Pristupu pravosuđu u pitanjima okoliša

Malta

Više informacija o pristupu pravosuđu u pitanjima okoliša za pojedine države dostupno je na sljedećim poveznicama:

1. Pristup pravosuđu na razini države članice
2. Pristup pravosuđu koji nije obuhvaćen područjem primjene Direktive o procjeni utjecaja na okoliš, Direktive o industrijskim emisijama, Direktive o pristupu informacijama i Direktive o odgovornosti za okoliš
3. Druga odgovarajuća pravila o žalbama, pravnim lijekovima i pristupu pravosuđu u pitanjima okoliša

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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

Malta's legal system is what is known as a mixed legal system (mainly based on continental Civil Law, but with influences from the Common Law tradition). Maltese law has its roots in Roman law, whilst public law has been greatly influenced by British law. The sources of Maltese law are the Constitution, the Codes, the Acts of Parliament, subsidiary legislation that may be published under such Acts, directly applicable EU legislation as well as ratified international conventions. The courts in Malta are categorised as Superior or Inferior Courts, and there is a distinction between civil and criminal courts. The Superior Courts are made up of the Constitutional Court, the Court of Appeal, the Court of Criminal Appeal, the Criminal Court and the Civil Court. The Inferior Courts are the Courts of Magistrates (Malta) and the Court of Magistrates (Gozo). The latter court has both a superior and an inferior jurisdiction. The Constitutional Court, which may be regarded as the highest court in Malta, hears and determines specific disputes including the human rights cases. All cases relating to violations of human rights are heard before the Civil Court, First Hall and the Constitutional Court (the 'Civil Court (Constitutional Jurisdiction)') may then act as a court of last instance. The Judiciary is composed of two offices:

Judges who preside over the Superior Courts, and the magistrates who preside over the inferior courts and conduct criminal inquiries.

The criminal or civil action is brought before the relevant Courts of First Instance. In general, parties to the dispute may appeal against the decision of the Courts of First Instance.

The main entity that regulates environmental matters is the Environment and Resources Authority (ERA). Decisions by other authorities, such as the Planning Authority, may also have direct or indirect effect on the environment. Historically these authorities had formed one authority, the Malta Environment and Planning Authority (MEPA), however the demerger ensures that the functions and roles of each entity are separate, and each is regulated by its own piece of legislation.

The **Environment and Resources Authority (ERA**) is the competent authority responsible for environmental protection under the Environmental Protection Act (Chapter 549). Its mission is to safeguard the Maltese environment for a sustainable quality of life. The goals of the ERA are: to mainstream environmental targets and objectives across Government and society; to take a leading role in advising Government on environmental policy-making at the national level, as well as in the context of international environmental negotiations; to develop evidence-based policy backed by a robust data gathering structure; and to draw up plans, provide a licensing regime and monitor activities having an environmental impact and to integrate environmental considerations into the development control process. The Environmental Protection Act (Chapter 549 of the Laws of Malta) is the main legal provision which regulates the operations of the ERA.

The **Planning Authority (PA)** carries out and monitors the permit granting process for development applications and also has a policy-making function in the land-use sphere. The PA is regulated by the Development Planning Act (Chapter 552 of the Laws of Malta).

Access to justice in environmental matters is provided mainly through the Environment and Planning Review Tribunal (**EPRT**), which was first established in 2010. The Tribunal is regulated through the Environment and Planning Review Tribunal Act (Chapter 551 of the Laws of Malta).

Chapter 551 distinguishes between decisions made by the Environment and Resources Authority (ERA), and the Planning Authority (PA). The decisions taken by the PA which can be appealed before the EPRT are listed in Article 11 of Chapter 551.

With regard to decisions taken by the ERA, Article 47 of Chapter 551 and Article 63 of the Environmental Protection Act (Chapter 549), provide the right for an aggrieved person to challenge such decisions before the EPRT. Notably, for appeals lodged by a person other than the applicant, such a person need not prove that he has an interest in that appeal in terms of the doctrine of juridical interest, but he is required to submit reasoned grounds based on environmental considerations to justify his appeal.

In all cases, the definition of a 'person' includes an association or organisation, whether registered as a legal person or not, including NGOs.

The **Court of Appeal** is the judicial body which decides on appeals against decisions of the EPRT.

The **Courts of Civil jurisdiction** (the First Hall of the Civil Court) can rule on another form of review, namely judicial review of administrative actions filed under Article 469A of the Code of Organisation and Civil Procedure (Chapter 12). The latter allows the courts of civil jurisdiction to enquire into the validity of any administrative act or declare such an act null, invalid or without effect, only in cases where the act is in violation of the Constitution of Malta, or when it is ultra vires on the grounds specifically contained in subsection (1)(b) of Article 469A.

