Acceso a la justicia en materia de medio ambiente

Países Bajos

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1. Acceso a la justicia en los Estados miembros
2. Acceso a la justicia que no entre en el ámbito de aplicación de la evaluación del impacto ambiental (EIA), la Directiva sobre las emisiones industriales (prevención y control integrados de la contaminación), el acceso a información ni la Directiva sobre responsabilidad medioambiental
3. Otras normas relevantes sobre las apelaciones, los recursos y el acceso a la justicia en cuestiones medioambientales

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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

Dutch regulation aimed at protecting the environment has been developing strongly since the early 70s. It developed as a highly fragmented accumulation of rules to protect the environment and human health, divided over a wide number of policy fields and regulations. The Dutch Constitution provides a basis for the regulation that should provide citizens with a habitable environment and allow for the protection and the improvement of the environment. The many legislative acts adopted by Parliament aim to protect the environment and often form the legal basis for executive decrees, which provide more detailed regulations and are adopted by either the Dutch Government or by a specific Minister who is responsible for a certain policy area. Protecting the environment, however, is also the responsibility of governmental bodies at the provincial and the municipal levels. Ensuring compliance and enforcement of environmental regulation is often the responsibility of these lower tiers of government as there is no national environmental protection agency in the Netherlands.

Most (sectoral) environmental laws, executive decrees and regulations have frequently been amended over time, often because of the adoption /implementation of EU environmental regulation and case law of the Court of Justice of the European Union. Over the years, the Dutch legislator has striven to implement coordinative measures on a procedural level and has even introduced integrative legislation. Both the regulation for adopting policy documents and the system of environmental permits have been strongly affected by these procedural and coordinative legislative efforts. However, at the moment there remain many specific (sectoral) acts in order to protect specific parts of the environment, e.g. for water, soil, air, waste, nature conservation and spatial planning. The Netherlands is now (2020) on the brink of implementing a restructured body of regulation that aims to improve environmental regulation with the introduction of the Environment and Planning Act (EPA). The EPA will (most likely) come into force in 2022. This act aims to replace and streamline many of the existing relevant sectoral acts and provide government with the instruments to both protect and improve the quality of the physical living environment in the Netherlands and regulate human activities that could be detrimental to it.

Although specific environmental legislation often provides for additional relevant articles on public participation and access to justice, the Dutch legislator has tried to implement a uniform system of general rules on public participation and access to justice in administrative decision-making, including environmental decisions. In many cases concerning environmental decision-making, the law provides that anyone has the right to state their views on a draft decision before the final decision is taken. Only those with a specific interest related to the decision taken have access to the administrative court that will provide judicial review. This includes natural persons, legal entities and NGOs. Many cases concerned with environmental legislation will be dealt with by the administrative courts. The Dutch system does not provide for environmental tribunals or environmental courts; however, the courts with general competence will provide a relevant role for environmental cases that fall outside the competence of the administrative courts. The rights of citizens in all procedures are affected by both EU regulations and international law. The same is true for the regulation on transparent government. The Netherlands offers an adequate legal framework for the promotion of a transparent government in the Netherlands as it provides anyone with the right to request access to information contained in documents held by an administrative authority that relates to an administrative matter.

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

Article 21 of the Dutch Constitution (Grondwet[1]) obliges Government to guarantee its citizens a habitable environment and arrange for the protection and the improvement of the environment. Together with Article 11, which secures the right to personal integrity and Article 22, which awards a right to health, these provisions are the main (social) fundamental rights related to the environment laid down in the Dutch Constitution. Access to justice is secured by Article 17, which states that no one can be kept from the competent court against his will. These articles order the legislator to adopt legislative acts and secure these rights; however, citizens cannot rely on the national constitutional rights before the courts when discussing these legislative acts as the Netherlands does not have a Constitutional court. However, in administrative court procedures against single case administrative decisions based on such legislative acts, citizens may rely directly on rights vis-à-vis the government that are granted by the Constitution, like the duty of the government to establish a habitable environment and arrange for the protection and the improvement of the environment, as long as the court does not assess the constitutionality of the legislative act itself (Article 120 Dutch Constitution). In the (near) future a new paragraph will be added to this provision in the Constitution. It will grant every citizen of the Netherlands the right to a fair trial within a reasonable time before an independent and impartial court to establish his rights and obligations or to determine the merits of any legal proceedings against him. The proposal thus establishes a new fundamental right for citizens in Chapter 1 of the Constitution. Chapter 6 of the Dutch Constitution is also relevant as it states that the law will make clear which court is competent (Article 112 of the Dutch Constitution). The Netherlands has no constitutional court and therefore relies on its parliamentary system and the Council of State as a legislative adviser to guarantee the proper functioning of the Dutch constitution. In practice, the European Convention on Human Rights and Fundamental Freedoms, the Charter of Fundamental Rights of the European Union and the Aarhus Convention are more relevant in legal procedures than the Dutch Constitution.

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

Procedures against administrative decisions in environmental matters are governed by both the general provisions of (administrative) procedural law, which are stipulated in the General Administrative Law Act (GALA, in Dutch: Algemene wet bestuursrecht), mainly chapters 6, 7 and 8 which stipulate the general provisions on access to administrative courts, and by some additional provisions in specific acts of which the most important ones are the Environmental Management Act (EMA, in Dutch: Wet milieubeheer), the General Act on Environmental Permitting (GAEP, in Dutch: Wet algemene bepalingen omgevingsrecht), the Spatial Planning Act (SPA, in Dutch: Wet ruimtelijke ordening), the Water Act (in Dutch: Waterwet) and the Nature Conservation Act (in Dutch: Wet natuurbescherming).

After years of preparation, the Dutch legislator has recently adopted a new Environment and Planning Act (in Dutch: Omgevingswet) which will (most likely) be in force in 2022. This act will completely replace or replace relevant parts of the Environmental Management Act, the General Act on Environmental Permitting, the Spatial Planning Act, the Water Act, the Nature Conservation Act and many other environmental acts.

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

Although it is not a typical case, the best known example of national case-law from the Netherlands Supreme Court is probably its decision in the Urgenda-case (ECLI:NL:HR:2019:2007).[2] In 2015, the Hague District Court (private law sector) became the first court of law that ordered a State to adopt more measures to tackle climate change. It ruled that the State must take more action to reduce greenhouse gas emissions in the Netherlands and ordered it to ensure that Dutch greenhouse gas emissions in the year 2020 would be at least 25 per cent lower than the 1990 levels. The Urgenda Foundation, partly on behalf of 886 Dutch concerned citizens, had requested that the court issue a ruling on the basis of tort law. In late-2018, the Hague Court of Appeal confirmed the District Court's judgment, albeit on different grounds, and just before the end of 2019, the Supreme Court upheld this ruling, adding to the already extended and impressive reasoning. The Supreme Court in the judiciary system of general competence has cassation power only and provides unifying case law with regards to the application of private law.

The highest court in the Netherlands for judicial review of decisions by government bodies that concern the environment is the Administrative Jurisdiction Division of the Council of State (Afdeling bestuursrechtspraak van de Raad van State). This court provides unifying case law concerning the application of administrative and environmental laws and regulations. It is both an appellate court and a court of first instance and has reformatory competence. Recent influential judgments are concerned with the Dutch Programmatic Approach to Nitrogen (ECLI:NL:RVS:2019:1603 and ECLI:NL:RVS:2019:1604). This approach was codified in general binding rules (executive decree/delegated regulation) on the basis of the Nature Conservation Act, and the court had to decide on its legality in several cases brought by environmental organisations and concerned with decisions on permitting and enforcement of nature conservation legislation. The regulation provided that agricultural entrepreneurs (farmers) could be allowed to expand either by applying for a permit or by way of exemption, even though their activities would be detrimental to Natura 2000 areas. These areas are protected on the basis of the Dutch Nature Conservation Act which serves as an implementation of the EU Habitats Directive. The Administrative Jurisdiction Division of the Council of State decided that the Dutch Programmatic Approach to Nitrogen could not form the legal basis for allowing economic activities as the regulation was in breach of Article 6 of the EU Habitats Directive in several respects.

Another relevant development in light of access to justice in environmental cases has been the recent judgment of the Administrative Jurisdiction Division of the Council of State in which it redefined which parties qualify as an interested party and will therefore have standing in administrative court proceedings on the basis of Article 8:1, in conjunction with Article 1:2 General Administrative Law Act (ECLI:NL:RVS:2017:2271). For many years, the courts had decided that anyone who could possibly experience the environmental effects of an environmental permit was considered an interested party. The court now reasoned that this was not in line with its own case-law in relation to zoning schemes and licenses for public events and decided that the question on standing, e.g. who is an interested party as defined in Article 1:2 General Administrative Law Act, would have to be answered consistently in all cases concerning decisions that have an effect on the environment. Anyone who is directly and actually affected by an activity permitted by the decision - such as a zoning plan or a permit - is, in principle, an interested party. However, the criterion ‘consequences of any significance' serves as a possibility for a correction. Consequences of any significance are missing if the effect on the applicant’s interests can be determined objectively, but the consequences for the person involved are so small that a personal interest in relation to the decision is lacking. In this assessment, consideration is given to the factors of distance, visibility, spatial impact and environmental consequences (e.g. odour, noise, light, vibration, emission, risk) of the activity permitted by the decision. The nature, intensity and frequency of the actual consequences may also be important. Legal standards do not determine whether the person concerned has a personal interest in the decision. If the decision and the grounds for appeal give cause to do so, the question of whether such a standard is met will be considered in the substantive assessment of the judicial review. Ultimately, it is up to the administrative court to decide who is an interested party. The litigant in question therefore does not have to prove that he is an interested party in a decision.

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

Once a treaty has come into force in international law, legislative, administrative and judicial authorities must accept the newly created legal situation as lawful and must take it into consideration when making their decisions. They must do all that is possible to apply the terms of the treaty considering their constitutional position in the State organization. The parties have the right to invoke international treaties directly in administrative or court procedures if these rights are considered self-executing (binding on all). Domestic statutory regulations may not be applied if such application is in conflict with provisions that are binding on all persons (Article 94 of the Dutch Constitution). They can also rely upon EU law if it has direct effect. Article 21 of the Dutch Constitution could be invoked by parties in procedures against decisions by administrative authorities. In most cases, however, it will not have the desired effect because of the discretion that Government has in achieving the objective(s) of this provision. Any provision of an international treaty can be invoked in administrative and judicial proceeding after it has been published and when such a provision is of a generally binding nature (Article 93 of the Dutch Constitution). This is true for several relevant provisions of the European Convention on Human Rights and Fundamental Freedoms and the Aarhus Convention, which was adopted by both the Netherlands and the European Union.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

Legal protection in the Netherlands is first of all provided by the courts of general jurisdiction that are competent to decide on private law (between private parties) and criminal law cases (Article 112 of the Dutch Constitution and Article 2 Judiciary (Organization) Act). This system has three tiers. A case is heard first by the District Court (in Dutch: Rechtbank) and if a party does not agree with the judgment, he may lodge an appeal with the Court of Appeal (in Dutch: Gerechtshof). The Court of Appeal re-examines the facts of the case and reaches its own conclusions. Thereafter, it is usually possible to refer a dispute to the highest court, the Supreme Court of the Netherlands (in Dutch: Hoge Raad). The Supreme Court of the Netherlands examines only whether the lower court(s) observed proper application of the law in reaching its judgment. At this stage, the facts of the case as established by the lower court(s) are no longer subject to discussion.

