Access to justice in environmental matters

Portugal

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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, decree-laws 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 It was revoked in 2014 by Law no. 19/2014 of 14 April.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: defence 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 environment 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*).

For reference, other key pieces of environmental legislation are: Environmental Liability Regime, Water Law and Water Resources Use Regime, Environmental Impact Assessment Regime, Industrial Emissions Regime, Regime of Prevention and Control of Pollutant Emissions into the Air, Waste Management Regime, Noise Regulation, Nature and Biodiversity Conservation Regime, National Ecological Reserve Regime, Sea Management and Planning Law, Law on Major Accident Hazards (Seveso), Law on Exposure to Magnetic and Electromagnetic Fields, Law on Geologic Resources and Forest Law.

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	
Reference number and date	**Environmental/procedural issues addressed**
STA 01362/12[36] 28 January 2016	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
STA 0848/08[37]	

7 January 2009	Summons to provide information, environmental protection, community law
STA no. 01456/03[38] 5 April 2005	Wind farm, environmental protection law, environmental impact assessment, environmental impact declaration, protected area
STA no. 045296[39] 17 June 2004	Environmental law, National Ecological Reserve, environmental impact assessment
STA 030275[40] 18 April 2002	Environmental law, legal presumption, waste management and treatment
STA 047807A[41] 1 August 2001	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
STA 46273A[42] 6 July 2000	Serious damage of public interest, environmental law, environmental protection
STA 000347[43] 6 April 2000	Environmental protection, *actio popularis* (popular action), jurisdiction of administrative courts
STA 044553[44] 16 June 1999	Legal standing, diffuse interests and environmental law
STA 027739[45] 25 June 1992	National ecological reserve, environmental law, violation of constitutional rules on competence of public organs and on omission of action

Case-law from STJ	
Reference number and date	**Environmental/procedural issues addressed**
STJ 215/15.7T8ACB.C1-A.S1[46] 26 September 2018	Administrative offence, environmental law
STJ 1853/11.2TBVFR.P2.S1[47] 5 April 2018	Emission of fumes, car paint shop, significant harm, right to environment and quality of life
STJ 1491/06.1TBLSB.P2.S1[48] 3 December 2015	Environment, personality rights, highway, right to quality of life, compensation, judicial presumption
STJ 990/10.5T2OBR.C3-A.S1[49] 9 July 2015	Opposition of judgments, administrative offence, environment, fine
STJ 111/09.7TBMRA.E1.S1[50] 6 September 2011	Extra contractual liability, personality rights, environment, property right, administrative act, material jurisdiction
STJ 07A1340[51] 29 May 2007	Extra contractual liability, right to quality of life, local authority, environment, natural reconstitution, obligation to compensate, causal link, prescription
STJ 05B3661[52] 26 January 2006	Landfill, administrative act, environment, pollution, generic risk, community directive
STJ 98B1090[53] 14 April 1999	Environment, diffuse interests, *actio popularis* (popular action), provisional procedures

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*)[56] 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)[57] 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 Central 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 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) Specialities 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 (*Inspecção-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* – CCDR)[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 paras 1 and 3 of ETAF). 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 CPTA). 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 CPTA).

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[74].

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)[75] 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[76].

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"[77].

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[78]. The cause of these ruling trends "may lie in judges being unfamiliar with environmental issues"[79]. 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"[80].

Prof. Aragão also clarifies why "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"[81].

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.

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

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 appeal 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[82]; 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). *Ipsis verbis* 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[84] 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)[85]. However, this is not an appeal to be brought before the national court, merely a request that the parties may ask the court[86].

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 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 Judges of the Peace (*Julgados de Paz*), though the latter is for specific situations not including conflicts where environmental interests are at stake. In Portugal, the alternative means for solving conflicts in the environmental area are mediation and arbitration[89].

There is a government online platform (*Portal do Cidadão* – Citizen Portal) for filing environmental claims[90] and also an online formulary or online desk through the IGAMAOT website. These are complaint forms for starting administrative sanctioning procedures which eventually will end up in Court but are not used to trigger out-of-court solutions.

Private mediation can be used in any field, including the environment[91]. 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[92].

Arbitration is only for rights of a patrimonial nature.

7) How can other actors help (ombudsperson (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 litigation, Collective and Diffuse Interests' was created in the General Prosecutor of the Republic[93] (*Departamento Central de Contencioso do Estado e Interesses Coletivos e Difusos* of the 'Procuradoria-Geral da República - PGR'), which is a coordinating body that represents the State before the Courts, is competent for civil, administrative and fiscal matters[94], 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[95].

The Portuguese Ombudsperson 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[96]). Its Statute is available in English (CRP and law of the ombudsperson) 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)[97].

ENGOs have legal standing to promote within the competent entities the administrative means of environmental protection and to initiate and intervene in administrative procedures (Article 9, par. 1 of Law no. 35/98).

The law grants legal standing to NGOs for intervening in judicial and administrative procedures, regardless of any direct interest in the case[98]. 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 (see question 1.4, 3) below).

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. 83 /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[99]. Although any citizen and civil organisations that defend environmental interests can challenge environmental decisions through a*ctio 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/IED, 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 (or 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[100], in spite of not being the victim of the environmental crime (Article 25 of APL)[101].

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[102].

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) [103].

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[104].

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**: Art. 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 fulfil 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 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 judge determines that 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 CPC).

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[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 not enough to cover the real costs of good experts. In that case, either the appellant pays the difference or chooses another expert"[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[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[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) Expert registries 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 ENGOs which are active is in Order no. 2226/2020 of 10 February 2020, List of ENGOs and equivalent active in the National Registry up to 31 December 2019[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 Conímbriga; 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 Grupo 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; Amigos dos Açores - Associação Ecológica; Clube de Montanhismo da Arrábida; ALMARGEM - Associação de Defesa do Património Cultural e Ambiental; Instituto Zoófilo Quinta Carbone; Associação de Estudos do Alto Tejo; OIKOS - Associação de Defesa do Ambiente e do Património da Região de Leiria; Onda Verde - Associação Juvenil de Ambiente e 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 Paul de Tornada – PATO; Associação de Defesa do Património Arouquense; 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 Esgueira (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 Vimaranense para a Ecologia; GPS - Grupo Proteção Sicó; Salta Fronteiras Associação; Rio Neiva - Associação de Defesa do Ambiente; Associação Vamos Salvar O Jamor; Cantinho dos Animais Abandonados de Viseu; Associação Onde Há Gato Não Há Rato; Abrigo de Carinho - Associação Amigos dos Animais; Cantinho do Tareco - Associação de Proteção Animal; Associação dos Amigos do Mindelo para a Defesa do Ambiente.