The **Constitutional Court** has both an original and an appellate jurisdiction. As an appellate court it hears appeals against decisions of other courts on questions relating to the interpretation of the Constitution and on the validity of laws, as well as appeals against decisions on alleged violations of fundamental human rights. As a court of original jurisdiction, the Constitutional Court decides questions concerning the validity of the election of members of the House of Representatives, the requirement in certain cases for a member to vacate his seat in the said House, and the validity of the election of the

Speaker from among persons who are not members of the House. As a court of original jurisdiction, the Constitutional Court also decides questions concerning the validity of general elections, including allegations of illegal or corrupt practices or foreign interference in such elections. No appeal lies from a decision of the Constitutional Court given in its original jurisdiction.
Certain subsidiary legislation also provides for access to justice with regard to specific matters, such as the Freedom of Access to Information on the Environment Regulations (S.L 549.39) which provide for two forms of appeal for an applicant who requested environmental information and was dissatisfied with the response. The applicant may appeal to the Information and Data Protection Commissioner as per regulation 12, or to the EPRT as per regulation 11A. In the latter case, the Tribunal is obliged to hold its first hearing within six working days from receipt of the appeal.

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

The Constitution contains a declaration of principles which includes reference to the State's obligations to protect and conserve the environment and its resources for the benefit of present and future generations, to prevent environmental degradation and to promote, nurture and support the right of action in favour of the environment[1]. However, in accordance with Article 21 of the Constitution, this is not justiciable.
Article 33 of the Constitution protects the right to life of every citizen as a fundamental human right. The wording of the provision is wide and can be interpreted to include the right to a healthy environment as an aspect of the right to life. As yet there has been no legal challenge to this provision to confirm its interpretation in the sense that the right to life includes the right to a healthy environment.
Article 41 also provides for the right to freedom of expression, including also freedom to receive ideas and information without interference.
Article 46 provides for the right to file a constitutional case against the government when a violation of human rights is alleged.
The Constitution contains provisions ensuring procedural rights such as the requirement of impartiality of tribunals deciding upon civil rights (including environmental rights).
The Constitution also includes the right to be given a fair hearing within a reasonable time. This incorporates safeguarding of the principles of natural justice.
Furthermore, there is a Constitutional provision[2] which allows for the filing of a class action known as the "*actio popularis*" where a law may be challenged as being invalid for reasons of public interest. An example of such a case would be one where an allegation is made that a law was not regularly approved by Parliament or the relevant minister according to its procedural norms.

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

Under the Maltese national order, there are five main routes whereby individuals, associations or NGOS can have access to justice in the environmental field. These are the following:
Access to information;
Public participation in decisions relating to the environment;
Right of appeal for decisions relating to the environment;
Right of action for Judicial Review of acts or omissions of authorities;
Right of action for the declaration of the invalidity of a law.
The relevant pieces of legislation which provide for access in this manner are listed below and are broadly grouped in relation to the above-cited categories (though the scope of some will overlap):

General

The Environmental Protection Act (Chapter 549) and the Development Planning Act (Chapter 552)

Access to Information

The Freedom of Access to Information on the Environment Regulations (S.L. 549.39)
The Freedom of Information Act (Chapter 496)

Public Participation

The Environmental Impact Assessment Regulations (S.L. 549.46)
The Strategic Environmental Assessment Regulations (S.L. 549.61)
The Industrial Emissions (Integrated Pollution Prevention and Control) Regulations (S.L. 549.77)
The Plans and Programmes (Public Participation) Regulations (S.L. 549.41)
The Water Policy Framework Regulations (S.L. 549.100)
The European Pollutant Release and Transfer Register Reporting Obligations Regulations (S.L. 549.47)
The Control of Major Accident Hazard Regulations (S.L. 424.19)
The Development Planning (Procedure for Applications and their Determination) Regulations (S.L. 552.13)

Access to justice – Appeal and Judicial review

The Environment and Planning Review Tribunal Act (Chapter. 551)
The Administrative Justice Act (Chapter. 490)
The Code of Organisation and Civil Procedure (Chapter. 12)
The Data Protection Act (Chapter. 586)

Access to Justice - Right of Action for the Declaration of the Invalidity of a Law

The Constitution of Malta

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

The jurisprudence of the Court of Appeal (as is the case with all judgments) can be found here. The doctrine of judicial precedent does not apply in Malta so jurisprudence has a persuasive but not a binding effect.
The rulings regarding environmental and development cases are those made by the Court of Appeal (Inferior jurisdiction). These are judgments in appeals filed from decisions of the Environment and Planning Review Tribunal (EPRT) and most have the Planning Authority (PA) as a defendant.
The Court of Appeal acts does not re-examine the facts of a case, but only interprets the relevant legal and procedural questions relating to it.[3]

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

Parties to administrative procedures may only rely on international agreements when these have been transposed into national law – there is no right of direct recourse.
As per Article 267 of the TFEU, which is applicable in Malta under Chapter 460, a preliminary reference may be requested at any stage of the proceedings, but if it is made at the appeal stage then the national court cannot reject it. The procedure is also regulated by Article 21 of the Court Practice and Procedure and Good Order Rules (S.L 12.09).