Judicial review of (single case) administrative law decisions that are concerned with the environment are adjudicated by a District Court (administrative law sector) as a court of first instance. An appeal may be lodged with one of the highest administrative law courts in the Netherlands. For environmental decisions this is the Administrative Jurisdiction Division of the Council of State (in Dutch: Afdeling bestuursrechtspraak van de Raad van State). This court will also hear some relevant cases (e.g. zoning schemes) as a court of first and only instance.

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

The Netherlands is divided into 11 districts, each with its own District Court. District Courts are divided into 3 sectors: a civil law sector, a criminal law sector and an administrative law sector. The 11 districts are divided into 4 areas of jurisdiction for the Courts of Appeal for civil and criminal disputes and some specific administrative disputes (e.g. tax law). With regard to criminal and civil law, the justices of the Court of Appeal only deal with cases where an appeal has been lodged against the judgment passed by the District Court. There is no special court or tribunal for environmental matters. The law will stipulate which court is competent, so there is no relevant possibility for forum shopping; any decision by a local government (municipality, province or water board) is lodged at the district court of the district where the government is located and a decision by any other governmental authority is lodged at the district court in the district where the appellant lives. With a few exceptions, administrative disputes on governmental decisions about environmental matters (judicial review) must be lodged by an interested party and heard first by one of the eleven District Courts (administrative law sector). Although the District Courts are competent to rule on any case concerning an administrative law decision by a public authority, the competence does not include general binding rules and policy rules. Against (single case) decisions, an interested party has the right to apply to the court for judicial review (Article 8:1 and 1:2 General Administrative Law Act). An interested party may lodge an appeal against the judgment of the District Court with the Administrative Jurisdiction Division of the Council of State, which is the highest administrative law court for environmental decisions.

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

Usually the cases are heard by the District Court by a single-judge division, but the court can decide to appoint three judges to a case which is complex or which involves fundamental issues. In environmental matters governed by administrative law and in a lot of other areas, appeal is a matter for the Administrative Jurisdiction Division of the Council of State (in Dutch: Afdeling bestuursrechtspraak van de Raad van State), which will have a case dealt with by three judges although it could decide to have a simple case heard by a single judge. In other areas Dutch administrative law provides for a special appeals tribunal, like the Central Appeals Tribunal (in Dutch: Centrale Raad van Beroep) for cases involving civil servants and social security issues, the Court of Appeal for appeals against tax assessments and the Trade and Industry Appeals Tribunal (in Dutch: College van Beroep voor het Bedrijfsleven) for disputes in the area of social-economic administrative law and for appeals for specific laws, such as the Competition Act. The proceedings before all these courts are regulated by the provisions of Chapters 6, 7 and 8 of the General Administrative Law Act and therefore do not differ much. None of the courts are allowed to have laymen contribute to the judgments.

In many administrative disputes, the hearing by the administrative law sector of the District Court is preceded by a procedure under the auspices of the administrative authority, either by allowing (in most cases) anyone to state their views about a draft decision or by obliging an interested party to lodge an objection against a decision before one can bring a case to the administrative law court for judicial review. With regard to the requirement of participation in the administrative procedure preceding the judicial review, the Court of Justice of the European Union (CJEU) ruled in its judgment in Case C-826/18 that this requirement is partially in violation of requirements of the Aarhus Convention (ECLI:EU:C:2021:7).

When a case is being dealt with in an objection procedure or by an administrative court, the applicant has the possibility to ask the court for a provisional or interim measure in a specific procedure if there is sufficient reason and a sufficiently urgent interest (Articles 8:81-8:86 General Administrative Law Act). If the interim measures requested are allowed by the administrative court it will mean, in most cases, that the challenged decision is suspended.

In procedures about administrative decisions that affect the environment, there is the possibility that the court will appoint a specific independent expert, the Foundation for advising Administrative Courts in environmental and zoning cases (in Dutch: Stichting Advisering Bestuursrechtspraak or StAB). This foundation is funded by government and has a specific expertise in environmental matters. The law provides that it will write a report on any environmental case at the request of an administrative court. In administrative court procedures, the courts do not have the possibility to investigate parts of an administrative decision that have not been challenged by the applicant. Any court, however, has the authority to investigate the facts of the case by hearing witnesses, by asking for (written) evidence or by appointing an expert, as long as it concerns the conflict that has been brought to court by the parties in the procedure. Administrative courts will use these powers in cases where the applicant has supplied sufficient information to doubt the facts that the administrative authority has based its decision on. Case law proves that parties to the conflict being decided by the courts have the duty to provide evidence on their own motion. This is also true in environmental matters before administrative courts, although the administrative authority of course always has the duty to take due care in preparing any administrative decision.

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

In procedures against administrative decisions, a competent court will quash (or annul) the decision if the applicant has brought forward arguments that prove the decision to be in breach of the law. There are very few elements that the court will investigate om its own motion; it will annul the decision if the public authority or person that has taken decision was not competent to do so, and it will declare an appeal inadmissible if any of the formal requirements are not met. When the appeal is well-founded, the judgment will inherently lead to the annulment of the decision. An administrative court does have the competence to determine that its judgment should take the place of the annulled decision or the annulled part thereof (either deciding that the legal consequences of the annulled decision will remain valid or that the judgment provides an amended administrative decision). Exercising that authority will be justified only in cases where it is sufficiently obvious what decision the administrative body would have to take after the annulment. The administrative courts have found more and more ways to make use of this competence in cases where the administrative decision was annulled. However, by default, many cases in which the decision is annulled will lead to a new decision by the same administrative authority. Courts are able to award compensatory damages to citizens against the public authority when there are grounds to do so (on the basis of tort), a request has been made by that citizen and the challenged decision has been found in breach of the law.

The provisions on the procedural steps for hearing the case in many cases award the court some discretion; this is the case for the application of the courts discretionary powers concerning establishing the facts (expert advice; written testimony etc.). In all cases, the procedure must provide for formal public hearing and a deadline for providing evidence and statements of ten days before the formal hearing. After the formal hearing and the closing of the case, judgment will be delivered within 6 or 12 weeks.

1.3. Organisation of justice at administrative and judicial level

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

Administrative environmental decisions are taken by administrative authorities of municipalities, provinces or on state level. In many cases the administrative authorities of the municipality are competent to take a decision (adopting a zoning scheme; granting a permit). For specific decisions, the provincial level is competent. Also, at the State level, a specific Minister (see https://www.government.nl/) might be competent.

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

The administrative procedures in environmental matters are governed by both the general provisions on administrative procedure of the General Administrative Law Act (in Dutch: Algemene wet bestuursrecht) and by some specific provisions in the General Act on Environmental Permitting (in Dutch: Wet algemene bepalingen omgevingsrecht) and the Environmental Management Act (in Dutch: Wet milieubeheer), the Spatial Planning Act (in Dutch: Wet ruimtelijke ordening) and other special acts.
Articles 8:1 and 7:1 General Administrative Law Act (in Dutch: Algemene wet bestuursrecht) stipulate that any interested party (Article 1:2 General Administrative Law Act) may bring a case against a decision (Article 1:3 General Administrative Law Act) made by an administrative authority (Article 1:1 General Administrative Law Act) to the administrative court, but must first file an objection (in Dutch: bezwaarschrift) with the authority that took the decision. The result of this objection procedure will be a (re)new(ed) decision by the same public authority. Only that decision can be the subject of judicial review by the administrative court.
For a number of important environmental permitting decisions, such as whether or not to grant an environmental permit (e.g. the permitting system that is required on the basis of the EU Industrial Emissions Directive, IED) and the adoption of municipal zoning schemes, the law provides for a procedure that involves public participation based on a draft-decision by the public authority. In order to be able to lodge an appeal against the final decision, one has to participate in the preparatory procedure (article 6:13 GALA). This requirement has been ruled partly in violation of the Aarhus Convention by the Court of Justice of the European Union (CJEU) in its judgment in case C-826/18.[3] When the law provides that this procedure is applicable, a decision will be drafted and will be made publicly known. The draft decision and the documents that it is based on will be available for anyone's viewing for six weeks. During that time anyone can participate in the decision-making process by submitting their views to the competent authority. The competent authority will have to respond to these views before taking and publishing the final decision. Such a final decision has to be taken within 6 months of the application for the environmental permit. This administrative procedure is laid down in section 3.4 (uniform extensive public preparation procedure) of the General Administrative Law Act (in Dutch: Algemene wet bestuursrecht) and section 3.3 of the General Act on Environmental Permitting (in Dutch: Wet algemene bepalingen omgevingsrecht). This procedure is applicable when it is stipulated by law or when the administrative authority decides to prepare the decision using this procedure. Any decision that was prepared in this extensive procedure is subject to review by a court directly without a prior objection procedure. Judicial review of an environmental case may take approximately a year.

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

Next to the court system consisting of courts with a general competence, the Netherlands judiciary system provides special courts for specific disputes concerned with administrative decisions, such as zoning schemes or permits. There are, however, no special environmental courts or tribunals. Administrative courts are competent to hear cases on decisions by public authorities. The term decision is defined as the written decision of an administrative authority constituting a public law act (Article 1:3 General Administrative Law Act). However, the administrative courts in the Netherlands are not competent to directly rule in cases concerned with general binding rules, policy rules or factual acts by government authorities (Article 8:2, 8:3 General Administrative Law Act). Those cases can be heard by (the private law sectors of) the District Courts on the basis of tort law. In those proceedings the provisions governing standing in private law will be relevant.

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

Most cases against environmental administrative decisions by the competent public authorities are lodged with the District Courts unless another procedure (e.g. appeal in first and only instance with the Administrative Jurisdiction Division of the Council of State) is stipulated. For most cases concerning environmental permits, the District Court and thereafter the Administrative Jurisdiction Division of the Council of State are competent. Cases on zoning plans go directly to the Administrative Jurisdiction Division of the Council of State. For instance: a zoning plan will be adopted according to the uniform extensive public preparation procedure that has to be applied by the competent authority in preparing the decision. Judicial review of a zoning plan is a matter for the Administrative Jurisdiction Division of the Council of State (in Dutch: *Afdeling bestuursrechtspraak van de Raad van State*) in first and last instance. The approval or refusal of an application for an environmental permit that is required in light of the EU Industrial Emissions Directive (or on other grounds in accordance with Article 2.1(1) sub e of the General Act on Environmental Permitting) will also be prepared by applying the uniform extensive public preparation procedure of section 3.4 General Administrative Law Act but will be subject to judicial review by the District Court first (no administrative review of any kind against the final decision is provided in these cases). An interested party may lodge an appeal against the judgment of the District Court with the Administrative Jurisdiction Division of the Council of State. In such cases on an environmental license, the courts will grant the public authority a small margin of appreciation when establishing what are the Best Available Techniques for the specific installation at hand. In all procedures of judicial review, the applicant may ask for provisional or interim measures in accordance with the general provisions on injunctive relief in administrative procedures (Articles 8:81-8:86 General Administrative Law Act).