ENGOs with no allocated geographical scope: Sociedade Portuguesa de Espeleologia; Associação Portuguesa de Recursos Hídricos; Clube Bio-Ecológico "Amigos da Vida Selvagem"; URBE - Núcleos Urbanos de Pesquisa e Intervenção; A ROCHA - Associação Cristã de Estudos e Defesa do Ambiente; GRUPO LOBO - Associação para a Conservação do Lobo e do seu Ecossistema; Associação Portuguesa de Educação Ambiental (AsPEA); APEMETA - Associação Portuguesa de Empresas de Tecnologias Ambientais; Clube de Atividades de Ar Livre; Sociedade Portuguesa de Ecologia; Senhores Bichinhos - Associação de Proteção aos Animais; MOLIMA - Movimento para a Defesa do Rio Lima; Real 21 - Associação de Defesa do Rio Real; Sociedade Portuguesa para o Estudo das Aves; EURONATURA - Centro para o Direito Ambiental e Desenvolvimento Sustentado; Grupo Ecológico de Cascais; Campo Aberto - Associação de Defesa do Ambiente; TAGIS - Centro de Conservação das Borboletas de Portugal; Movimento Pró-Informação para a Cidadania e Ambiente; Montis - Associação de Conservação da Natureza; ZERO - Associação Sistema Terrestre Sustentável; Sociedade Portuguesa de Botânica; Amigos Picudos - Associação para a Preservação e Proteção dos Ouriços; ANP - Associação Natureza Portugal.

Equivalent to ENGOs, i.e. ENGOs without "status": Grupo de Arqueologia e Arte do Centro; Corpo Nacional de Escutas; AFURNA - Associação dos Antigos Habitantes de Vilarinho da Furna; Centro Português de Atividades Subaquáticas; MARCA - Associação de Desenvolvimento Local; Associação de Defesa

do Património Cultural e Natural de Soure; FORESTIS - Associação Florestal de Portugal; ARMERIA - Movimento Ambientalista de Peniche; PALOMBAR - Associação de Conservação da Natureza e do Património Rural; VENTO NORTE - Associação de Defesa do Ambiente e Ocupação dos Tempos Livres; TERRAS DENTRO - Associação para o Desenvolvimento Integrado; AFLOBEI - Associação de Produtores Florestais da Beira Interior; Associação - Ação, Liberdade, Desenvolvimento, Educação, Investigação, Ambiente – ALDEIA; Transumância e Natureza – Associação; APAMB - Associação Portuguesa de Inspeção e Prevenção Ambiental; Associação Florestal do Lima; Associação dos Escoteiros de Portugal; Arborea - Associação Agro-Florestal e Ambiental da Terra Fria Transmontana; Aguiar Floresta - Associação Florestal e Ambiental de Vila Pouca de Aguiar; Portucalea - Associação Florestal do Grande Porto; ANIA - Associação Ambiental; PCI - Paramédicos de Catástrofe Internacional; mc2p - Associação de Museus e Centros de Ciência de Portugal; SOS - Salvem o Surf - Associação Nacional de Defesa e Desenvolvimento do Surf; Associação de Produtores Florestais do Vale do Minho; Associação Florestal do Vale do Douro Norte; FLOPEN - Associação de Produtores e Proprietários Florestais do Concelho de Penela; Dão-Flora - Associação de Produtores Florestais; Serras e Povoados – Associação.

A National Registry of ENGOs (*Registo Nacional de Organizações não Governamentais de Ambiente e Equiparadas*) is maintained by APA. The name and scope of the ENGOs registered in this National Registry are provided in Order no. 2226/2020 of 10 February 2020.

The registration process for ENGOs of public utility is described on the APA website.

The following Portuguese ENGOs are associated with the European Environmental Bureau (EEB)[120]: Grupo de Estudos de Ordenamento do Território e Ambiente (GEOTA); Liga para a Protecção da Natureza (LPN); Associação Nacional de Conservação da Natureza (Quercus); Associação Sistema Terrestre Sustentável (ZERO). Quercus and ZERO are also members of Climate Action Network Europe (CAN Europe)[121].

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

Insofar as concerns the list of organisations which have received Community funding for environmental purposes, besides what is stated above on Portuguese ENGOs associated with EEB and CAN Europe, the following organisations are active in Portugal: World Wide Fund for Nature (WWF) and Birdlife International.

Portugal does not have any organisations accredited to UN 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).

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 means of challenging administrative decisions (which in Portuguese law are called administrative acts): administrative complaint (Articles 192 and 193 of the CPA)[123] for acts of negative content or positive content; and administrative appeal in cases of omission of an act[124]. The latter can be in the form of a hierarchical appeal (Articles 193 to 198 of the CPA)[125] or a special administrative appeal (Article 199 of the CPA)[126].

The following time limits apply[127]: for both administrative complaints or 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 to 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 first 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[128] 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.

Insofar as concerns 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 **5 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).**[132]**

According to Article 163 par. 2 of the CPA, annullable 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)[133]. 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[134],[135].

The second condition means that the administrative acts can only be challenged starting from the moment when they become effective[136].

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)[137].

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)[138].

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[139]. 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[140] 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[141].
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 pars. 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[142].
In a judicial challenge of an administrative act, there is no time limit for challenging null acts. For challenging annullable acts, the following time limits apply: **one year** for the public prosecutor; **3 months** for any other party (Article 58 of the CPTA)[143]. These time limits start from the moment of the knowledge that 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 requirement 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[144], 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[145] 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[146], the parties shall: present the evidence (list of witnesses and/or documents); request other evidence means to the court or refer that the required documents are available in the administrative body; present proof of pre-payment of the judicial fees due or, alternatively, proof of having legal aid (Article 78 par. 4 and Article 79 par. 1 of the CPTA). The court shall, *ex officio*, notify the defendant (i.e. the administrative body against whom the administrative action was brought to court), though the law does not set a time limit for this, except in cases of urgent notification upon request of the author and decided by the judge; the defendant shall respond to the initial application within **30 days** starting from the notification made by the court (Article 81 paras 1 and 2 and Article 82 par. 1 of the CPTA). Upon notification, the author may present a reply to the response of the defendant: **20 days** if the reply concerns the pleas of the response or **30 days** if the reply concerns a new request of the response (Article 85-A par. 3 of the CPTA). In the final hearing of the process, the parties shall make oral arguments, or, if the matters are complex, the parties may bring written arguments to court within **20 days** (Article 91 paras 3 and 5 of the CPTA).**[147]**

1.7.2. Interim and precautionary measures, enforcement of judgments

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

With regard to the effects of challenging administrative acts (through administrative complaint or appeal), the following must be taken into account - the effectiveness of the challenged administrative acts and the time limits[148].
The general rule is that if the complaint or appeal against the administrative act is optional (the majority of cases), the effects of the challenged administrative act are not suspended. If the complaint or appeal against the administrative act is mandatory, there is suspension of the administrative act.
Nevertheless, the plaintiff of the complaint may request (to the body competent to decide on the appeal) the suspension of effects of the administrative act 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 not an obstacle to suspension of the effectiveness of said administrative act, if the suspension can raise relevant utility concerning the

effects 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 [150] (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)[153].