1.2. Jurisdiction of the courts

1) Number of levels in the court system

The Maltese judicial system is a two-tier system consisting of court(s) of first instance, presided over by a judge or magistrate, and the court(s) of second instance, the court of appeal.

There are also various specialised tribunals that deal with specific areas of the law. There is a right of appeal to the Court of Appeal against decisions of tribunals and awards of arbitrators.

The Environment and Planning Review Tribunal (EPRT) is the tribunal which decides upon appeals against decisions of the Planning Authority and the Environment and Resources Authority. Decisions of the Environment and Planning Review Tribunal are subject to appeal before the Court of Appeal on points of law or any matter relating to an alleged breach of the right of fair hearing before the tribunal (as per Article 50 of Chapter 551).

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

The **Environment and Planning Review Tribunal** (EPRT) Act, Chapter 551, provides that the role of the EPRT is to review 'the decisions of the Planning Authority and the decisions of the Environment and Resources Authority', further providing that the EPRT is to exercise any other jurisdiction and function conferred by the Act and any other law. The role of the EPRT is to 'review' planning and environmental decisions in terms of law and fact within the parameters set out in the EPRT Act. The decisions of the EPRT are subject to appeal before the Court of Appeal.

The **Administrative Review Tribunal** is set up by virtue of the Administrative Justice Act (Chapter 490 of the Laws of Malta), for the purpose of reviewing administrative acts. It consists of a Chairperson, who shall be a person who holds or has held the office of a judge or of a magistrate in Malta (Article 8(4) of Chapter 490), appointed for a period of four years by the President of Malta acting on the advice of the Prime Minister. The Tribunal is assisted by two assistants, whom the administrative review tribunal may consult in any case for its decision (Art. 10(1) of Chapter 490) however, the Tribunal is not bound to abide by the opinion given by the assistants (as per Art. 10(2) of Chapter 490). The Tribunal holds sessions in Malta and Gozo.

Administrative acts include the issuing by the public administration i.e. the government of Malta including its Ministries and departments, local authorities and any body corporate established by law of any order, licence, permit, warrant, authorisation, concession, decision or refusal of any demand from a member of the public. Any party to the proceedings before the Tribunal who feels aggrieved by a decision of the said Tribunal may appeal to the Court of Appeal.

The Administrative Review Tribunal does not have a general jurisdiction to review administrative acts which are reviewable under Article 469A of the Code of Organisation and Civil Procedure. It only has jurisdiction to review those administrative acts committed by the entities listed in Chapter 490 of the Laws of Malta or any other pertinent law.

The **First Hall of the Civil Court** has general jurisdiction to decide on actions for judicial review filed under Article 469A of the Code of Organisation and Civil Procedure (Chapter 12). The latter allows the courts of justice of civil jurisdiction to enquire into the validity of any administrative act or declare such act null, invalid or without effect, only in cases where the act is in violation of the Constitution of Malta, or when it is ultra vires on the grounds specifically contained in subsection (1)(b).

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

The Environment and Planning Review Tribunal is the specialised environmental tribunal within the Maltese judicial system. It consists of a panel of three (3) members, all of whom are appointed by the President acting on the advice of the Prime Minister. One member within the panel shall be an advocate and the other two members shall be well-versed in development planning and environmental matters respectively. In practice, this usually translates into a panel consisting of an advocate, a planner and an architect. The EPRT may engage experts to assist it in its deliberations.

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

The Court of Appeal may bring up certain issues of its own motion. These are limited to issues of public order such as those regarding prescription or jurisdiction.

The Environment and Planning Review Tribunal has wider discretionary and own motion powers than the Court of Appeal, as the latter only decides upon points of law raised by the party in its appeal. Besides accepting and/or dismissing appeals, the EPRT has the power to order a change of plans and/or variations to planning and environmental decisions or order the Planning Authority to reconsider and decide the case again.