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

The Dutch General Administrative Law Act (GALA) provides all procedural rules for judicial review and the administrative procedure that are to be followed before one can apply for judicial review. It also provides for extraordinary ways of lodging an appeal against decisions that concern the environment (e.g. no obligatory objection procedure when the decision has been prepared by following the uniform extensive public preparation procedure of section 3.4 General Administrative Law Act; no obligatory objection procedure when the decision is designated in an annex to the GALA; judicial review in first and only instance with the Administrative Jurisdiction Division of the Council of State if the decision is designated in an annex to the GALA, etc.). The General Administrative Law Act also provides for extraordinary procedures. During the objection procedure and during all administrative law procedures for judicial review the applicant may ask for provisional or interim measures in accordance with the general provisions on injunctive relief in administrative procedures (Articles 8:81-8:86 General Administrative Law Act).
None of the legislative procedural acts in the Netherlands introduce specific provisions for instigating the preliminary reference procedure with the European Court of Justice. The District Courts and the highest administrative courts make use of the competence to give an interlocutory ruling regulated in Article 8: 80a General Administrative Law Act. The competence is, however, not specifically tailored for this use.

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

Some administrative courts, including the highest administrative court in environmental cases, offer parties the possibility to call in a mediator and try to settle their conflict by finding consensus and without the courts delivering judgment. Although these have proven highly efficient in a small number of cases, the administrative courts have all adopted a new way of hearing cases that allows courts to have a strong focus on procedural justice and investigate possibilities to deal with the case in other ways than by simply annulling the administrative decision in its judgment.

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

The existence of a National Ombudsman is guaranteed by Article 78a of the Dutch Constitution (in Dutch: Grondwet). The Netherlands has a special National Ombudsman Act (in Dutch: Wet Nationale ombudsman). In addition, the work of the National Ombudsman's Office is covered by the Dutch General Administrative Law Act (in Dutch: Algemene wet bestuursrecht). The National Ombudsman investigates complaints brought to him by members of the public. He can also launch investigations on his own initiative. There is no special Ombudsman for environmental matters. At anyone's complaint the Dutch Ombudsman is competent to investigate the behaviour of government. The Ombudsman mostly helps individual citizens who are experiencing problems

with government and explains to administrative authorities how they can do things better. Where appropriate, the National Ombudsman responds to problems or complaints by launching investigations. By law, all parties concerned have to cooperate with these. The National Ombudsman is a 'fall-back provision'. If you have a complaint about government, the first step is to complain to the administrative authority itself. The National Ombudsman can only deal with a complaint if it was first lodged with the administrative authority itself and the complaint was not sufficiently dealt with.

1.4. How can one bring a case to court?

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

In administrative procedures, the basic rule is that an interested party, a person whose interest is directly affected by a decision (Article 1:2(1) General Administrative Law), must be able to participate in the procedure that will lead to the decision. This is the case both in the administrative procedure that is stipulated for individual decisions and for cases where the uniform extensive public preparation procedure of section 3.4 General Administrative Law Act is applicable (even in cases where anyone is allowed to submit their views, e.g. Article 3.12, lid 5 General Act on Environmental Permitting (in Dutch: Wet algemene bepalingen omgevingsrecht).

Article 1:2(1) General Administrative Law Act states that an interested party is a person (or any legal entity) whose interest is directly affected by a decision. Article 1:2(3) General Administrative Law Act stipulates that with regard to legal entities, their interests are deemed to include the general (or: public) and collective interests which they particularly represent in accordance with their articles of association (bylaws) and as evidenced by their actual activities.

The rule that stipulates that an interested party has the right to appeal a decision (Article 1:3 General Administrative Law Act) taken by a public authority (Article 8:1 and 1:2 General Administrative Law Act) is applicable for all administrative review procedures and administrative court proceedings. In 2005, the actio popularis was removed from the body of Dutch administrative procedural law. The sectoral, environmental legislation does not diverge from this general rule of legal standing; therefore it applies in cases concerned with decision for which an Environmental Impact Assessment (EIA) is required on the basis of EU law and in cases concerned with decisions on the application of a permit that is required in accordance with the Industrial Emissions Directive (IED) for an installation as defined in that directive. Although sectoral legislation on environmental matters often stipulates that not just an interested party but anyone is entitled to submit his or her views on a draft decision, legal standing before an administrative court is awarded only to an interested party (Article 1:2 General Administrative Law Act). Administrative authorities may also qualify as an interested party. Article 1:2(1 and 2) General Administrative Law Act reads that the interests entrusted to a public authority by the legislator are deemed to be their interests. The public tasks attributed to them and the competences they have are decisive in assessing which interests are entrusted to them. In accordance with Article 1:1 General Administrative Law Act, the National Ombudsman is not deemed to be such an administrative authority.

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

The Dutch legislator aims to provide uniform provisions on access to justice. In many cases, the relevant provisions of the General Administrative Law Act (GALA, in Dutch: Algemene wet bestuursrecht) provide clarity as to procedures to be followed and the possibilities of judicial review against a decision. Although some sectoral legislation provides additional regulation, in most cases the rules on standing, appeal requirements, and court fees are uniform. In some environmental cases the law prescribes that an Environmental Impact Assessment (EIA) report has to be drawn up by the applicant before the public authority is able to decide on an application (Chapter 7 of the Environmental Management Act) for a permit or another decision that one can appeal against with an administrative court. Any decision on EIA screening, EIA scoping or acceptance of an EIA report by the public authority can be challenged in court by filing an appeal against the decision by the public authority that allows or refuses the permit or the decision. There are no special rules on standing, forum, hearing, evidence or the extent of the review by the court. EIA is seen as an important instrument to prepare certain decisions that potentially have significant effects on the environment. It ensures those involved that the competent authority is able to respect the duty of careful preparation of the decision. In most cases, the draft-decision is made public together with the EIA report and anyone is allowed to submit views before a final decision is made. Administrative Courts will review both the procedural legality and the substantive legality of administrative decisions as long as the interested parties have made that specific part of the decision a part of the dispute (see Article 8:69(1) General Administrative Law Act).

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

An interested party is anyone whose interest is directly affected by an administrative decision. Case law provides that there should be a personal, objectively determinable interest that belongs to the person filing the case. Regarding administrative authorities, the interests entrusted to them are deemed to be their interests. Regarding legal entities (Article 1:2(3) General Administrative Law Act), their interests are deemed to include the general and collective interests that they particularly represent in accordance with their rules of association (bylaws) and as evidenced by their actual activities. This is also true for foreign NGOs. An example of a general interest could be the protection of the environment in a specific area. One of the most relevant criteria for any legal entity claiming to represent a general interest is the fact that its actions should prove that the specific general interest relevant to the case has been looked after by the legal entity, e.g. by providing proof of activities aimed at protecting the environment. Whether a legal entity (e.g. an NGO) represents general interests of protecting the environment is assessed on a case-by-case basis. Lodging appeals or asking for enforcement action will not count as actual activities. However, this requirement is not applied when a collective interest is represented and the members of the association qualify as interested parties.

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

Discrimination based on country of origin and/or language is forbidden by the Dutch Constitution (Article 1). In general the (procedural) law demands that all lawsuits, appeals and other written documents are submitted to the court in Dutch. The judgment and other written documents of the court will also be in Dutch. One exception exists for the Dutch province of Friesland; there, the Frisian language can be used in court (Wet gebruik Friese taal). However, there are possibilities to have relevant documents that are written in another language translated. If the notice of objection or appeal is in a foreign language and a translation is necessary for the objection or appeal to be properly dealt with, the applicant must arrange for a translation and pay for the costs. Furthermore, when someone participates in a court hearing and is unable to speak the Dutch language sufficiently, he is allowed to use his own language and arrange for an interpreter and pay for the costs. Only if the court arranges for an interpreter, and this will - in environmental matters – in general not be the case, will the costs be paid by the court (see Article 8:35 and 8:36 General Administrative Law Act).

1.5. Evidence and experts in the procedures

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

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

Administrative Courts will review both the procedural legality and the substantive legality of administrative decisions as long as the interested parties have made that specific part of the decision a part of the dispute (see Article 8:69(1) General Administrative Law Act). When a public authority has been granted a margin of appreciation by the legislator in weighing the different interests involved in making a specific decision, the court will allow for this margin by applying a marginal review and upholding any decisions that it finds not unreasonable (Article 3:4(2) General Administrative Law Act). In general, courts will review the administrative decision and will ascertain whether the competent authority could justifiably base the decision on the material, technical findings and calculations that were used. There are no written rules of evidence other than the rules that have to be applied when establishing the facts in the administrative procedure that leads to the decision (e.g. good governance principles). In criminal and civil court procedures, there are specific rules on how to

provide evidence and who must bear the burden of proof. In civil procedures, the parties have to propose all of the evidence for their statements to the court as soon as possible. The state prosecutor prosecutes and must provide all evidence in criminal procedures concerned with environmental matters. In the rules on administrative court procedures, there are some formal rules on providing evidence but none are about which one of the parties will have the burden of proof. Case law of course provides for rules of thumb concerning substantial rules of evidence. For instance: when the challenged decision restricts a citizen in his rights or is of a punitive nature, the burden of proof is on the public authority. Another relevant rule of thumb is: who took the initiative for the administrative decision? If the administrative decision-making started with an application by the citizen involved, the first burden of proof is on the applicant. Policy documents and generally binding rules cannot be directly reviewed by an administrative court.
However, the General Administrative Law Act does provide formal rules concerning the establishment of the facts by administrative courts. For instance, the courts are competent to ask parties for written evidence and can also appoint an independent expert, like the Foundation for advising Administrative Courts in environmental and zoning schemes cases (Stichting Advisering Bestuursrechtspraak or StAB).
It should be noticed with regard to gathering evidence, that Article 6:22 of the General Administrative Law Act (in Dutch: Algemene wet bestuursrecht) provides that any flaw that will not harm the interests of any of the interested parties can be overlooked by the court. Also relevant in this respect is Article 8: 69a GALA, which stipulates that an administrative decision will not be quashed by the court if the decision is in breach of any rule which was not written to protect the interests of the party that filed the case. In environmental matters, however, the provisions protecting the environment, nature and health are deemed to have been written to protect the clean, healthy and acceptable living conditions of citizens that live or own property nearby. Therefore, individuals could also rely on such provisions.

2) Can one introduce new evidence?

Providing new evidence in court for the first time (either in the procedure of first instance or in appeal) is allowed unless the principle of due process is violated. Although the legislator once explained that administrative courts should seek the objective truth and the courts are competent to request evidence on their own motion (ex officio), the current proceedings before the administrative courts, in many ways, resemble the procedure in civil courts where the parties are expected to provide their evidence. Parties are able to present expert opinions, have an expert heard as a witness and ask the court to appoint an expert to conduct an investigation (see division 8.2.2 General Administrative Law Act on the preliminary inquiry). The court will evaluate all the evidence presented and conclude which evidence is most probably in line with the truth. When an expert opinion is presented, it is, of course, not binding on an administrative judge, although judges are likely to follow the opinion of the expert it appointed. The opinion of an expert is also not binding in cases where the court did not appoint the expert but a party presented a report. The courts are always able to assess the quality and the consistency of the report and will take into account whether the expert has reported in accordance with the principle of due care.

