to Gibraltar.
Mediation is frequently used in civil claims between individuals or corporate bodies.

**XV Being a Foreigner**

Nationality has no bearing on the ability of a person to prosecute or defend a claim before the Court. Use of different languages is allowed in court procedures. Languages such as French or German can be used with an interpreter. In criminal cases the court service will arrange for an interpreter for the duration of the case. In civil cases it is for the parties to make such arrangements and pay the fees.

**XVI Transboundary Cases**

Part III of the Town Planning (Environmental Impact Assessment) Regulations, 2000 deals with developments likely to have a significant transboundary effect. Under regulation 14, where the Commission is aware that a relevant development carried out in Gibraltar is likely to have significant effect on the environment of (or otherwise seriously affect) another Member State it shall deliver a notice to the Minister with responsibility for the Environment. The Minister shall send particulars of the development to the Member State, and give it a reasonable time to indicate whether it will participate in the EIA procedure. Where the Member State indicates it wishes to participate in the EIA procedure the authorities and public concerned shall be given an opportunity, before a permit for the development is granted, to forward to the Commission, their opinion on the information supplied. The Minister shall enter into consultations with the Member State concerned. When the application is determined, it shall inform the Member State of its decision, the reasons for that decision and where necessary a description of relevant measures to avoid, reduce or offset major adverse effects of the development.

Regulation 15 also makes provision for when the Minister for the Environment receives information on a project in another Member State that is likely to affect the environment in Gibraltar.

**Related links**

**Legislation**


**Public Bodies**


Gibraltar Citizens Advice Bureau  [http://cab.gi](http://cab.gi)

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**Annex D: Isle of Man**

The Isle of Man is a Crown Dependency and does not form part of the United Kingdom or of the European Union – Protocol 3 of the Accession Treaty 1972 applies to it. The Department of Environment Food and Agriculture is concerned with environmental matters. There is no specific legislation for EIA for projects on the Isle of Man but the Isle of Man Strategic Plan (Environment Policy 24) provides for EIA for development likely to have a significant effect on the environment. Judicial review of decisions on the environment can be done by a Petition of Doleance under the High Court Act 1991. There is no Freedom of Information Act for the Isle of Man. Access to environmental information can be obtained from the Isle of Man Government Laboratory. Statutory nuisances are provided for in Part 1 of the Public Health Act 1990. Individuals can bring an action against another person in common law for a nuisance, which can include an injunction.

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**Annex B: Guernsey**

The Bailiwick of Guernsey is a Crown Dependency and includes the separate jurisdictions of Alderney and Sark and the islands of Herm, Jethou and Lihou. Alderney and Sark have independent legislative, executive and judicial systems. Under Protocol 3 to the Accession Treaty of 1972 there is only a limited connection to the European Union for the purposes of free movement of goods. Other EU legislation does not generally apply. Pollution control law is mainly contained in the Environmental Pollution (Guernsey) Law 2004 while land use planning is provided for in the Land Planning and Development (Guernsey) Law 2005. There is provision for EIA in the Land Planning and Development (General Provisions) Ordinance 2007. Judicial review of decisions is available in the Royal Court of Guernsey under the rules in Practice Direction 3 of 2004. There is no freedom of information legislation in Guernsey. The Office of Environmental Health and Pollution Regulation has legal powers to prevent the recurrence of statutory nuisances under the Loi Relative à la Santé Publique, 1934 (as amended) and related legislation. Individuals can bring an action against another person in customary law for a nuisance, which can include an injunction.

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The Bailiwick of Jersey is a Crown Dependency. Under Protocol 3 to the Accession Treaty of 1972 there is only a limited connection to the European Union for the purposes of free movement of goods. International environmental legislation such as the Basel Convention on Wastes 1989 is implemented by statutes such as the Waste Management (Jersey) Law 2005. Environmental issues are dealt with mainly by the Planning and Environment Department. EIA is provided for by the Planning and Building (Environmental Impact) (Jersey) Order 2006. Government decisions on environmental matters can be challenged in the Royal Court by a petition of doleance which is “a remedy of last resort” in which the petitioner bears a heavy burden to show that a grave injustice needs to be remedied – The Attorney General v Michel [2006] JRC089. There is no freedom of information legislation in force in Jersey. Statutory nuisances can be dealt by the Minister under the Statutory Nuisance (Jersey) Law 1999, section 8 of which enables an action by a person aggrieved by a nuisance for which the Minister is responsible. Individuals can bring an action against another person in customary law for a nuisance, which can include an injunction.

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