1.3. Organisation of justice at administrative and judicial level

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

The Environment and Resources Authority is the main regulator on the environment in Malta. The Planning Authority decides on matters which may have an environmental impact *(similar to other public authorities such as Transport Malta, Regulator for energy and water services, etc).*

The ERA is responsible for various permitting aspects such as waste management, industry and nature protection. Through its permitting system the Authority implements the provisions of the Environmental Protection Act and regulations set out in subsidiary legislation through the industrial, nature and waste management permitting streams using various tools. These tools consist of notifications, clearances, general binding rules, consignment permits for disposal at sea and transfer of hazardous waste, environmental & nature permits, Integrated Pollution Prevention and Control (IPPC) permits, registration of producers and permitting of schemes under Extended Producer Responsibility and Convention on International Trade in Endangered Species (CITES) permits amongst others.

Below is a list of permits by permitting stream:

Industry-related: IPPC and Environmental Permits for major activities;

Waste Management: IPPC, environmental permits, consignment permits, transfrontier shipment permits, waste registrations (carriers, brokers, etc), extended producer responsibility scheme permits and producer registrations;

Nature-related: tree and activity permits, CITES permits and clearances, GMOs, invasive alien species;

Discharges to sea: hotels, port facilities, sewage treatment plants;

Other activities: environmental permits and registrations for activities including minor industries, medium combustion plants, fuel stations, and road tankers.

All applications for an Environmental Permit are duly processed in accordance with internal procedures. The Authority's decisions are communicated only to applicants in writing and are appealable before the Environment and Planning Review Tribunal.

It should be noted that notice of the filing of an application for certain environmental permit is not widely disseminated and that only the relevant decision is published on the ERA website. The public is not given an opportunity to participate in this permitting process, and the right to challenge the issue of the permit is severely hindered by the fact that there is no notification or publication of the permit within a certain time. As a result, constant attention to the ERA website is needed to see when the relevant decision is issued, in order to appeal within the relative time limit.

The Planning Authority (PA) established under the Development Planning Act, 2016 (Chapter 552 of the Laws of Malta) is the national agency responsible for land use planning in Malta. Its functions include the consideration and determination of applications for development and the facilitation and co-ordination of the permit-granting process for projects of common interest. The Planning Authority also has a policy-making function.

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

An appeal against decisions of the EPRT may be made to the Court of Appeal on points of law within 20 days from the date of decision by the EPRT. The appellant before the Tribunal and all other persons who participated in the appeal may appeal against decisions of the Tribunal. There is no set time limit for the Court of Appeal to give its judgment.
A request for revocation of a permit issued under the Development Planning Act may be filed with the PA within 5 years of the date of issue of the permit. A ruling for revocation may be filed on grounds of fraud, the submission of incorrect information, error on the face of the record or where public safety is concerned. The decision of the PA regarding revocation may be appealed to the EPRT and thereafter to the Court of Appeal. If the PA refuses to consider the request for revocation, that refusal may be challenged by means of an action for judicial review within six months.
An action for the judicial review of the legality of administrative action (including environmental decisions) may be filed before the First Hall of the Civil Court, which is the court of first instance. Such an action is based on Article 469A of Chapter 12 of the Laws of Malta. It must be filed within a period of six (6) months from the date when the interested person becomes aware or could have become aware of such an administrative act, whichever is the earlier.
There is no set time limit for judgment to be handed down when such an action is filed. The judgment of the First Hall of the Civil Court may be appealed by either party to the Court of Appeal.

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

There are no specialised environmental courts in Malta.

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

Whilst an action for judicial review challenging the legality of administrative action (including environmental decisions) delivered by competent authorities may be filed before the First Hall of the Civil Court as described above, there is also the possibility of appeal against decisions of the Environment and Planning Authority before the Environment Planning Review Tribunal. Appeals against the decisions of this tribunal may then be made to the Court of Appeal on points of law within 20 days from the date of decision of EPRT. The appellant before the Tribunal and all other persons who participated in the appeal may appeal against decisions of the Tribunal.
There is no set time limit for the Court of Appeal to give its judgment.

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

There is no provision for extraordinary ways of appeal or rules in the environmental sector.
A request for a preliminary reference may be made before courts of all instances, however only a court of last instance is obliged to make the request if it deems it necessary. The preliminary reference procedure may not be used before tribunals – such as the Environment and Planning Review Tribunal.

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

Under Maltese law, provision for 'out of court settlements' procedures is found in:
S.L. 549.127
Article 83 from Chapter 549.