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

In administrative court procedures, the courts do not have the possibility to investigate parts of an administrative decision that have not been challenged by the applicant. Any court, however, has the authority to investigate the facts of the case by hearing witnesses, by asking for (written) evidence or by appointing an expert, as long as it concerns the conflict that has been brought to court by the parties in the procedure. Administrative courts will use these powers in cases where the applicant has supplied sufficient information to doubt the facts that the administrative authority has based its decision on. Case law proves that parties to the case that is before the court have the duty to provide evidence on their own motion and they are allowed to do so. This is also true in environmental matters before administrative courts, although the administrative authority, of course, always has the duty to take due care in preparing any administrative decision.
In procedures about administrative decisions on environmental matters, there is the possibility that if the court appoints an independent expert it will be the Foundation for advising Administrative Courts in environmental and zoning cases (Stichting Advisering Bestuursrechtspraak or StAB). This foundation is funded by government and has a specific expertise in environmental matters. The law provides that it will write a report on any environmental case at the request of an administrative court.
There is no publicly available list or registry of experts in environmental cases. Courts may invite individual experts with expertise on specific aspects of a case before them by selecting them based on their publications about that subject matter.

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

The court will establish the facts of the case even when an expert has been appointed by the court. However, a carefully prepared expert opinion delivered to the court by an independent expert will most likely be the basis for the judgment of the court, as the opinion of the expert is valuable to the court.

3.2) Rules for experts being called upon by the court

The formal requirements for an expert called upon by the court are stipulated in Article 8:47 of the General Administrative Law Act. Any administrative court may appoint an expert to conduct an investigation. The appointment must state the task to be performed and set a term within which the expert must submit a written report on the investigation to him. The intention to appoint an expert must be notified to the parties and the court may give the parties the opportunity to express their wishes regarding the investigation in writing within a period of time to be determined by the court. Both the Administrative Jurisdiction Division of the Council of State[4] and the (ordinary) judiciary[5] have introduced Codes of Conduct for experts that are appointed by the court to deliver an expert opinion.

3.3) Rules for experts called upon by the parties

The General Administrative Law Act provides general provisions concerning the expert opinions that public authorities may use to come to its decision. In the administrative procedure leading up to the decision, section 3:3 GALA is concerned with the experts that the public authority is obliged to call upon and are called ‘advisers’. The administrative authority to which the opinion is delivered must provide the adviser, at his request or otherwise, with the information needed to enable him to discharge his duties properly and must set a term if the law does not already provide one. The decision of the public authority will state the name of the advisers. The most relevant provision is Article 3:9 GALA, which provides that when an order is based on an investigation carried out by an adviser, the administrative authority must satisfy itself that the investigation was carried out with due care. The public authority must not base its decision on the results of the investigation of the adviser if this is not case. This basic principle is applicable for all expert opinions that decisions are based on (Article 3:2 GALA).
During the procedure before an administrative court, the parties can call upon an expert to report on a specific aspect of the case and submit the report to the court in order to convince the court. For the parties that aim to have the court annul the decision, the law does not provide any rules for experts called upon.

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

When the court appoints the expert, the expert will be awarded a set payment from the judiciary for the task. Parties do not bear these costs.
Article 8:36(2) of the General Administrative Law Act provides that the party who has brought or summoned a witness or an expert must reimburse the costs thereof. This also applies to the party to whom an expert's report has been issued. In connection with this, Article 1(b) of the Decree on Administrative Procedure Costs stipulates that the costs of a witness, expert or interpreter brought in or summoned by a party or interested party may be reimbursed. This also applies to the costs of an expert who has reported to a party. According to the established case law of the highest administrative courts, the costs of engaging an expert are eligible for reimbursement if such engagement was reasonable and if the expert costs themselves are reasonable. The question is

whether, in view of the facts and circumstances as they existed at the time the expert was called upon, the party that called upon the expert could assume that the expert would make a relevant contribution to the court's answering of a question that may be relevant to the outcome of the dispute.

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

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

Lawyers play an important role in judicial procedures in environmental matters as environmental law is getting more and more complex. If a case is won in administrative court, the public authority could reimburse costs for legal counsel if the court so orders. The amount that can be awarded is maximized and is usually well below the actual costs (Article 8:75 General Administrative Law Act). However, in administrative procedures, legal counsel is not obligatory. The same is true for all procedures before the administrative courts. Legal counsel is therefore not mandatory in administrative judicial procedures. In other words, the General Administrative Law Act (in Dutch: Algemene wet bestuursrecht) does not prescribe legal counsel for lodging an appeal, nor for legal representation in court proceedings. In civil court proceedings legal representation is obligatory in many cases, although there is an important exception for cases in which the financial interest of the case is no larger than EUR 25,000. The same applies for criminal court procedures. All lawyers are members of the Bar (in Dutch: Orde van Advocaten). On their website you can find lawyers through some keywords, like areas of specialization such as environmental law (in Dutch: milieurecht/omgevingsrecht). One can also visit the website of the government at https://rechtwijzer.nl/ of https://www.juridischloket.nl/.

1.1 Existence or not of pro bono assistance

Law firms could be persuaded to provide pro bono legal assistance and some of them say that they provide such assistance on a regular basis, but most law firms will probably not provide legal assistance for free in relatively normal cases.

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

There are a few websites that provide information on how to get in touch with law firms or lawyers that will provide pro bono existence.

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

The first line of legal aid provided by the Netherlands is online self-help. Information and support are offered on the 'Rechtwijzer' website (Roadmap to Justice). This website provides legal information that is helpful in common legal procedures. To receive pro bono assistance will require getting in touch with a lawyer who or law firm that is willing to provide it.

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

All lawyers are members of the Bar (in Dutch: Orde van Advocaten). On their website you can find lawyers through some keywords, like areas of specialization such as environmental law (in Dutch: milieurecht/omgevingsrecht). Also, the website for the Legal Services Counters provides a search engine for lawyers and similar information is available at the website that provides a roadmap to justice.

For natural scientists and other non-legal experts there are no registries or general public websites.

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

There are many NGOs active in the environmental field but there is not a complete verified list available of these Dutch NGOs.

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

In some cases environmental NGOs, such as Greenpeace, The World Wide Fund for nature or Friends of the Earth Netherlands (in Dutch: Milieudefensie), will be able to help the public lodge appeals.

1.7. Guarantees for effective procedures

1.7.1. Procedural time limits

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

An administrative environmental decision for which judicial review is possible by an administrative court must be challenged within 6 weeks after the decision has been officially notified (Article 6:7 GALA); either for lodging an administrative review (objection procedure) or a judicial review procedure by the administrative court. In most cases, one is allowed to submit a pro forma appeal which means that another term is awarded to submit grounds for the appeal.

2) Time limit to deliver decision by an administrative organ

If an objection is lodged against a decision, the time limit for deciding on the raised objections by the administrative authority is stipulated in Article 7:10 General Administrative Law Act and is either six or twelve weeks after the term to file an objection has passed. The twelve-week term is only applicable when an external review advisory board of at least three persons is asked to provide advice on the abjection(s) filed.

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

If the uniform extensive public preparation procedure codified in section 3.4 General Administrative Law Act (GALA) was followed in preparing the environmental decision, the decision should be challenged by lodging an appeal directly with the District Court or with the court that is made competent by the legislator. If this preparatory procedure was not followed, it is obligatory to follow an objection procedure by filing an objection with the administrative authority that has taken the decision before an appeal may be lodged (Article 8:1 and 7:1 GALA).

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

The General Administrative Law Act sets a time limit for delivering the judgment after the hearing by an administrative court. This time limit is six weeks and can be extended for another six weeks. However, there are no sanctions against courts delivering late judgments. Usually an administrative court will need 9 to 12 months to deliver its judgment.

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

There is no time limit for the court to set a date for the hearing. If a court date has been set, the parties have until ten days before the hearing to deliver new information or new grounds for their appeal, but they should be aware that the principle of due process could limit the freedom to send in new information or grounds.

1.7.2. Interim and precautionary measures, enforcement of judgments

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

In general, an appeal against a governmental decision in the Netherlands does not have a suspensive effect (see Article 6:16 General Administrative Law Act). However, sectoral or specific legislation may diverge from this general rule. In most environmental decisions this is not the case.

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

If an objection has been filed with the administrative authority, the president of the District Court which has or may have jurisdiction in the proceedings on the merits may, on request, grant a provisional remedy where speed is of the essence because of the interests involved. So as soon as an objection is filed (pro forma), courts are competent to grant injunctive relief at the request of any interested party that has lodged the objection and has proved the urgent need for a injunctive relief because of the interests involved (see Article 8:81 General Administrative Law Act).The injunctive relief can consist of any court ordered action but will, in practically all cases, consist of awarding a suspensive effect or removing the suspensive effect of a decision that was taken by the administrative authority. There is no appeal against an injunction by the administrative court.