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 paras 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)[157].

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 I 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[158]), 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; [159]; (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[160].

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[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[162].
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[163]), 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 advice: this grants the right to meet with a lawyer to obtain technical advice on the law applicable to concrete matters or cases where legitimate personal interests or rights are harmed or threaten to be harmed. However, this does not apply to non-profit organisations.

6) Does the 'loser party 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, filing 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 (Law 26/2016).

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 (Law n. 26/2016, 22 August).

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 https://justica.gov.pt/ 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. L) 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

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

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 screening criteria are covered by Annex III of DL 151-B/2013 transposing Annex III of the EIA Directive.
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)(ii));
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 proponent[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 and three months 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 onmes* binding force, retroactive effects (*ex tunc*) 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).
There is no special rule regarding standing of foreign NGOs in administrative proceedings or judicial actions, namely in Law 35/98, which establishes the right of ENGOs to procedural participation, their legal standing for promoting and being involved in environmental administrative procedures, and their legal standing to introduce judicial actions and to appeal[183]. See question 1.4, 3) above on the right of access to justice of foreign persons.

5) 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 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).

6) 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 two 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).

7) 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.

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?

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 *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 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 pars. 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) It is 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 CPTA), i.e. only final acts can be challenged after being issued/published. 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, 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).

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

DL 127/2013 does not set out such a requirement. Administrative review procedures are not mandatory.

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.

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).
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 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 information on access to justice provided to the public in a structured and accessible manner?
It is mandatory to inform the following in the dissemination of licensing requests[192], 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[194]
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.
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?
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 summonsing 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 pars. 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?

In 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 *lis pendens*, 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 978 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).

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[1] CRP adopted in 1976 and last amended in 2005 (*DR 155/05, 12.08*).

[2] 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.

[3] Article 2, par.1 of Law no. 11/87

[4] Law no. 19/2014 in English: Summary; Extended information.

[5] Translation of Articles 9 and 66 of the CRP.

[6] *Lei n.º 67/2007, de 31 de Dezembro, na redacção dada pela Lei n.º 31/2008, de 17 de Julho* (consolidated version).

[7] Law 67/2007 revokes Decree-Law no. 48051 of 21 November 1969, which approved the general regime of administrative responsibility. See Cadilha, Carlos, "*O novo regime de responsabilidade civil do Estado e demais entidades públicas pelo exercício da função administrativa*", and Leitão, Alexandra "

Duas questões a propósito da responsabilidade extracontratual por (f)actos ilícitos e culposos praticados no exercício da função administrativa: da responsabilidade civil à responsabilidade pública. Ilicitude e presunção de culpa", 2011.

[8] Caupers, João, *"(…) a Lei n.º67/2007, no seu artigo 2.º, salvaguarda os regimes especiais de responsabilidade civil por danos decorrentes da função administrativa, como é o caso do regime jurídico da responsabilidade por danos ambientais*" in "*A Responsabilidade do Estado e Outros Entes Públicos", Faculdade de Direito da Universidade Nova de Lisboa.*

[9] Law 35/98 (consolidated text here).

[10] Marcelino, M. 2017. Portugal Implementation Report. Page 69.

[11] For further developments, see Canotilho, J. J. Gomes and Moreira, Vital. 2007. "Constituição da República Portuguesa Anotada – Volume I". Coimbra Editora. Pages 278 and 279.

[12] For further developments, see, Gomes, Carla Amado, CONSTITUIÇÃO E AMBIENTE: ERRÂNCIA E SIMBOLISMO, ICJP, CDIP, March 2006. Also J. J. GOMES CANOTILHO e VITAL MOREIRA, Constituição da República Portuguesa. Anotada, 3ª ed., Coimbra, 1993, pp. 346 segs, and JORGE MIRANDA e RUI MEDEIROS, Constituição da República Portuguesa Anotada, I, Coimbra, 2005, pp. 680 segs.

[13] For extended information and comments on *Actio Popularis*, see page 45 Development of an assessment framework on environmental governance in the EU Member States - Portugal (February 2019). See also Aragão, Alexandra, "Study on the Implementation of Articles 9.3 and 9.4 of the Aarhus Convention in Portugal". Universidade de Coimbra, 2012, Page 27. See also Martin NESBIT, Tsvetelina FILIPOVA, Thorfinn STAINFORTH, Johanna NYMAN, Christine LUCHA, Aaron BEST, Heidi STOCKHAUS, Stephen STEC. May 2019, page 62. "Development of an assessment framework on environmental governance in the EU Member States No 07.0203/2017/764990/SER/ENV.E.4 Final report".

[14] Source: NESBIT et al., May 2019, page 18.

[15] *Lei n.º 83/95, de 31 de Agosto sobre o Direito de participação procedimental e de acção popular* (full consolidated text).

[16] As stated in the Preamble of Law 83/95: "A Assembleia da República decreta, nos termos dos artigos 52.º, n.º 3, 164.º, alínea d), e 169.º, n.º 3, da Constituição(…)".

[17] See Aragão. 2012. Page 28.

[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 41/2013, 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.

[19] For more information on costs of judicial procedure, see Aragão, 2012, pages 21-22 and 28.

[20] *Lei n.º 19/2014 de 14 Abril.*

[21] *Lei n.º 50/2006, de 29 de Agosto* (consolidated text). See Aragão, 2012, pages 4-8 for extended comments on the history of Law 50/2006, namely the changes in 2009 regarding issues of broad scope of liability, set of preventive measures, inspection powers of the competent authorities, sanctioning scheme.