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

The Ombudsman is an independent officer of Parliament whose mandate is to investigate any action taken by or on behalf of any government department or other authority of the Government, any Minister or Parliamentary Secretary and any other public officer and any statutory body and/or partnership or other body in which the Government has a controlling interest or any other body or entity subjected by law to his jurisdiction.
The Ombudsman investigates claims of maladministration, procedural irregularity, injustice or unfairness by such entities. When the Ombudsman's investigation shows that the complaint is justified, he may recommend that complainant be given adequate redress. However, the Ombudsman's opinion is persuasive and not enforceable and there are instances when his recommendation is ignored.
The Ombudsman institution in Malta is regulated by the Ombudsman Act which also provides for the appointment of Commissioners for Administrative Investigations in specialised areas of the public administration. One of these Commissioners is tasked with investigating environmental and planning issues. Filing a complaint with the Ombudsman and/or the Commissioner for the Environment and Planning is free of charge and the anonymity of the complainant is maintained. Own motion investigations by the Office of the Ombudsman can also take place.

1.4. How can one bring a case to court?

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

Physical and legal persons, including NGOs, may challenge environmental administrative decisions.

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

The rules regarding the possibility of challenging environmental administrative decisions are broadly the same in sectoral legislation.

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

In order to appeal against a decision of the Planning Authority to the Environment and Planning Review Tribunal, interested third parties (including NGOs) must have submitted written representations regarding the application for development/environmental permission during the term established by law for the public consultation process.
However, all persons having sufficient interest have access to a review procedure before the Environment and Planning Review Tribunal to challenge the substantive or procedural legality of any decision, act or omission relating to a development or an installation which is subject to an environmental impact assessment (EIA) or an integrated pollution prevention and control (IPPC) permit. This applies even if they have not submitted representations within the term stipulated by law. The concept of "sufficient interest" has been interpreted widely by the Tribunal and the courts, and essentially NGOs or parties who aim to safeguard the environment are assumed to have sufficient interest.
With regard to the possibility of filing actions for judicial review of administrative decisions before the courts, although notionally the requirement of possessing juridical interest still exists, this is no longer interpreted restrictively by the courts insofar as eNGOs are concerned. Recent jurisprudence has seen eNGOs being assumed to have the necessary juridical interest and locus standi. Individuals must show legal interest, which, as defined in jurisprudence, is made up of the following three concurrent characteristics:
legitimate or juridical,
personal or direct and
actual.
The requirement that interest must be legitimate or juridical means that it must be in conformity with the law. The second requisite requires that there must be a determinate and actionable link between the parties to the action and the third requisite implies that the interest must exist at the time of the filing of the action and it cannot be hypothetical.

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

The official language of the courts is Maltese and proceedings are conducted in the Maltese language (Chapter 12 of the Laws of Malta, Code of Organisation and Civil Procedure).

Chapter 189 of the Laws of Malta, the “Judicial Proceedings (Use of English Language) Act, 1965”, deals with cases where one or more parties are English-speaking. In this case, the court may order proceedings to be conducted in English.
Where any party does not understand the language in which the oral proceedings are conducted, such proceedings shall be interpreted to him either by the court or by a sworn interpreter.
Any evidence submitted by affidavit is to be drawn up in the language normally used by the person taking such an affidavit. The affidavit, when not in Maltese, is to be filed together with a translation into Maltese, which must also be confirmed on oath by the translator.

1.5. Evidence and experts in the procedures

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

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

The rules of evidence contained in Chapter 12 require, inter alia, that all evidence must be relevant to the matter at issue between the parties, and that in all cases the court shall require the best evidence that the party may be able to produce.
The parties may also bring forward witnesses, and Chapter 12 holds that all persons of sound mind, unless there are objections against their competency, shall be admissible as witnesses. As a general rule however, hearsay evidence is not permissible[4].
The court may not request evidence on its own motion. However, the court may, at any stage of the examination or cross-examination, put to a witness such questions as it may deem necessary.

2) Can one introduce new evidence?

Evidence can be produced until such time as the party declares that all evidence has been produced.
No new evidence or new witnesses may be introduced at the appellate stage, unless the court grants authorisation. The circumstances in which this may be allowed are listed in Article 208 of Chapter 12. This would include circumstances where it is proved on oath or otherwise, that the party submitting the evidence of such a witness had no knowledge thereof, or was unable, by the means provided by law, to produce such a witness in the court of first instance or the evidence of the witness was submitted and disallowed before the court below and the appellate court considers it admissible and relevant; or the appellate court is satisfied of the necessity or expediency of taking the evidence of such a witness.

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

Parties to judicial proceedings may request expert opinion from “ex parte witnesses”. However, in terms of Article 563A of Chapter 12, the evidence of ex parte expert witnesses is admissible only if, in the opinion of the court, the witness is suitably qualified in the relevant matter. The party summoning the expert witness has to pay the relevant fees. The court may also request “ex officio” expert witnesses on its own motion.
According to Article 89 of Chapter 12, the Minister responsible for justice may nominate a panel, consisting of however many advocates, legal procurators and other experts he sees fit to call on, to perform the duties of experts in the courts of Malta and Gozo. This list is to be published in the Government Gazette. However, this list of experts includes architects, accountants and traffic experts rather than environmental experts.
The court may refer to these experts or others not on the list. In this case the court will decide which of the parties is to bear the costs and fees for the appointed experts. More specifically, in terms of Article 223(5) of Chapter 12, where an ex parte expert witness is produced by any of the parties in a case, the court in the definitive judgement shall establish a fair amount which can be claimed as costs for the said witness. The court also establishes how the costs are to be apportioned between the parties to the case.