3) Is there a possibility to introduce a request for such a measure during the procedure and under what conditions? Possible deadline to submit this request?
Suspensive effect might be asked for under the conditions stated above and can only be requested during a procedure of legal protection such as an objection procedure or a court procedure.
4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?
In general, administrative decisions can be immediately executed, irrespective of an appeal or a court action. Any execution of a decision that is later annulled by court, however, may lead to liability. In practice, decisions are often not yet executed and a court decision might be awaited.
5) Is the administrative decision suspended once challenged before court at the judicial phase?
Although there are examples of decisions that are - on the basis of sectoral legislation - de jure suspended when an administrative decision is challenged, this is usually not the case as the General Administrative Law Act provides otherwise (Article 6:16 GALA) and that provision applies to most environmental decisions.
6) Is there a possibility for the national tribunals to provide injunctive relief (conditional upon a financial deposit)? Is there separate appeal against this order on the injunctive relief or the financial deposit?
If an appeal against a decision has been lodged with the District Court, the president of the District Court which has jurisdiction in the proceedings on the merits may, on request, grant a provisional remedy where speed is of the essence because of the interests involved. So, as soon as an appeal is lodged (pro forma), courts are competent to grant injunctive relief at the request of any interested party that has lodged the appeal and has proved the urgent need for a injunctive relief because of the interests involved (see Article 8:81 General Administrative Law Act).The injunctive relief can consist of any court ordered action but will, in practically all cases, consist of awarding a suspensive effect or removing the suspensive effect of a decision that was taken by the administrative authority. There is no appeal against an injunction by the administrative court.
When a suspensive effect has been ordered by the administrative court, the decision may not be executed. No one may make use of the permission that has been given by such a decision. If this occurs anyway, an interested party may ask for enforcement action by the public authority. Also, anyone who claims that the actions are to be considered a tort, may apply for an injunctive relief with the District Court (private law sector).
1.7.3. Costs - Legal aid - Pro bono assistance, other financial assistance mechanisms
1) How can one calculate what costs will be involved when one intends to initiate a procedure - administrative costs, judicial costs, costs for filing a case, experts' fees, lawyers' fees, cost of appeal, etc.
Administrative procedures such as the preparatory procedure and the objection procedure are free of charge. For an administrative court to hear an applicant' s case, it is necessary to pay a fee. The fee for court proceedings in first instance is stipulated in Article 8:41 of the General Administrative Law Act (in Dutch: Algemene wet bestuursrecht). In general, the fee is not considered to be very high. It varies on the basis of the type of person that instigates the procedure and the type of case and substantive law that applies to the case. Article 8:41(3) General Administrative Law Act mentions the different fees explicitly. In 2020 the fee is EUR 48 for any natural person that lodges an appeal or an injunction against a decision by an administrative authority that is concerned with social security and related legislation (see Article 8:41(3) General Administrative Law Act). It is EUR 178 for a natural person in any other case and EUR 354 for any legal person lodging an appeal or an injunction. Fees for proceedings before an administrative Court of Appeal are somewhat higher and are stipulated in Article 8:109 GALA, they are EUR 131, 265 and 532, respectively. If the appeal is successful, these costs will usually have to be paid by the administrative authority (Article 8:75 and 8:114 General Administrative Law Act). In very rare cases of abuse of the right to appeal, the court might decide that the applicant should bear the (fixed) costs of the administrative authority such as the court fees and costs for lawyers. The courts practically never make use of this competence.
2) Cost of injunctive relief/interim measure, is a deposit necessary?
The costs of the injunctive relief procedure before the administrative courts are the same as the court fees for the judicial review by the court.
3) Is there legal aid available for natural persons?
The courts cannot provide exemptions from court fees. The Dutch legal aid system provides legal aid to people of limited means. Anyone in need of professional legal aid but unable to (fully) bear the costs is entitled to call upon the provisions as set down in the Legal Aid Act (in Dutch: Wet op de Rechtsbijstand). Residing under the competence of the Ministry of Justice & Security, an independent governing body called the Legal Aid Board (in Dutch: Raad voor Rechtsbijstand) is entrusted with all matters concerning administration, supervision and expenditure as well as with the actual implementation of the legal aid system. This includes matching the availability of legal experts with the demand for legal aid, as well as the supervision and quality control of the actual services provided.
In general, the Dutch legal aid system can be described as a threefold model as it encompasses three lines that provide legal aid consisting of a public preliminary provision, public first-line and private second-line help. See the website of the Legal Aid Board for more information or the specific site for the system of legal aid. One could also visit the website of the judiciary that provides information on the system of legal aid.
Second, there are the Legal Services Counters that act as what is commonly known as the 'front office' of legal aid. Legal matters are clarified by providing information and advice either online, by telephone or at one of the 30 Legal Services Counters. Clients may be referred to a private lawyer or mediator, who act as the secondary line of legal aid. Clients may also apply for help from a subsidised lawyer or mediator directly. As a third option, such a lawyer (or mediator) submits an application to the Legal Aid Board on behalf of his client. If legal aid is granted, a certificate is issued which allows the lawyer in question to deal with the case. Lawyers and mediators are paid by the Legal Aid Board to provide their services to clients of limited means. Generally, they are paid a fixed fee according to the type of case, although exceptions can be made for more time-consuming cases.
The regular fixed fee is seen as insufficient to cover the actual costs of procedures by those providing this type of legal aid. Furthermore, over time the rules on who can make use of this type of legal aid have been tightened which means fewer persons qualify for this aid.
4) Is there legal aid available for associations, legal persons, NGOs with legal personality and without legal personality? If yes, how to request legal aid? Is there pro bono assistance?
There are no legal clinics dealing with environmental cases that are available to the general public. The legal aid system in the Netherlands is meant primarily for natural persons. Legal personalities often have insurance for legal services. In some cases, NGOs like Greenpeace will organize the protests against a decision by a public authority and will help interested parties with lodging appeals or will appeal themselves.
5) Are there other financial mechanisms available to provide financial assistance?
The Netherlands provides a legal aid system to natural persons which has been described above. Also, there is the possibility to take out legal assistance insurance, but this is not provided by government.
6) Does the 'loser party pays' principle apply? How is it applied by courts, are there exceptions?
The 'loser pays principle' does not apply in administrative court cases, although the administrative authority will have to pay the court fee for the applicant in most cases when the decision is annulled. Also, in most cases, the authority will have to pay a calculated sum of legal costs (such as the costs related to

lawyers representing the applicant) to the applicant if the decision is quashed by the court. The applicant will only be forced to pay for the costs of the public authority if he has obviously misused the possibility of judicial review. This is practically never the case. For third parties the costs will not be reimbursed in most cases.
In civil matters the 'loser pays principle' prevails. In civil court proceedings costs are a bit higher. The fee for court proceedings before a District Court is differentiated (in most common cases in 2020 it is EUR 304 for a natural person and EUR 656 for any legal person, but could be higher when the interests of the case are bigger). When a case is concerned with claims that are either above EUR 25,000 or above EUR 100,000 the fees increase, respectively. Under specific circumstances, one could be classified as needy or poor and a special low fee applies. In all cases. other costs might be the costs for professional legal assistance. These costs differ on the basis of the type of lawyer (and his specialisation) the applicant hires. If the claimant or applicant is considered needy or poor, he could ask for subsidised legal aid but will have to pay a personal contribution.

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

The courts cannot provide exemptions from court fees. Articles 8:74 for court fees and 8:75 GALA for other costs of the procedure provide the legal basis for the judgment of the administrative court concerned with the legal costs. An exemption for the court fees based on case law is very rare and demands - with a reference to the right to access to court enshrined in article 6 ECHR - that an appellant proves that he is in such a specific financial condition that he unable to pay (e.g. earnings of less than 90% of the minimum social benefits scheme).

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

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

All Dutch legislation is available here (in Dutch). Some information on the Dutch court system is also available at https://www.government.nl/. Advice and legal aid is available online at https://rechtwijzer.nl/ and https://www.juridischloket.nl/. The latter refers to the 30 Legal Services Counters that are available throughout the Netherlands where anyone can get legal advice. Environmental information can be requested on the basis of the Government Information (Public Access) Act (WOB, Wet openbaarheid van bestuur) which provides specific provisions concerned with requests for environmental information. Also, chapter 19 of the Environmental Management Act (Wet milieubeheer) implements the specific legal regime for environmental information. More specific information about Dutch environmental law and procedures, including information on access to justice, can be found on the website of the Knowledge Centre InfoMil.

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

Rules on access to justice are codified in the General Administrative Law Act (Chapter 6, 7 and 8) and are applicable for any administrative decision. However, sectoral legislation such as the Environmental Management Act, the General Act on Environmental Permitting, the Spatial Planning Act, the Water Act, the Nature Conservation Act etc. may provide additional provisions. Information on the main additional provisions have been discussed in the questions above.

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

There are no sector-specific rules.

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

It is obligatory for the administrative authority and the administrative court to provide information about the possibility to lodge either an objection procedure, a judicial review procedure or an appeal and stipulate this information in the decision or the judgment. This is stipulated in Article 3:45 GALA and Article 6:23 GALA.

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

For court cases in which one of the parties does not have an adequate command of Dutch, the government has set up a register of court interpreters and sworn translators. In certain cases (involving criminal or immigration law), the courts can only use interpreters and translators whose names are listed in this register. In civil cases this is not mandatory. Using the register, litigants (such as private individuals and enterprises) and people providing legal services (such as lawyers) can easily find an interpreter or translator who fulfils the requirements of integrity and quality laid down in the Sworn Interpreters and Translators Act. The register of court interpreters and sworn translators (only in Dutch) can in fact be accessed by any member of the public.

1.8. Special procedural rules

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

Country-specific EIA rules related to access to justice

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

There are no specific rules relating to standing and access to justice in relation to EIA. The general provisions provided by GALA and specific (environmental) legislation are applicable and explained in more detail in paragraph 1.7.4 sub 1 and 2.

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

An EIA report is prepared in light of an environmental decision that will be taken by an administrative authority. Judicial review is only available against the environmental decision (permit; planning decision) and not against decisions on screening and scoping, on the conditions set by the administrative authority or on the timeframe. The (preparation of the) EIA report is considered a preparatory requirement for the decision that potentially has a detrimental effect on the environment. In all cases, the uniform extensive public preparation procedure is applicable (section 3.4 GALA) and in that procedure anyone can state their views on the basis of a draft decision and the EIA report. In some cases there is a formal requirement for public consultation before the EIA report will be drafted but it does not stipulate which individuals of the public concerned must be allowed to state their views and in what timeframe. After the administrative authority has taken a final decision, judicial review is available only against that decision and only for an interested party (Article 1:2 GALA), as is the case in most of administrative law procedures in the Netherlands.

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

In most environmental decisions, anyone that is against the draft decision and is reasonably deemed capable and available for stating their views is supposed to do so when a draft decision is notified by the administrative authority in the uniform extensive public preparation procedure (section 3.4 GALA). There will be a six-week term to state the views. When a final decision is taken, one should apply for judicial review with the administrative court within six weeks after the official notification of the decision. Anyone who should have stated their views against the draft decision but did not do so will not be able to lodge an admissible appeal with the district court. Also, an appeal against any part of an environmental decision that a court could annul separately from other parts will be inadmissible if the applicant did not state his views on that particular part of the decision in the administrative procedure that led to the final decision.

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

The final decision can be challenged before an administrative court by an interested party. As explained above both a natural or a legal person can be an interested party on the basis of section 1 of Article 1:2 GALA. Also, an NGO can be considered an interested party under the requirements set in section 3 of Article 1:2 GALA. Articles 8:1 and 7:1 General Administrative Law Act (in Dutch: Algemene wet bestuursrecht) stipulate that any interested party (Article 1:2 General Administrative Law Act) may bring a case against a decision (Article 1:3 General Administrative Law Act) made by an administrative authority

(Article 1:1 General Administrative Law Act) to the administrative court, but must first file an objection (in Dutch: bezwaarschrift) with the authority that took the decision.

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

This question has been answered in paragraph 1.3 sub 2 – 5 since there is no difference in standing or the scope of the judicial review between different kinds of administrative court procedures. The scope of judicial review is determined by the applicant and can include both substantive and procedural legality of decisions. On its own motion, the administrative court may review the competence of the court, the competence of the administrative authority and the adherence to time limits when lodging the objection procedure and the appeals procedure.

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

The administrative courts in the Netherlands are competent to decide in cases concerning decisions (see Article 8:1 and Article 1:3 GALA) or untimely decision-making when a decision was requested. In any case where an EIA report is required, the decision that can be challenged must be such a decision, e.g. granting the permit that was applied for or adopting the zoning scheme. For factual acts or omissions, interested parties may request an enforcement decision or must refer the case to the civil court.

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

The Dutch legal system for judicial review requires an interested party to participate in one of two possible administrative procedures before they may file a court action. If a decision is prepared by following the uniform extensive public preparation procedure of section 3.4 GALA, any party is obliged to state their views on the draft decision that will be notified (Article 3:15 General Administrative Law Act).

8) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc., not meaning the requirement determined under point 12?