[22] General Regime and Process of Administrative Offences, Decree-Law no. 433/82 of 27 October 1982, as last amended by Law no. 109/2001 of 24 December 2001, *Decreto-Lei n.º 433/82, de 27 de Outubro, Institui o Ilícito de mera ordenação social e respectivo processo* (consolidated text).

[23] Decree-Law no. 48/95 of 15 March, as last amended by Law no. 102/2019 of 6 September, approving the Penal Code (consolidated text).

[24] For further information on eco-crimes, see Aragão, 2012, page 10.

[25] CPTA approved by Decree-Law no. 214-G/2015, as last amended by Law 118/2019, which changes profoundly the previous version of the CPTA (consolidated text).

[26] Article 9.

[27] The Public Prosecutor (*Ministério Público*) is governed by Law no. 68/2019 of 27 August 2019, as amended by Law no. 2/2020 of 31 March 2020, approving the Statute of the Public Prosecutor- *Lei n.º 68/2019, de 27 de Agosto, Estatuto do Ministério Público – EMP* (consolidated text).

[28] Without prejudice to the rights established in 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, transposing 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. *Lei n.º 26/2016, de 22 de Agosto* (consolidated full text). The responsibility for ensuring compliance with Law 26/2016 lies with the Commission for Access to Administrative Documents (*Comissão de Acesso aos Documentos Administrativos*- CADA), which is an independent administrative entity that operates under the aegis of the Portuguese Parliament (Assembly of the Republic – *Assembleia da República*).

[29] *Decreto-Lei n.º 4/2015, de 7 de Janeiro* (full text which has not undergone any changes).

[30] See also Aragão, 2012, pages 16-17.

[31] Law no. 35/98 of 18 July 1998, as amended by Law no. 82-D/2014 of 31 December 2014 (consolidated text).

[32] *Portaria n.º 478/99, de 29 de junho, que aprova o Regulamento do Registo Nacional das Organizações não Governamentais de Ambiente (ONGA) e Equiparadas, alterada pelas Portarias n.º 71/2003, de 20 de janeiro, e n.º 771/2009, de 20 de julho.*

[33] Aragão, 2012, page 14.

[34] Aragão, 2012, page 29. Also see page 23 for a broad description of environmental case-law.

[35] An additional list of case-law on environmental issues from 1988 to 1993 can be found on pages 69 and 70 of Implementation report - Portugal. Also Castro Verde Highway (cf. C-239/04) is quoted on page 23 of Jan Darpö. 2013. "Effective Justice? Synthesis report of the study on the Implementation of Articles 9.3 and 9.4 of the Aarhus Convention in the Member States of the European Union".

[36] *Acórdão do STA n.º 01362/12 de 28/01/2016.*

[37] *Acórdão do STA n.º 0848/08 de 07/01/2009.*

[38] *Acórdão STA n.º 01456/03 de 05/04/2005.*

[39] *Acórdão STA n.º 045296 de 17/06/2004.*

[40] *Acórdão do STA n.º 030275 de 18/04/2002.*

[41] *Acórdão do STA n.º 047807A de 01/08/2001.*

[42] *Acórdão do STA n.º 46273A de 06/07/2000.*

[43] *Acórdão do STA n.º 000347 de 06/04/2000.*

[44] *Acórdão do STA n.º 044553 de 16/06/1999.*

[45] *Acórdão do STA n.º 027739 de 25/06/1992.*

[46] *Acórdão do STJ n.º 215/15.7T8ACB.C1-A.S1 de 26/09/2018.*

[47] *Acórdão do STJ n.º 1853/11.2TBVFR.P2.S1 de 05/04/2018.*

[48] *Acórdão do STJ n.º 1491/06.1TBLSB.P2.S1 de 03/12/2015.*

[49] *Acórdão do STJ n.º 990/10.5T2OBR.C3-A.S1 de 09/07/2015*.
[50] *Acórdão do STJ n.º 111/09.7TBMRA.E1.S1 de 06/09/2011*.
[51] *Acórdão do STJ n.º 07A1340 de 29/05/2007*.
[52] *Acórdão do STJ n.º 05B3661 de 26/01/2006*.
[53] *Acórdão do STJ n.º 98B1090 de 14/04/1999*.
[54] The official journal is the *Diário da República*.
[55] Source: overview of the court system in Portugal. Tribunal Constitucional
[56] Law no. 13/2002 of 19 February 2002, as last amended by Law no. 114/2019 (consolidated full text).
[57] According to information on the Public Prosecutor webpage.
[58] See following paragraphs of this question.
[59] Approved by Law no. 52/2008 of 28 August, as last amended by Law no. 62/2013 of 26 August (consolidated text).
[60] Jurisdiction is divided between the different courts in accordance, inter alia, with the following criteria:(i) The matter that is being judged; (ii) The position of the court within the judicial hierarchy; (iii) The amount that is being claimed; (iv) The types of procedures of the specific case and; (v) The territory.
[61] Article 31 of ETAF.
[62] Article 212 of the CRP and Article 12(2) of ETAF.
[63] For information on how the parties can themselves attribute jurisdiction to a court that would not be competent otherwise, see point 2.2.2.3 of Jurisdiction - Portugal
[64] Source: 2.1 of Jurisdiction - Portugal
[65] NESBIT et al., May 2019, pages 69 and 74. "In Portugal, there is a focus on (…) enabling the courts' human resources to cope better with environmental law challenges. The Centre for Judiciary Studies (*Centro de Estudos Judiciários* - CEJ) provides a course on environmental topics for magistrates."
[66] Princípio da tutela jurisdicional efetiva (see question 1.7.2 below).
[67] Source Aragão, 2012, page 20.
[68] Law no. 4/2004 of 15 January (consolidated text).
[69] Law no. 3/2004 of 15 January (consolidated text).
[70] The reason for having more than three administrative tiers (like the majority of EU Member States) is the autonomous regions of the Azores and Madeira in Portugal, as explained in NESBIT et al., page 30.
[71] Consolidated DL 251-A/2015, as amended.
[72] The CCDR correspond to the five regions of Portugal: CCDR Norte, CCDR Centro, CCDR Lisboa e Vale Tejo, CCDR Alentejo and CCDR Algarve.
[73] Aragão, 2012, pages 11-13.
[74] See page 4 Development of an Assessment Framework onEnvironmental Governance in EU Member States – Country fiche Portugal. See also Aragão, 2012, page 14.
[75] http://www.cada.pt/ Ver também questão 1.1, 3) acima.
[76] Aragão, 2012, page 13.
[77] Aragão, 2012, page 14.
[78] Several examples given on pages 48 and 49 of Development of an assessment framework on environmental governance in the EU Member States - Portugal (February 2019)
[79] Page 50 of Development of an assessment framework on environmental governance in the EU Member States - Portugal (February 2019)
[80] Page 16 of Effective Justice? - Synthesis report of the study on the Implementation of Articles 9.3 and 9.4 of the Aarhus Convention in the Member States of the European Union
[81] Aragão, 2012, pages 2 and 30.
[82] See also Question 1.5, 2) below.
[83] Code of Criminal Procedure approved by Decree-Law no. 78/87 of 17 February 1987, as last amended by Law no. 102/2019 of 6 September 2019 (full consolidated text).
[84] Case-law on preliminary ruling requested by a defendant within an administrative offence appeal.
[85] Preliminary ruling before the CJEU
[86] Source of information: 'Justiça Comunitária', Instituto de Estudo Estratégicos e Internacionais.
[87] The problematics of preliminary rulings are presented on the website of the Law Bar A problemática do reenvio prejudicial Ramos, Vânia Costa. Procedural rights in criminal proceedings giving opinion on practical utility of preliminary ruling within ECHR: 'Forum Direitos Fundamentais nos Processos Penais na Europa'.
[88] Carla Câmara, 2012. "Guia prático do reenvio Prejudicial". Centro de Estudos Judiciários.
[89] For general information on alternative means for resolving disputes in Portugal, see "Do I have to go to court or is there another alternative?"
[90] Queixa Ambiental, IGAMAOT
[91] Resolução de Litígios - Mediação *Mediação privada sobre qualquer área, incluindo ambiental; mediação pública só mediação familiar, laboral e penal*.
[92] Detailed information on mediation can be found at Mediation in Member States - Portugal.
[93] The "*Procuradoria-Geral da República*" (PGR) is the supreme body of the Public Prosecutor comprising, among other internal bodies, the General Public Prosecutor and the Vice-General Public Prosecutor (Articles 220 par. 1 and 2 of the CRP and Article 15.º of Law no. 68/2019 of 27 August 2019 approving the Statute of the Public Prosecutor - see the following paragraph in this same question).
[94] Website of the Central Department of State litigation, Collective and Diffuse Interests.
[95] See NESBIT et al., May 2019, page 95, which quotes Signing of Protocols with IGAMAOT and APA, Portal of Public Prosecutor.
[96] Lei n.º 9/91, de 09 de Abril, *Estatuto do Provedor de Justiça* (consolidated texto).
[97] The Environmental Implementation Review 2019 – Country report Portugal, page 36.
[98] 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.
[99] 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)