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

Judges are not bound by expert opinion.

3.2) Rules for experts being called upon by the court

Where a person is called as a witness, his opinion on any relevant matter on which he is qualified to give expert evidence shall be admissible in evidence only if, in the opinion of the court, he is suitably qualified in the relevant matter.
The parties to the lawsuit may challenge the appointment of the expert on grounds of impartiality.

3.3) Rules for experts called upon by the parties

In the case of an expert witness produced by the parties to a lawsuit, his opinion on any relevant matter on which he is qualified to give expert evidence shall be admissible in evidence only if, in the opinion of the court, he is suitably qualified in the relevant matter.

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

Where an “ex parte” expert witness is produced by any of the parties to a case, the court shall in the definitive judgment establish a fair amount which can be claimed as costs for the said witness. In determining the said amount, the court shall take into account the seriousness of the claims and, in the case of an expert witness not resident in Malta, whether local expertise was available, and all the other circumstances of the case. The court shall also establish how the said costs are to be apportioned between the parties to the case. This is also the procedure which is adopted when the court appoints an expert witness of its own motion.
Fees for expert witnesses may be considerable.

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

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

The Chamber of Advocates is the professional body representing lawyers practising in Malta. Its website includes a “Find a lawyer” function, for lawyers registered with the Chamber. However, the search for lawyers working in the environmental field only produces a list of 6 lawyers, which is relatively out of date, as at least one of these practitioners is now working in another sector.
The Government of Malta’s website, lawyersregister.gov.mt, provides an official list of lawyers with the names and details of warranted lawyers who have consented to have their professional details featured on the Register. This Register can be accessed publicly. However, this list does not provide the specialisation area of each lawyer.
Lawyers who work in the environmental field are usually contacted via one of the several Environmental NGOs active in this sector.
It is not mandatory to be represented by legal counsel.

1.1 Existence or not of pro bono assistance

There are lawyers who assist parties or environmental NGOs pro bono. They are usually referred to by Environmental NGOs.
There is a recently-established Law Clinic whereby law students are supervised by legal practitioners to provide legal advice. This is aimed mostly at third country nationals appealing against asylum law decisions.

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

Since the provision of pro bono assistance is relatively informal, applicants should ideally contact one of the NGOs indicated below, providing contact details and the subject of their query.

The Law Clinic may be contacted at the Cottonera Resource Centre by sending an email to crc@um.edu.mt

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

Applicants for pro bono assistance should address the Chairperson or Administrator of the relevant NGO.

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

There are no expert registries or publicly available websites with contact details of experts in the environmental field. Malta is a very small island and references to experts/practitioners are obtained by word of mouth.

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

The following are the NGOs which are very active in this field:

Din l-Art Ħelwa
Friends of the Earth (Malta)
Moviment Graffitti
Futur Ambjent Wieħed: avvchristinebellizzi@gmail.com
Nature Trust Malta
Ramblers Association of Malta
Flimkien Għal Ambjent Aħjar
Birdlife Malta
Bicycle Advocacy Group (BAG Malta)

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

The following international NGOs are active in Malta:

Birdlife Malta
Friends of the Earth (Malta)

1.7. Guarantees for effective procedures

1.7.1. Procedural time limits

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

The public can challenge decisions of the Environment Resources Authority as well as those of the Planning Authority when it grants planning/development permission.

The deadline for filing an appeal to the Environment and Planning Review Tribunal is 30 days from the date of publication of the decision.

Appeals against decisions which do not need to be published shall be lodged before the Tribunal within thirty days from the date of notification of the decision (Chapter 551 Article 13 of the Laws of Malta)

2) Time limit to deliver decision by an administrative organ

The Environment and Planning Law Review Tribunal is the body which decides appeals against decisions of the Planning Authority and the Environment and Resources Authority.

The time limit within which it has to deliver its decision depends on whether a request for suspension of execution of the decision is filed and upon the type of decision appealed against. The different time limits are listed below:

Time limit when a request for the suspension of the execution of the permit is not requested

In cases where an appeal is lodged but is not accompanied by a request for suspension, the Tribunal shall appoint the day and hour and hold the first hearing for the parties to appear before it, within two months from the lodging of the appeal application.