Unless there are good reasons not to be, the appeal to the court by the interested party is inadmissible if that party did not participate in the administrative procedure (Article 6:13 General Administrative Law Act). If the uniform extensive public preparation procedure was not followed, the law requires that an interested party files an objection (Article 7:1 General Administrative Law Act) and that he states his grounds for his objections against the decision taken by the administrative authority in the objection procedure before he can lodge an appeal against the decision. This entails that every interested party must participate in the prescribed review procedure before an appeal at the court can be lodged. At the moment of writing, it is clear that this requirement is in violation of the implementation of the Aarhus Convention in the European Union. As was explained in more detail above in paragraph 1.3 sub 2.

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

On the basis of Article 6 of the European Convention for Human Rights and the Fundamental Freedoms, the Dutch courts aim to provide procedures with a fair balance between the parties where each party must be afforded a reasonable opportunity to present their case under conditions that do not place them at a disadvantage vis-a-vis their opponent. The courts make sure that both parties to the proceedings know the evidence in the possession of the court and have the opportunity to comment on it with a view to influencing the outcome of the case. In administrative court procedures, the court is deemed to be active and may, if necessary, counterbalance the inequality between the individual and the administrative authority. This fundamental orientation has an impact on the law of administrative procedure as well. During the decision-making, too, an individual should be able to defend his or her position easily.

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

Although the Dutch administrative courts have implemented several relevant guidelines in order to be able to deliver judgments in a timely way, and also the legislator has adopted several instruments to help administrative courts achieve that goal, there is no general legally binding timeframe to deliver judgment besides the term that is codified in Article 8:66 GALA (six weeks after hearing the case). In some specific environmental cases, however, the legislation specifies that the judgment must be delivered in six months; there is no sanction if the court does not comply with this time requirement. However, case law provides that damages can be awarded if a case remains undecided in the system of administrative adjudication unreasonably long (more than four years if the objection procedure, the procedure of judicial review by the District Court and the Court of Appeal are all used).

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

There are no special rules applicable apart from the general provisions that were discussed above.

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

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

There are no country-specific IED rules in relation to access to justice in the Netherlands, although the permit on the basis of this Directive is always prepared by following the uniform extensive public preparation procedure (section 3.4 GALA) and anyone is allowed to state their views on a draft decision. As a consequence, there is no obligatory objection procedure before one can challenge the final decision in court.

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

Article 8:1 GALA provides that any interested party (Article 1:2 GALA) has standing in administrative court proceedings. Who might be considered an interested party has been described in more detail in paragraph 1.4.

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

Only the final decision (granting or refusal of permit) can be challenged in court.

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

Only the final decision (granting or refusal of permit) can be challenged in court.

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

The uniform extensive public preparation procedure is applicable to the granting of a permit for an IED installation. Anyone can state their views on a draft decision. This means that the draft decision will be notified and available for six weeks and during that time one can challenge the draft decision. After a final decision has been taken and is officially notified, an interested party (Article 1:2 GALA) can challenge the decision by lodging an appeal with the administrative court (District Court) within six weeks after the official notification.

6) Can the public challenge the final authorisation?

The public can challenge the final authorisation but article 8:1 GALA provides that only an interested party (Article 1:2 GALA) has standing in administrative court proceedings and article 6:13 GALA provides that only those that participated in the procedures may lodge an appeal. Who might be considered an interested party has been described above (section 1.4). The CJEU has ruled that article 6:13 GALA is partly in violation of the Aarhus Convention.

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

Administrative courts are competent to review both substantive and procedural legality of the decision by an administrative authority. The court can establish the facts on its own motion and must also assess whether the administrative authority was competent to take the decision, whether the applicant has

standing before the court and whether the court is competent. There are no other legal questions that the court will answer on his own motion. Challenging decisions (Article 1:3 GALA) and untimely decision-making is possible before an administrative court. Also, an interested party may ask for injunctive relief concerned with these decisions. However, the administrative courts are not competent to hear factual acts and omissions; the civil court is competent.

8) At what stage are these challengeable?

Decisions can be challenged before a court within six weeks after the decision has been officially notified (see above)

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

In many administrative law conflicts about decisions, there is an obligatory objection procedure (Article 7:1 GALA) before the interested party may bring the case to court. However, if the uniform extensive public preparation procedure was followed to take the decision, which is the case for any permit required under the IE Directive, this obligation does not exist and an interested party can file a court action with the administrative court within six weeks after the official notification of the final decision. See above.

10) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc., not meaning the requirement determined under point 12?

Article 6:13 GALA provides that the appeal of an interested party that wants to file a court action with the administrative court and did not participate in previous administrative procedures without good reason will be inadmissible. See above.

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

There is no difference between the rules provided in an administrative law case and the rules applicable to decisions concerning the application of the IED. Dutch courts aim to provide procedures with a fair balance between the parties; in administrative matters this may mean that the courts will be more proactive towards 'weaker' parties and as a result, because of the complex nature of the technical issues in environmental matters, are perhaps more inclined to ask for expert advice.

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

There is no specific legislation aimed at implementing the notion of timely with regards to the IED and the EIA Directive as the General Administrative Law Act provides sufficient provisions on timely decision making and timely court procedures.

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

There is no specific legislation concerning injunctive relief about decisions with regards to the IED and the EIA Directive as the General Administrative Law Act provides provisions on the possibilities of injunctive relief which have been discussed in paragraph 1.7.2 sub 2.

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

The administrative authority will provide information on access to justice when publishing the notification that a (environmental) decision has been taken (see https://www.overheid.nl/ or overuwbuurt.overheid.nl). The courts provide structured and accessible (online) information on access to justice. Also, the governmental websites dealing with legal aid provide information to citizens. See in more detail paragraph 1.7.4 sub 2.

1.8.3. Environmental liability[6]

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

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

In the Netherlands, the Environmental Liability Directive is implemented in title 17.2 of the Environmental Management Act. The scope of implementation in the Environmental Management Act is similar to the scope of the directive: strict liability for environmental damage caused by any of the activities mentioned in Annex III of the directive (mainly integrated pollution prevention and control installations), and fault-based liability for other activities.

Judicial review by an administrative court is available when application of title 17.2 Environmental Management Act (EMA) leads to a (single case) decision by an administrative authority as defined in Article 1:3(2) General Administrative Law Act. When such a decision is taken, the general provisions for access to justice will apply. This means that any natural person, legal entity, administrative authority and/or NGO considered to be an interested party as defined in Article 1:2 General Administrative Law Act will have standing in an administrative court procedure against such a decision. Also, the administrative authorities mentioned in Article 17.2(3) EMA will be allowed to request for a decision on environmental remediation. A (single case) decision might be a decision at the request of a third party (interested party) for preventive or remedial action (Article 17.15(1) EMA), a decision to take preventive measures in the event of imminent environmental damage (Article 17.12(4) EMA), a decision to oblige someone to take all feasible measures in the event that environmental damage has already occurred (Article 17.13(5) EMA), a decision by the competent authority to take preventive measures or all feasible measures itself if the damage has already occurred, (Articles 17.10 and 17.14(2) EMA), a decision as to whether or not to agree with the remedial measures proposed by the party causing the damage (Article 17.14(3) EMA, the decision prioritising which environmental damage is remedied first (Article 17.14(4) EMA), and a decision concerning the recovery of costs incurred by the competent authority from the party causing the damage (Article 17.16 EMA).

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

The provisions on access to justice in the General Administrative Law Act are applicable and there are no additional special provisions provided in the Environmental Management Act. This means that the deadline is six weeks after the official notification of a decision.

The following applies to the cost recovery aspect. The competence to decide to recover costs expires after a period of five years after the day on which the preventive and remedial measures have been fully completed, by - or on behalf of - the competent authority (Article. 17.17 Environmental Management Act). If the party causing the damage has only been identified after the date of completion of the measures, the five-year period starts from the moment of identification. Still, the deadline to introduce an appeal will be six weeks.

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

There are no special requirements stipulated for observations accompanying the request for action. In general, a request or application to take a decision should be done by an interested party (Article 1:2 General Administrative Law Act) and should be sufficiently clear and concrete to be considered a request. A request or application should furthermore be accompanied by those facts and circumstances that the applicant is able to provide (Article 4:2 General Administrative Law Act). Case law has provided that it is duty of the interested party to provide the competent authority with any leads for the investigation. It is then up to the competent authority to investigate whether action is required.

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

There are no special requirements stipulated regarding 'plausibility'. A request or application should furthermore be accompanied by those facts and circumstances that the applicant is able to provide (Article 4:2 General Administrative Law Act). Case law has provided that it is duty of the interested party to provide the competent authority with any leads for the investigation. It is then up to the competent authority to investigate whether action is required.

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

There are no special time limits stipulated for the notification of the decision by the competent authority. If an request/application for an administrative single case decision is filed with the administrative authority, it is legally obliged to deliver a decision within either the term provided in sectoral legislation or – if no such term is provided – within a reasonable time period, which is deemed to be eight weeks according to the Article 4:13 General Administrative Law Act. Although not stipulated by law, the administrative authority may decide that the uniform extensive public preparation procedure of section 3.4 GALA is applicable for a decision on the basis of title 17.2 EMA. In that case, a decision will be drafted and will be made publicly known. The draft decision and the documents on which it is based will be available for anyone's viewing for six weeks. During that time anyone can participate in the decision-making process by submitting their views to the competent authority. The competent authority will have to respond to these views before taking and publishing the final decision. Such a final decision has to be taken within 6 months of the application.

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

Yes. See above. An interested party may request a decision on preventive measures in case of imminent threat of environmental damage.

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

Article 17.9 EMA stipulates which are the competent authorities. When the damage has been caused by an (industrial) installation, the administrative authority that is competent to grant the permit and is the competent enforcement agency is the competent authority. However, if the damage has occurred or will occur predominantly in water systems, the authority that is competent for that water system is the competent authority. When the damage has been caused outside an (industrial) installation, different competent authorities are designated depending on the damage being predominantly caused to soil, water, habitats, species (see Article 17.9(3) EMA. Where, in the event of environmental damage or imminent threat thereof, more than one administrative authority has been designated as the competent authority, or powers have been assigned to another administrative authority by this or any other law, consultations must be held in good time between those administrative authorities with a view to promoting the best possible coordination between the decisions to be taken or the measures to be taken. The administrative bodies must coordinate with each other (Article 17(5) EMA).

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

There are no special requirements stipulated in the implementation of the Environmental Liability Directive. Therefore, the general provisions of the General Administrative Law Act are applicable and they stipulate that procedures of administrative review (either an objection procedure or the uniform extensive public preparation procedure) must be followed before judicial proceedings can be instigated (Article 8:1 and 7:1 GALA).

1.8.4. Cross-border rules of procedures in environmental cases

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

There are no special regulations provided for administrative law cases with cross-border characteristics. The general provisions of the General Administrative Law Act are applicable.

However, in certain cases the government of another country will be informed of the possible environmental effects by decisions, plans or programmes of the Dutch authorities (section 7.11 EMA concerning environmental impact assessment) or in the event that an installation is operated in such a way that environmental damage occurs or may occur outside the borders of the Netherlands (Article 17.13 EMA).