[100] 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.
[101] Aragão, 2012, pages 16-17. For an extended explanation on *actio popularis*, see Aragão, 2012, pages 17-20.
[102] 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
[103] Gomes, Carla Amado, 2014, e-book "A TRILOGIA DE AARHUS" Conferência promovida pelo ICJP em 23 de Outubro de 2014.
[104] Gomes, 2014, page 84.
[105] Aragão, 2012, page 18.
[106] Aragão, 2012, page 28.
[107] See also point 8 (In which language can I make my application) of How to proceed? - Portugal
[108] Decree-Law no. 34/2008 of 26 February, 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.
[109] 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.
[110] Source: Sandra Oliveira e Silva. 2012. "The right to interpretation and translation in Criminal Proceedings: Portuguese Law Standards".
[111] https://ec.europa.eu/competition/antitrust/actionsdamages/national_reports/portugal_en.pdf
[112] See also above Question 1.3, 5).
[113] 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).
[114] 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).
[115] Aragão, 2012, page 23.
[116] 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.
[117] Article 5 par. 2 and Annex Regulation n.º 9/2016 of 6 January 2016 (*Regulamento n.º 9/2016 (Série II), de 6 de Janeiro de 2016*).
[118] 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*).
[119] Aviso n.º 2226/2020 (Série II) 10 de Fevereiro de 2020, Lista das organizações não governamentais de ambiente (ONGA) e equiparadas com a inscrição ativa no Registo Nacional, até 31 de dezembro de 2019.
[120] https://eeb.org/who-we-are/our-members/ "EEB is Europe's largest network of ENGOs, bringing together around 150 civil society organisations from more than 30 European countries"
[121] http://www.caneurope.org/ Europe's largest coalition working on climate and energy issues.
[122] Extensive analysis of administrative and judiciary rules on challenging administrative decisions can be found in "A Revisão Do Código De Processo Nos Tribunais Administrativos – II, Jurisdição Administrativa e Fiscal", Centro de Estudos Judiciários (CEJ), April 2017, in particular the following relevant Articles: Cadilha, Carlos, "*Repercussões do novo código de procedimento administrativo no direito processual administrativo*", pages 27 *et seq.*, in particular pages 37-39 (paras 9-12 - *Impugnações administrativas*); and Carvalho, Ana Celeste, "*O Novo Regime da Acção Administrativa",* pages 83-133.
[123] An administrative complaint means a complaint against the body that was itself responsible for committing (or omitting) the challenged administrative act.
[124] Cadilha in CEJ, April 2017, page 29.
[125] A hierarchical appeal means an internal appeal progressing within the hierarchy of Public Administration, i.e. from a lower- to a higher-level body. Whenever 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.
[126] 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).
[127] 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.
[128] 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.
[132] See Quadros, Fausto, "*Principais alterações ao código de processo nos tribunais administrativos*" (Pages 11-22) in CEJ, April 2017, page 13.
[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 Sul 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*").
[134] Lisboa, Helena, "*Suspensão de Eficácia do Ato Administrativo e A Resolução Fundamentada* – Dissertação de *Mestrado profissionalizante pré-bolonha em direito administrativo*", University of Lisbon Faculty of Law (*Universidade de Lisboa Faculdade de Direito*), March 2019, page 56.
[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).

[137] Source CEJ, April 2017, page 29.

[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 ETAF e do CPTA", AAFDL, 2016, retrieved from A Revisão do ETAF 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 brough to the court as well as the possibility of executing such judicial decision and obtaining the injunction measures, preventative 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.

[142] CEJ, April 2017, page 96.

[143] For the form of counting the deadlines of Article 58 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.

[153] Aragão, 2012, page 19.

[154] The moment of such early stage is when the judge makes a liminal appraisal of the process regarding procedural issues, such as ordering 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.

[157] Quadros in CEJ, April 2017, page 19.