The Tribunal shall deliver its final decision on the merits of the appeal within one year from the first hearing of the appeal, which period may be extended only once by a further period of six months in exceptional cases, in the interests of justice. This is also the applicable time limit when a request for suspension has been made but not acceded to.

However, this time limit is not really enforceable. The only thing that happens when a final decision is not delivered within the time-frames indicated is that the appeal is assigned by the Secretary to another panel. It is not clear what happens if the second Tribunal panel does not deliver a decision within the time limit.

Time limits when a suspension of the execution of the permit is requested

Where the appeal is accompanied by a request for suspension of execution of a permission, the Tribunal shall notify the parties, hold its first hearing and decide on the request within thirty days from receipt of the appeal application.

The Tribunal may not grant a suspension of execution of a permit in relation to an application for a development which, in the opinion of the Minister responsible for the Planning Authority, is of strategic significance or of national interest, relates to any obligation ensuing from a European Union act, affects national security or affects the interests of the Government and/or other governments. This proviso is not applicable to applications relating to developments or installations which are subject to an environmental impact assessment (EIA) and/or integrated pollution prevention and control (IPPC) matters.

The Tribunal can suspend execution of the permit for one month from the date of the first hearing of the appeal before the Tribunal, in the case of an application subject to an environmental impact assessment (EIA) and/or an integrated pollution prevention and control (IPPC) permit, which in the opinion of the Minister responsible for the Planning Authority is of strategic significance or of national interest, relates to any obligation ensuing from a European Union act, affects national security or affects the interests of the Government and/or other governments.

The Tribunal shall suspend the execution of such a permit for three months from the date of the first hearing of the appeal before the Tribunal in the case of an application other than those described above.

Time limit for decision on the merits when the execution of a permit has been suspended

The Tribunal shall, whenever the execution of a permit has been suspended, deliver its final decision on the merits of the appeal:

within three months from the date of the first hearing of the appeal;

within one month from the date of the first hearing of the appeal in the case of an application subject to an environmental impact assessment (EIA) and/or to an integrated pollution prevention and control (IPPC) permit which, in the opinion of the Minister, is of strategic significance or of national interest, relates to any obligation ensuing from a European Union act, affects national security or affects the interests of the Government and/or other governments.

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

It is possible to challenge a first level administrative decision directly before the courts, when the law does not provide for the possibility of an appeal to the Environment and Planning Review Tribunal under Chapter 551 of the Laws of Malta – as would be the case with certain types of development permits such as development notification orders.

In these cases, an interested third party may lodge an action for judicial review before the Civil Court to 'enquire into the validity' or declare such acts null in terms of Article 469A of Chapter 12 of the Laws of Malta due to the fact there is no alternative mode of contestation or of obtaining redress provided elsewhere.

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

There is no deadline for the national court to deliver its judgment.

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

There are time limits within which the relevant appeals or action for judicial review must be filed. However, time limits during the course of the procedure are laid down by the court and are not fixed.

1.7.2. Interim and precautionary measures, enforcement of judgments

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

An appeal to the Environment and Planning Review Tribunal does not have a suspensive effect. Nor does an action filed in court for judicial review challenging an administrative environmental decision or action. The suspension of the administrative decision must be specifically requested – by means of an application requesting such suspension before the EPRT, and by means of an application for a warrant of prohibitory injunction in the case of court action for judicial review.

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

When filing an appeal against a decision of the Planning Authority to grant planning/development permission one may also file an application for suspension of the execution of the permit. If acceded to by the EPRT, this would suspend execution of the permit only until such time as the EPRT decides upon the appeal – which is at most 3 months.

Similarly, when filing an appeal against a decision of the Environment and Resources Authority, one may also file an application for suspension of the appealed decision. Notably, in the case of an appeal against the approval or partial approval of a potentially irreversible action or an action that may potentially cause significant damage to the environment, the approval may be suspended by the EPRT pending its final decision, if the said Tribunal deems that this would be in the interests of avoiding any likely significant or irreversible effects or implications on the environment or for similarly justified reasons.[5]

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

The request for a suspension may only be filed concurrently with the application for appeal filed before the Environment and Planning Review Tribunal. This means it must be filed within 30 days of the date of publication of the decision appealed against.

No other requests for suspension may be filed before the EPRT. As the suspension lapses automatically when the EPRT gives its decision, a situation my arise where the EPRT decides upon the substantive merits of the appeal and decides against the appellants. As the effects of the suspension would have lapsed, the effects of the decision appealed against go into effect unless they are suspended by the filing of an application for a warrant of prohibitory injunction which is acceded to by the court. This results in an anomalous situation where an administrative environmental decision may become executable whilst appeal proceedings before the courts are still ongoing. This may render the court appeal process an exercise in futility, as the decision (which may include a permit for development which is environmentally deleterious and irreversible) would have become executable long before the court can reach its judgment.