2) Notion of public concerned?

There are no special regulations provided for administrative law cases with cross-border effects. The general provisions on standing in administrative procedures and judicial proceedings that are stipulated in the General Administrative Law Act (e.g. the appellant must be an interested party (article 1:2 GALA) and must have participated in the preparatory procedure (article 6:13 GALA)) are applicable. See explained in more detail in paragraph 1.4 and 1.8.1 sub 7 and 8.

3) Do NGOs of the affected country have standing? When and to what court should they submit their appeals? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?

There are no special regulations provided for administrative law cases where NGOs of an affected country want to participate in the decision-making procedure, the procedure of administrative review or the judicial proceedings. The general provisions on standing in administrative procedures and judicial proceedings that are stipulated in article 1:2 and article 6:13 of the General Administrative Law Act are applicable. See explained in more detail in paragraph 1.4 and 1.8.1 sub 7 and 8. GALA. As far as we know, there are also no special regulations provided for individuals of an affected country related to legal aid and/or pro bono assistance.

4) Do individuals of the affected country have standing? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?

There are no special regulations provided for administrative law cases where individuals of an affected country want to participate decision making, administrative review or judicial proceedings. The general provisions on standing in administrative procedures and judicial proceedings that are stipulated in in article 1:2 and article 6:13 of the General Administrative Law Act are applicable See explained in more detail in paragraph 1.4 and 1.8.1 sub 7 and 8. As far as we know, there are also no special regulations provided for individuals of an affected country related to legal aid and/or pro bono assistance. See above.

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

There are no special regulations provided for administrative law cases where individuals of an affected country want to have information. The general provisions on providing information (notification duties of decisions and plans) are stipulated in the General Administrative Law Act and perhaps the Government Information (Public Access) Act (WOB, Wet openbaarheid van bestuur). Also, decisions taken by the competent authority in light of the implementation of the Environmental Liability Directive must be notified to the public in accordance with the general provisions stipulated in the General Administrative Law Act. The competent authority may oblige the party causing the damage to provide (additional) information. If the cause of the damage is an unusual event within an installation, title 17.1 EMA will provide additional safeguards to protect the environment and human health.

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

There are no special regulations provided for administrative law cases with cross-border characteristics. The general provisions of the General Administrative Law Act are applicable. When the uniform extensive preparatory procedure is applicable, in most cases the public will have six weeks to state their views on a draft decision. Lodging an appeal procedure against the final decision is possible for an interested party during the period of six weeks after notification of the final decision.

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

There are no special regulations provided for administrative law cases with cross-border characteristics or for foreign applicants and non-foreign applicants. See above. This means that the decision of the administrative authority or the judgment will have to provide access to justice information.

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

There are no special regulations provided for administrative law cases with cross-border characteristics or for foreign applicants and non-foreign applicants. For court cases in which one of the parties does not have an adequate command of Dutch, the government has set up a register of court interpreters and

sworn translators. In certain cases (involving criminal or immigration law), the courts can only use interpreters and translators whose names are listed in this register. In civil cases this is not mandatory. Using the register, litigants (such as private individuals and enterprises) and people providing legal services (such as lawyers) can easily find an interpreter or translator who fulfils the requirements of integrity and quality laid down in the Sworn Interpreters and Translators Act. The register of court interpreters and sworn translators (only in Dutch) can in fact be accessed by any member of the public. However, in most environmental cases the appellant will bear the costs of translation or interpretation. See explained in more detail in paragraph 1.4 sub 5.

9) Any other relevant rules?

There are no other relevant rules.

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[1] All Dutch legislation is available here (search for Dutch legislation).

[2] Many relevant judgments are published here (search for Dutch case law)

[3] CJEU 14 January 2021, ECLI:EU:C:2021:7. See ABRvS 14 April 2021, ECLI:NL:RVS:2021:786 and ABRvS 4 May 2021, ECLI:NL:RVS:2021:953.

[4] Amended Code of Conduct for judicial experts at the Administrative Jurisdiction Division.

[5] Search for 'Gedragscode deskundigen' on the website of the Dutch judiciary.

[6] See also case C-529/15.

Last update: 27/07/2021

Access to justice falling outside of the scope of EIA, IPPC/IED, access to information and ELD

1.1. Decisions, acts or omissions concerning specific activities falling within the scope of EU environmental legislation outside the scope of the EIA and IED Directives[1]

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

There is no difference between the regulation provided in an administrative law case outside the scope of EIA and IED, access to information and ELD and within. The articles 1:2 GALA on 'interested parties' that have standing and article 6:13 GALA are relevant. In general the level of access to national courts can be considered very effective as administrative court procedures are accessible, not expensive and allow for an active court to investigate the matter. However, recently discussion on the application of article 6:13 GALA has been triggered by the CJEU (case C826/18), because it ruled that this provision is partly in violation of the Aarhus Convention as it requires interested parties to participate in the preparatory procedure for a decision in order to have access to justice. See explained in more detail in paragraph 1.4 and 1.8.1 sub 7 and 8.

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

There is no difference between the regulation provided in an administrative law case outside the scope of EIA and IED, access to information and ELD and within. The scope of administrative review (if applicable) and judicial review will cover procedural and substantive legality as long as grounds for appeal have been brought forward by the appellant.

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

The system of judicial review mandates that all administrative review procedures must be used and exhausted before an appeal may be lodged (Article 6:13 GALA). There is no difference between the regulation provided in an administrative law case outside the scope of EIA and IED, access to information and ELD and within. See explained in more detail paragraph 1.3 and 1.4.

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

Article 6:13 GALA provides for the general rule that it is necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc. There is no difference between the regulation provided in an administrative law case outside the scope of EIA and IED, access to information and ELD and within. See explained in more detail in paragraph 1.8.1 sub 7 and 8.

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

There are no grounds/arguments precluded from the judicial review phase, however, when a decision consists of multiple parts that may be quashed separately, anyone bringing grounds against such a part of a decision must have brought grounds against that part in any (administrative preparatory or review) procedure to be admissible (Article 6:13 GALA). There is no difference between the regulation provided in an administrative law case outside the scope of EIA and IED, access to information and ELD and within.

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

There is no difference between the rules provided in an administrative law case and the rules applicable to decisions concerning the application of EU law outside of EIA Directive/IED. Dutch courts aim to provide procedures with a fair balance between the parties; in administrative matters this may mean that the courts will be more proactive towards 'weaker' parties and therefore and because of the complex nature of the technical issues in environmental matters are perhaps more inclined to ask an expert advice.

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

There is no specific legislation aimed at implementing the notion of timely with regards to areas addressed by EU law outside the IED and the EIA Directive, as the General Administrative Law Act provides sufficient provisions on timely decision making and timely court procedures.

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

There is no specific legislation concerning injunctive relief concerning the issues relevant here. The General Administrative Law Act provides provisions on the possibilities of injunctive relief which have been discussed in more detail in paragraph 1.7.2.

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

There is no specific legislation concerning the costs of access to justice and the consequences of losing the procedure other than the general provision provided by the GALA. See above. The 'loser pays principle' does not apply in administrative court cases, although the administrative authority will have to

pay the court fee for the applicant in most cases when the decision is annulled. Also, in most cases, the authority will have to pay a calculated sum of legal costs (such as the costs related to lawyers representing the applicant) to the applicant if the decision is quashed by the court. The applicant will only be forced to pay for the costs of the public authority when he has obviously misused the possibility of judicial review. This is practically never the case. For third parties, in most cases the costs will not be reimbursed. There is no express statute that requires that costs should not be prohibitive.

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

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

There is no special regulation provided for access to justice when a Strategic Environmental Assessment is required other than the general provisions discussed above. This means that administrative review and judicial review is only available against the final decision when it can be considered a decision as defined in Article 1:3 GALA and is not considered a general binding rule or a policy rule (or a plan without direct binding effect for the public). In a large number of cases, there is therefore no administrative review or judicial review available. When there is, however, only an interested party (Article 1:2 GALA) has standing, as is the case in any administrative court procedure. See above.

In most cases, the uniform extensive public preparation procedure is followed to prepare the decision for which a Strategic Environmental Impact Assessment is required and in most of those administrative procedure anyone has the right to state their views on a draft decision. In judicial appeal procedures, however, access to justice is provided only for interested parties (article 1:2 GALA). The effectiveness of the level of access is quite high as the costs and the financial risks of lodging an appeal are low and the formal requirements for standing are reasonable. Be that as it may, there are doubts as to whether the system provided by article 6:13 GALA that requires all interested parties to state their views against a draft decision in the preparatory procedure is in accordance with the Aarhus Convention.

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

There is no special regulation provided for access to justice when a Strategic Environmental Assessment is required. The scope of administrative review (if applicable) and judicial review will cover procedural and substantive legality as long as grounds for appeal have been brought forward by the appellant. See above for information on the general rules on access to justice in administrative court cases.

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

The system of judicial review mandates that all administrative review procedures must be used and exhausted before appeal may be lodged (Article 6:13 GALA). There is no special regulation provided for access to justice when a Strategic Environmental Assessment is required. See above for information on the general rules on access to justice in administrative court cases.

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

Article 6:13 GALA provides for the general rule that it is necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc. There is no specific regulation provided for access to justice when a Strategic Environmental Assessment is required. See above for information on the general rules on access to justice in administrative court cases.

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

There is no specific legislation concerning injunctive relief. The General Administrative Law Act provides provisions on the possibilities of injunctive relief which have been discussed above. There is no specific regulation provided for access to justice when a Strategic Environmental Assessment is required. See above for information on the general rules on access to justice in administrative court cases.

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

There is no specific legislation concerning the costs of access to justice and the consequences of losing the procedure other than the general provision provided by the GALA. See above. The ‘loser pays principle’ does not apply in administrative court cases, although the administrative authority will have to pay the court fee for the applicant in most cases when the decision is annulled. Also, in most cases, the authority will have to pay a calculated sum of legal costs (such as the costs related to lawyers representing the applicant) to the applicant if the decision is quashed by the court. The applicant will only be forced to pay for the costs of the public authority when he has obviously misused the possibility of judicial review. This is practically never the case. For third parties, in most cases the costs will not be reimbursed. There is no express statute that requires that costs should not be prohibitive.

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

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

There is no special regulation provided for access to justice whether a Strategic Environmental Assessment is required or not. This means that administrative review and judicial review is only available against the final decision when it can be considered a decision as defined in Article 1:3 GALA and is not considered a general binding rule or a policy rule (or a plan without direct binding effect for the public). In a large number of cases there is therefore no administrative review or judicial review. When there is, only an interested party (Article 1:2 GALA) has standing, as is the case in any administrative court procedure. See above.

In most cases, the uniform extensive public preparation procedure is followed to prepare the decision for which a Strategic Environmental Impact Assessment is required, and in most of those administrative procedures anyone has the right to state their views. In judicial appeal procedures, however, access to justice is provided only for interested parties (article 1:2 GALA). The effectiveness of the level of access is quite high as the costs and the financial risks of lodging an appeal are low and the formal requirements for standing are reasonable. Be that as it may, there are doubts whether the system provided by article 6:13 GALA that requires all interested parties to state their views against a draft decision in the preparatory procedure is in accordance with the Aarhus Convention.