[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

[160] Santos, Ricardo and João Vaz, João, "Development of an assessment framework on environmental governance in the EU Member States - No 07.0203/2017/764990/SER/ENV.E.4 Environmental Governance Assessment Portugal", February 2019, page 50.

[161] See question 1.4, 1) above.

[162] Source Aragão, 2012, pages 8-9.

[163] Ministry of Justice (MJ) websites https://www.portugal.gov.pt/pt/gc21/area-de-governo/justica and https://justica.gov.pt/ .

[164] Case-Law no. 591/2016 of 13 December 2016 and Case-Law no. 242/2018 of 7 June 2018, both of the Constitucional Court, *Acórdão do Tribunal Constitucional n.º 591/2016*, de 13/12.

[165] Source Aragão, 2012, pages 8-9.

[166] VDA, 2019, page 9.

[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 adamant 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.

[169] IPPC - Integrated Pollution Prevention and Control.

[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 depor 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, nºs 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 proceed? - 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 both 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 Marinhas 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 contrainteressadas 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, lauched in 2015, is used for information dissemination and participation in environmental issues.

[183] Centro de Estudos Judiciários "e-book Direito Administrativo" (2014), Page 354. See also legal opinion defending the possibility of future establishment of "an international environmental court" of Berrance, Maria Eduarda Varzim, "A Tutela Jurisdicional Ambiental – Uma Tutela Civil ou Administrativa?" (Outubro 2015), Universidade o Minho, Escola de Direito.

[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".

[187] DL 127/2013 consolidates in one unique legal act the following five regimes: integrated pollution prevention and control originating in certain activities, established by Decree-Law no. 173/2008 of 26 August transposing Directive no. 96/61/EC; limitation of air emissions of certain pollutants originating in big combustion plants, established by Decree-Law no. 178/2003 of 5 August transposing Directive no. 2001/80/EC; waste incineration and co-incineration, established by Decree-Law no. 85/2005 of 28 April transposing Directive no. 2000/76/EC; limitation of emission of volatile organic compounds resulting from the use of organic solvents in certain activities and installations, established by Decree-Law no. 242/2001 of 31 August transposing Directive no. 1999/13/EC; conditions of licensing for discharge, storage, deposit on or injection into soil of wastewater or waste from the industry of titanium dioxide, established in Order no. 1147/94 of 28 December transposing Directive no. 78/176/EEC, no. 82/883/EEC and no. 92/112/EEC.

[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(4) 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;
subjection 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.
[195] Formulary of request for action and Support Guide for files in the formulary available here.
[196] Espoo Convention approved by Decree no. 59/99 of 17 December 1999. For more information, see Mário João de Brito Fernandes, *Yearbook of International Environmental Law*, Volume 23, Issue 1, 2012, pages 400–402, 30 November 2013.
[197] Decree-Law no. 232/2007 of 15 June 2007 approves the legal regime of evaluation of effects of certain plans and programms on the environment, transposing Directive 2001/42/EC of the European Parliament and of the Council of 27 June 2001 and Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, as amended by Decree-Law 58/2011 of 4 May 2011 (DL 232/2007) *Decreto-Lei n.º 232/2007 de 15 de Junho, Estabelece o regime a que fica sujeita a avaliação dos efeitos de determinados planos e programas no ambiente, transpondo para a ordem jurídica interna as Directivas n. os 2001/42/CE, do Parlamento Europeu e do Conselho, de 27 de Junho, e 2003/35/CE, do Parlamento Europeu e do Conselho, de 26 de Maio, alterado pelo Decreto-Lei n.º 58/2011 de 5 de Maio de 2011* (full consolidated text).
[198] https://apambiente.pt/index.php/avaliacao-e-gestao-ambiental/assuntos-internacionais
[199] For instance, Gomes (2014) (see Question 1.4, 3).
[200] See question 1.7.4, 5) above.
[201] See also David, Sofia, "*A casuística dos estrangeiros e das migrações na jurisdição administrativa*", in e-book "*O contencioso de direito administrativo relativo a cidadãos estrangeiros e ao regime da entrada, permanência, saída e afastamento do território português, bem como do estatuto de residente de longa duração"* 2ª edição, CEJ, 29/12/2017. Page 273 («*O Sistema de Acesso ao Direito e à Justiça está actualmente consagrado na Lei n.º 34 /2004, de 29-07 (alterada pela Lei n.º 47/2007, de 28-08), destinando-se a «assegurar que a ninguém seja dificultado ou impedido, em razão da sua condição social ou cultural, ou por insuficiência de meios económicos, o conhecimento, o exercício ou a defesa dos seus direitos» - cf. art.º 1.º, do citado diploma. Este sistema inclui a informação e a protecção jurídicas – cf. arts.º 4.º e 6.º, da Lei n.º 34/2004, de 29-07.Nos arts.º 7.º, 8.º, n.º 1, 8.º-A e 8.º-B, da 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 o tenham noutro Estado, desde que o direito de protecção jurídica seja atribuído aos portugueses pelas leis do respectivo 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 announcement of publicising the 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.

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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]

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. 140/99 of 24 April 1999 regulating Natura 2000 Network, as last amended by Decree-Law no. 156-A/2013 of 8 November 2013 (DL 140/99)[2], transposing Habitats Directive 92/43/EEC[3];
Law no. 58/2005 of 29 December approving the Water Law, as last amended by Law no. 44/2017 of 19 June 2017[4], transposing Water Framework Directive 2000/60/EC; the Water Law is implemented by Decree-Law no. 226-A/2007 of 31 May 2007 approving the Water Resources Use Regime, as last amended by Decree-Law no. 97/2018 of 27 November 2018 (DL 226-A/2007)[5];
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);
Decree-Law no. 178/2006 of 5 September 2006 approving the Waste Management Regime, as last amended by Decree-Law no. 152-D/2017 of 11 December 2017 (DL 178/2006)[7], transposing Directive 2008/98/EC;
Noise Regulation, consisting of both Decree-Law no. 9/2007 of 17 January 2007 approving the General Noise Regulation, as last amended by Decree-Law no. 278/2007 of 1 August 2007 (DL 9/2007)[8], and Decree-Law no. 146/2006 of 31 July 2006 regulating assessment and management of environmental noise, as last amended by Decree-Law no. 136-A/2019 of 6 September (DL 146/2006)[9], which transpose Directive 2002/49/EC and Directive (EU) 2015/996.
Other environmental regimes not transposing Directives:
Decree-Law no. 142/2008 of 24 July 2008 approving the Nature and Biodiversity Conservation Regime, as last amended by Decree-Law no. 42-A/2016 of 12 August 2016 (DL 142/2008)[10], and Decree-Law no. 166/2008 of 22 August 2008 approving the National Ecological Reserve Regime, as last amended by Decree-Law no. 124/2019 of 28 August 2019 (DL 166/2008)[11];
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 concerned 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]:

Reference number and date	Issues addressed
Case-law concerning DL 140/99 and Directive 92/43	
STA 0996/06 25 September 2012[17]	Development plan of the Natural Park Sintra-Cascais; principle of trust; principle of proportionality; land use plan; right to participation
STA 047310 15 February 2007[18]	Expropriation of public utility; highway; waters; Natura Network; aquifer
STA 46273A 6 July 2000[19]	Suspension of the effects of administrative acts; serious injury of public interest; environmental law; environmental protection
STA 031535 14 October 1999[20]	Transposition of Directive; immediate effect; preliminary ruling; protection area; Vasco da Gama bridge
Case-law concerning Law 58/2005 and Directive 2000/60	
STA 0458/15 17 February 2016[21]	Water resources fees; principle of tax legality; organic unconstitutionality
STA 0848/08 7 January 2009[22]	DL 226-A/2007; summons to provide information; environmental protection; community law
Case-law concerning DL 9/2007 and Directive 2002/49	
STA 01273/13 3 December 2014[23]	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 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 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 has terminated. Such suspension of the deadline does not prevent the interested party from introducing a judicial review even if the administrative review is already ongoing neither from requiring injunctive relief (Article 59 pars. 4 and 5 of the CPTA).

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[27]);

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[28]. 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[29]

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[30].

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 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, 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 prepare and participate 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, 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 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]**

The National Action Plan for Energy Efficiency 2013-2016 and the National Action Plan for Renewable Energy were subject to public consultation[45].

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.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[46]

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 178/2006). 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 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 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 38 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[50]

Decree-Law no. 127/2008 of 21 July 2008 implementing Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register (DL 127/2008)[51].
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 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.?

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.

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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] *Decreto-Lei n.º 140/99, de 24 de Abril*, na última redacção dada por Decreto-Lei n.º 156-A/2013, de 8 de Novembro (Rede Natura 2000). Consolidated text to be updated. Article 10 of DL 140/99 transposes Article 6 of the Habitats Directive.

[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.

[4] *Law No 58/2005 of 29 December 2005, as amended most recently by Law No 44/2017 of 19 June 2017* (consolidated text).

[5] *Decree-Law No 226-A/2007* of 31 May 2007 'System for the use of water resources', as amended most recently by Decree-Law No 97/2018 of 27 November 2018 (full consolidated text).
[6] *Decree-Law No 150/2015, of 5 August*
[7] *Decree-Law No 178/2006* of 5 September 2006 'General waste management system', as amended most recently by Decree-Law No 152-D/2017 of 11 December 2017 (full consolidated text).
[8] *Decree-Law No 9/2007* of 17 January 2007 'General Noise Regulation', as amended most recently by Decree-Law No 278/2007 of 1 August 2007 (full consolidated text).
[9] *Decree-Law 146/2006* of 31 July 2006 'Assessment and management of ambient noise', amended by Decree-Law No 136-A/2019 of 6 September 2019 (full consolidated text).
[10] *Decree-Law No 142/2008* of 24 July 2008 'Legal framework for nature conservation and biodiversity', as amended most recently by Decree-Law No 42-A/2016 of 12 August 2016 (full consolidated text).
[11] *Decree-Law No 166/2008*, of 22 August 2008 'Legal framework for the National Ecological Reserve', as amended most recently by Decree-Law No 124/2019 of 28 August 2019.
[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).
[14] Articles 31 and 11(1) of DL 150/2015 transpose Articles 22 and 11 of the Directive.
[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.
[17] *Acórdão do STA n.º 0996/06 de 25/09/2012*.
[18] *Acórdão do STA n.º 047310 de 15/02/2007*.
[19] *Acórdão do STA n.º 06/07/2000 de 06/07/2000*.
[20] *Acórdão do STA n.º 031535 de 14/10/1999*.
[21] *Acórdão do STA n.º 0458/15 de 17/02/2016*.
[22] *Acórdão do STA n.º 0848/08 de 07/01/2009*.
[23] *Acórdão do STA n.º 01273/13 de 03/12/2014*.
[24] Source: Aragão, 2012, page 20.
[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 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.
[27] Cristiana 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.
[30] Source Aragão, 2012, page 20.
[31] 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.
[32] Source: 5th National Report on Implementation of the Aarhus Convention - 2017 (*5º Relatório Nacional de Implementação da Convenção de Aarhus – NIR 2017*). APA. Page 40 *et seqs*.
[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*.
[34] Approved by Resolution 56/2015 of 30 July 2015. *Resolução do Conselho de Ministros n.º 56/2015 de 30 de Julho, Aprova o Quadro Estratégico para a Política Climática (QEPiC), o Programa Nacional para as Alterações Climáticas (PNAC 2020/2030) e a Estratégia Nacional de Adaptação às Alterações Climáticas (ENAAC 2020).*
[35] Approved by Order n.º 241-B/2019 of 31 de July 2019. *Portaria n.º 241-B/2019, de 31 de Julho, Aprova o PERSU 2020+, que constitui um ajustamento às medidas vertidas no Plano Estratégico para os Resíduos Urbanos (PERSU 2020).*
[36] Approved by Resolution 11-C/2015 of 16 March 2015. Resolução do Conselho de Ministros n.º 11-C/2015, de 16 de Março, Aprova o Plano Nacional de Gestão de Resíduos para o horizonte 2014-2020.
[37] Approved by Resolution 100/2017 of 11 July 2017. *Resolução do Conselho de Ministros n.º 100/2017, de11 de Julho, Aprova a Estratégia Nacional de Educação Ambiental para 2017-2020 (ENEA 2020).*
[38] Approved by Resolution 46/2016 of 26 de Agosto 2016. *Resolução do Conselho de Ministros n.º 46/2016, de 26 de Agosto, Aprova a Estratégia Nacional para o Ar (ENAR 2020).*
[39] Approved by Resolution 20/2013 of 10 April. Resolução do Conselho de Ministros n.º 20/2013, de 10 de Abril, Aprova o Plano Nacional de Acção para a Eficiência Energética para o período 2013-2016 e o Plano Nacional de Acção para as Energias Renováveis para o período 2013-2020.
[40] *5º Relatório Nacional de Implementação da Convenção de Aarhus – 2017 (NIR 2017).* APA. Page 52 et seq.
[41] Source Aragão, 2012, page 20.
[42] Sources https://apambiente.pt/residuos/antecedentes-0; NIR 2017, page 56.
[43] Information from APA on the ENAR 2020

[44] Source NIR 2017, page 56. Also Paragraph 7 of ENAR 2020 on public consultation.
[45] According to Resolution 20/2013, the public consultation was made available through the document *«Linhas estratégicas para a revisão dos Planos Nacionais de Ação para as Energias Renováveis e Eficiência Energética»*.
[46] 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.
[47] NIR 2017, APA, page 4.
[48] The administered means all the addressees of the acts practised by the Public Administration.
[49] Source Aragão, 2012, page 20.
[50] 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
[51] Decree-Law No 127/2008, of 21 July 2008 regulating implementation in national law of Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register, as amended by Decree-Law No 6 /2011 of 10 January 2011. Consolidated text not available.
[52] Decreto Legislativo Regional n.º 19/2010/A, de 25 de Maio, Regulamenta a elaboração e disponibilização de relatórios e informação pública sobre o estado do ambiente, regula o apoio às organizações não governamentais de ambiente, alterado pelo Decreto Legislativo Regional n.º 12/2019/A, de 30 de Maio (full consolidated text).
[53] For further developments see Blanco de Morais, Carlos, Novidades em matéria da disciplina dos regulamentos no código de procedimento administrativo, p. 4.
[54] Source Aragão, 2012, page 20.
[55] See for instance main online tools for case-law searching referred to in question 1.7.4, 2) above and Gomes' e-book referred in question 1.8.1, 2) above.
[56] For an example of such a preliminary reference, see Case C-281/16, *Vereniging Hoekschewaards Landschap*, ECLI:EU:C:2017:774
[57] The problematics of preliminary rulings are presented on the website of the Law Bar *A problemática do reenvio prejudicial* Ramos, Vânia Costa. Procedural rights in criminal proceedings giving opinion on practical utility of preliminary ruling within ECHR: Forum Direitos Fundamentais nos Processos Penais na Europa.
[58] Source of information: Questões prejudiciais
[59] See tables concerning references for preliminary rulings by Member States (2015-2019) on page 163 of "*Statistics concerning the judicial activity of the Court of Justice*".

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

Other relevant rules on appeals, remedies and access to justice in environmental matters are provided in the following legal regimes:
administrative executive process (CPTA);
payment of penalty for non-fulfilment of the Public Administration duty to execute administrative courts decisions (CPTA); and
administrative appeals against omissions of administrative action (CPTA).

Articles 157 to 179 of the CPTA regulate the **administrative executive process**, that is the process applicable to contempt of judicial decisions by administrative courts against public bodies. The administrative executive process can also be used to: obtain the execution of unchallengeable administrative acts[1] which the Administration does not duly execute (Article 157 par. 2); obtain the execution of any executive title issued within a legal administrative relation against a public legal person, a ministry or a regional administrative body (Article 157 par. 4).[2] The general principle is that the decisions of administrative courts are mandatory for all public and private entities and outweigh any decisions of administrative authorities. This means that any administrative act in contempt of judicial decision is null, so when the judgment of the court is not followed and respected, the authors of such null act are subject to civil, criminal and disciplinary liability (Article 158 pars. 1 and 2). The civil liability of the authors of the null act involves the public body itself (i.e. the Administration) and the respective responsible officers; the disciplinary liability involves the responsible officers; and the criminal liability (crime of disobedience) involves the public administrative body when such administrative body clearly and unlawfully indicates its intention to not execute the court decision (Article 159). The moment when the court decision becomes effective counts as the start of the period for the Administration to execute such court decisions or, where the court decision has been subject to non-suspensive appeal, such period starts from the time of notification of such appeal to the Administration (Article 160).

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 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 fulfil the duties that were not fulfilled under that same act (Articles 173 to 179 of the CPTA).

Without prejudice to the civil, criminal or disciplinary liability mentioned above, administrative courts have the power to impose **penalty payments** whenever appropriate (Article 3 par. 2 of the CPTA), as replied above to Questions 1.2, 4) and 1.7.1, 2). The penalty payment consists of condemning the responsible officer in the administrative body tasked with execution of the court decision to pay a sum of money for each overdue day. For such purpose, the responsible

officer shall be individually identified. Such sum of money is fixed under reasonable criteria between 5% and 10% of the minimum wage. The penalty payment ends when the court decision is fully executed. The officer responsible may oppose the penalty payment on the basis of justified reasons or excuse of conduct (Article 169 par. 1, 2, 4 and 6 of the CPTA).
Examples of cases where such penalty payment can be imposed are mentioned above under Question 1.7.2, 6) (Articles 108 par. 2 and 111 par. 4): they can be imposed in the rapid judicial action called the 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).
Other situations are, for example: in court decisions that condemn the Administration to issue administrative acts or administrative regulations or that impose the fulfilment of other kinds of duties, the court has the power to impose a certain period for their fulfilment and also a penalty payment to prevent avoidance of such fulfilment (Article 95 par. 4); the court can impose a penalty payment on the responsible officers of a public body condemned in a judgment of administrative court who are tasked with the execution of such court decision (Article 179 par. 3).
The issue of “administrative passivity” is also dealt with in the regime of protection of diffuse interests regarding **omissions of the Public Administration** that cause relevant damage to fundamental assets such as the environment. As extensively stated above in Questions 1.1, 3), 1.3, 1) and 3), 1.4, 3), 1.7.1, 1), administrative courts are competent to hear cases of environmental harm caused by omission of the State, namely to declare nullity of illegal omission of an administrative act due (Article 95 par. 5 of the CPTA).

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[1] Unchallengeable administrative acts are those acts that do not meet the two conditions mentioned above in Question 1.7.1, 3), namely those acts that do not have external effectiveness and do not produce immediate legal effects (cf. Articles 51 and 54 par. 1 of the CPTA).
[2] The administrative executive process can also be used to execute judicial decisions of the administrative courts against private persons (Article 157 par. 5 of the CPTA), which are not addressed within these factsheets.
[3] On this mechanism, see Carvalho, Ana Celeste, “The extension of the effects of the judgment in administrative procedure revised”, e-Pública Vol. 3 No. 1, Abril 2016 (65-88), available here.
[4] Decision of STA n.º 048087G of 28/11/2007

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