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

There is no special regulation provided for access to justice when a Strategic Environmental Assessment is required or when it is not. The scope of administrative review (if applicable) and judicial review will cover procedural and substantive legality as long as grounds for appeal have been brought forward by the appellant. See above for information on the general rules on access to justice in administrative court cases.

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

The system of judicial review mandates that all administrative review procedures must be used and exhausted before appeal may be lodged (Article 6:13 GALA). There is no special regulation provided for access to justice when a Strategic Environmental Assessment is required or when it is not. See above for information on the general rules on access to justice in administrative court cases.

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

Article 6:13 GALA provides for the general rule that it is necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc. There is no special regulation provided for access to justice when a Strategic Environmental Assessment is required or when it is not. See above for information on the general rules on access to justice in administrative court cases.

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

There is no specific legislation concerning injunctive relief. The General Administrative Law Act provides provisions on the possibilities of injunctive relief which have been discussed above. There is no special regulation provided for access to justice when a Strategic Environmental Assessment is required or when it is not. See above for information on the general rules on access to justice in administrative court cases.

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

There is no specific legislation concerning the costs of access to justice and the consequences of losing the procedure other than the general provision provided by the GALA. See above. The 'loser pays principle' does not apply in administrative court cases, although the administrative authority will have to pay the court fee for the applicant in most cases when the decision is annulled. Also, in most cases, the authority will have to pay a calculated sum of legal costs (such as the costs related to lawyers representing the applicant) to the applicant if the decision is quashed by the court. The applicant will only be forced to pay for the costs of the public authority when he has obviously misused the possibility of judicial review. This is practically never the case. For third parties, in most cases the costs will not be reimbursed. There is no express statute that requires that costs should not be prohibitive.

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

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

There is no special general regulation provided for access to justice concerning plans and programmes that are required by EU environmental legislation. This means that administrative review and judicial review is only available against the final decision when it can be considered a decision as defined in Article 1:3 GALA and is not considered a general binding rule or a policy rule (or a plan without direct binding effect for the public). In a large number of cases there is therefore no administrative review or judicial review, e.g. air quality plans. When there is, e.g. against a management plan for a Natura 2000 area when it implies that certain activities will not require a permit on the basis of the implementation of the Habitats Directive, only an interested party (Article 1:2 GALA) has standing, as is the case in any administrative court procedure. See above.

In most cases, the uniform extensive public preparation procedure is followed to prepare the decision and in most of those administrative procedures anyone has the right to state their views. In judicial appeal procedures, however, access to justice is provided only for interested parties (article 1:2 GALA). The effectiveness of the level of access is quite high as the costs and the financial risks of lodging an appeal are low and the formal requirements for standing are reasonable. Be that as it may, there are doubts whether the system provided by article 6:13 GALA that requires all interested parties to state their views against a draft decision in the preparatory procedure is in accordance with the Aarhus Convention.

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

Relevant for the competence of the Dutch administrative courts is primarily the question whether the plan or the programme can be considered a decision as defined in Article 1:3 GALA that does not consist of general binding rules or policy rules. Plans and or programmes that are required by EU environmental law are often considered either policy documents to allow government to achieve a certain goal or provide an (indirect) assessment framework for assessing the applications for a permit or for adopting a zoning scheme that affect citizens (directly) and which decisions can be challenged in court. In many cases, however, the plans and programmes are not considered to be a decision against which interested parties should be awarded the possibility of judicial review. This is not just the case because the plans and programmes will be followed by decisions that can be challenged but also because in the procedure of judicial review of these decisions, the interested party may introduce a plea of illegality concerning the plan or programme that was the basis for the decision. Only if the plan or programme itself does directly provide citizens with binding legal consequences, e.g. the management plan of a Natura 2000 area that will allow certain activities without a permit, judicial review will be open for an interested party (Article 1:2 GALA).

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

There is no special general regulation provided for access to justice concerning plans and programmes that are required by EU environmental legislation. In a procedure of judicial review of a decision the applicant may enter a plea of illegality concerning a plan or programme and the administrative court must assess whether that ground of appeal is well-founded. It is generally thought that this assessment is done with more deference for the public authority that adopted the plan or programme and will still cover both procedural and substantive legality, although procedural flaws are considered less relevant for the question whether the competent authority could apply the plan of programme to take the contested decision.

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

The system of judicial review mandates that all administrative review procedures must be used and exhausted before appeal may be lodged (Article 6:13 GALA). There is no special general regulation provided for access to justice concerning plans and programmes that are required by EU environmental legislation. See above.

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

Article 6:13 GALA provides for the general rule that it is necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc. There is no special general regulation provided for access to justice concerning plans and programmes that are required by EU environmental legislation.

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

There are no grounds/arguments precluded from the judicial review phase, however, when a decision consists of multiple parts that may be quashed separately, anyone bringing grounds against such a part of a decision must have brought grounds against that part in any (administrative preparatory or review) procedure to be admissible. There is no special general regulation provided for access to justice concerning plans and programmes that are required by EU environmental legislation. The general provisions stipulated in GALA are applicable.

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

There is no difference between the rules provided in an administrative law case and the rules applicable to plans and programmes. Dutch courts aim to provide procedures with a fair balance between the parties; in administrative matters this may mean that the courts will be more proactive towards 'weaker' parties and therefore and because of the complex nature of the technical issues in environmental matters are perhaps more inclined to ask an expert advice.

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

There is no specific legislation aimed at implementing the notion of timely with regards to plans and programmes required by European Law, as the General Administrative Law Act provides sufficient provisions on timely decision making and timely court procedures. There is no special general regulation provided for access to justice concerning plans and programmes that are required by EU environmental legislation.

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

There is no specific legislation concerning injunctive relief. The General Administrative Law Act provides provisions on the possibilities of injunctive relief which have been discussed in paragraph 1.7.2 above. There is no special general regulation provided for access to justice concerning plans and programmes that are required by EU environmental legislation.

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

There is specific legislation concerning the costs of access to justice and the consequences of losing the procedure other than the general provision provided by the GALA. See above. The 'loser pays principle' does not apply in administrative court cases, although the administrative authority will have to pay the court fee for the applicant in most cases when the decision is annulled. Also, in most cases, the authority will have to pay a calculated sum of legal costs (such as the costs related to lawyers representing the applicant) to the applicant if the decision is quashed by the court. The applicant will only be forced to pay for the costs of the public authority if he has obviously misused the possibility of judicial review. This is practically never the case. For third parties the costs will in most cases not be reimbursed. There is no express statute that requires that costs should not be prohibitive.

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

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

There is no special general regulation provided for access to justice concerning executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts. This means that administrative review and judicial review is only available against the final decision when it can be considered a decision as defined in Article 1:3 GALA and is not considered a general binding rule or a policy rule (or a plan without direct binding effect for the public). In a large number of cases, there is therefore no administrative review or judicial review. When there is, only an interested party (Article 1:2 GALA) has standing, as is the case in any administrative court procedure. See above.

In cases where general binding rules are used, there is no competence of the administrative courts and the uniform extensive public preparation procedure is not applicable as there are separate provisions on the preparation of general binding rules in the Netherlands. In many other cases where a decision has to be taken, the uniform extensive public preparation procedure is followed to prepare the decision and in most of those administrative procedure anyone has the right to state their views. There is no direct access to administrative courts for judicial review and therefore the effectiveness is dependent on the judicial review of decisions based on the binding normative instruments (general binding rules).

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

There is no special general regulation provided for access to justice concerning executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts. In a procedure of judicial review of a decision based on the general binding rules implementing European law, however, the appellant may enter a plea of illegality concerning these executive and/or generally applicable legally binding normative instruments and the administrative court must assess whether that ground of appeal is well-founded. It is generally thought that this assessment is done with more deference for the public authority that adopted the normative instrument. It will still cover both procedural and substantive legality, although procedural flaws are considered less relevant for the question of whether the competent authority could apply the plan of programme to take the contested decision.

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

The system of judicial review mandates that all administrative review procedures must be used and exhausted before appeal may be lodged (Article 6:13 GALA). However, this requirement is irrelevant here, as there is no special general regulation provided for access to administrative courts concerning executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts.

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

Article 6:13 GALA provides for the general rule that it is necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc. However, this requirement is irrelevant here, as there is no special general regulation provided for access to administrative courts concerning executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts.

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

There is no specific legislation concerning injunctive relief. The General Administrative Law Act provides provisions on the possibilities of injunctive relief which have been discussed in paragraph 1.7.2 above. There is no special general regulation provided for access to administrative courts concerning executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory act.

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

There is specific legislation concerning the costs of access to justice and the consequences of losing the procedure other than the general provision provided by the GALA. The 'loser pays principle' does not apply in administrative court cases, although the administrative authority will have to pay the court fee for the applicant in most cases when the decision is annulled. Also, in most cases, the authority will have to pay a calculated sum of legal costs (such as the costs related to lawyers representing the applicant) to the applicant if the decision is quashed by the court. The applicant will only be forced to pay for the costs of the public authority if he has obviously misused the possibility of judicial review. This is practically never the case. For third parties, in most cases the costs will not be reimbursed. There is no express statute that requires that costs should not be prohibitive.

7) Is it possible to bring a legal challenge before a national court concerning any related EU regulatory act with a view to a validity reference under Article 267 TFEU, and if so how[6]?

There is no special general regulation provided for access to justice concerning executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts. Also, the preliminary reference procedure is not codified in Dutch procedural law. In a procedure of judicial review of a decision, the applicant may enter a plea of illegality concerning an EU (regulatory) act or decision and the administrative court must assess whether that ground of appeal is well-founded and whether a preliminary reference procedure with the ECJ is deemed necessary.

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

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

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

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

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

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

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

The sanctions for the administrative authority for not responding within the prescribed term have been described above. When a decision is not provided before the end of the term provided by law, or when no term is provided within eight weeks after the request, the applicant will have to send a notice of default and allow the administrative authority another two weeks to decide. If a decision still is not taken after those two weeks, there are two consequences. First, for each day after that term the administrative authority will have to pay a penalty to the applicant for each day that no decision is made (with a maximum of EUR 1,442). Second, the applicant can ask the court for judicial review in order to force the administrative authority to come up with a decision. That court procedure will be about the question of whether the administrative authority did indeed not decide within the provided time frame and the procedure must take no more than eight weeks. If the conclusion by the court is indeed that no decision was made before the deadline, the court will order the administrative authority to take the decision within a two-week period and will award a penalty for each day that a decision still has not been taken after those two weeks.

If an administrative authority does not comply with a judgment of an administrative court, it will be most likely be the case that no decision is taken. Judicial review will be available for an interested party when the time frame for taking a decision has passed (see above in paragraph 1.8.2). If a natural person or a legal person does not comply with the judgment of the administrative court, it will most likely be the case that this person acts in violation of administrative law, in accordance with a suspended permit or in violation of the conditions of his permit. Therefore, an interested party may request enforcement measures with the competent administrative authority, which is - in general - entitled to take enforcement action (either an administrative order to take physical action or instead impose on the offender a duty backed by a penalty payment).

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