According to Chapter 12 of the Laws of Malta (Code of Civil Procedure). The object of a warrant of prohibitory injunction is to restrain a person from doing anything which might be prejudicial to the person suing out the warrant. The court shall not issue any such warrant unless it is satisfied that such a warrant is necessary in order to preserve a right of the person requesting it, and that prima facie such person appears to possess such right.

It should be noted that the application for a warrant of prohibitory injunction may be objected to by the other parties involved in the procedure. The latter may also file requests for revocation of the said warrant or for the appellants to provide security in the event that the warrant can be proven to have been issued on frivolous or vexatious grounds. This can be very daunting for persons or NGOs without sufficient resources.

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

As explained above, there is immediate execution of an administrative decision irrespective of appeal proceedings unless the court accedes to the application for the issue of a warrant of prohibitory injunction filed by appellants.

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

The administrative decision is not suspended even when challenged before the court, unless the court accedes to the application for the issue of a warrant of prohibitory injunction filed by appellants.

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

The only forms of injunctive relief available are those described above – namely an application for suspension of execution of a decision to be filed before the EPRT and/or an application for the issue of a warrant of prohibitory injunction to be filed before the courts.

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

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

Subsidiary Legislation 551.01, Environment and Planning (Fees) Regulations, stipulate the fees due to the Registry of the Environment and Planning Review Tribunal in respect of appeals. These are as follows:

Type of decision	Appeal fee
Against a decision of the PA for a development permission	Minimum fee of € 150. Maximum fee of € 3500, Maximum fee of € 1000 in case of appeals submitted by eNGOs which are registered and certified in accordance with the Voluntary Organisations Act
Against a decision of the PA under a development notification order or under a regularisation process or under a planning control application	€ 150
Against a decision following a request for screening of a proposed development permission	€ 150
Against any other decision of the PA	€ 150
Against any decision of the Environment and Resources Authority	€ 150

If one had to add the professional fees payable to lawyers, architects and other technical experts required to conduct an appeal before the EPRT, one could easily run to some 2500 to 3000 euros in the more straightforward appeals. More complex appeals which would require analysis of environmental assessments and studies and expert opinion would be far more expensive – running to costs of 10,000 euros or more.

The costs of filing an appeal to the court would be 120 euros in Court Registry fees, and a further 7.20 euros for each notification, to which professional fees for legal counsel must be added. These fees could vary widely depending on the complexity of the case and the level of background research required. It would be safe to say that there would be a starting figure in the 1200 euro range for the most simple kind of appeal.
The cost of filing an action for judicial review of administrative acts would be 120 euros in court fees and a further 7.20 euros for each notification, to which professional fees for legal counsel and expert witnesses must be added, for a starting figure which would approach the 3000 euro figure. When the case is terminated, the court registry fees amount to 650 euros.

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

Injunctive relief may be available at 2 stages:
1) When filing an appeal against a decision to grant planning/development permission one may also file an application for suspension of execution of the permit. If acceded to by the EPRT, this would suspend the execution of the permit until such time as the EPRT decides upon the appeal. There is no separate registry fee for filing this application, however fees are payable to the professional practitioner (lawyer/architect) drawing up and filing the application and attending the relative Tribunal hearing to discuss this application. These costs vary depending on the practitioner in question.
No form of deposit is necessary.
2) If the Tribunal rules against the plea to request suspension of the execution of the permit, or rules against the revocation of the permit, then an appellant may file an application for a warrant of prohibitory injunction in the civil courts. This costs 250 to 300 euros in Court Registry fees (depending on the number of parties which have to be notified). The fees due to the legal practitioners (lawyer and legal procurator) drafting and filing the relative application have to be added to this amount. The application for a warrant of prohibitory injunction must be followed by the filing of a lawsuit within 20 days.
No form of deposit is necessary, but if the request for a warrant of prohibitory junction is not acceded to, the costs and expenses must be paid for by the losing party.

3) Is there legal aid available for natural persons?

Legal aid is available for natural persons under the Maltese legal system. The applicant should apply to the Legal Aid Malta Agency for legal aid.
This is subject to a means test. A person requesting legal aid must also pass the “merit” test and show that he has reasonable grounds for initiating or defending, continuing or being a party to proceedings.
For an applicant to qualify under the means criteria, the person must not possess property of any sort, including disposable money, with a net value above € 6,988.12 for the preceding twelve months. Moreover, the applicant’s income should not, for the period of twelve months prior to the demand for the benefit of legal aid, exceed the national minimum wage for persons above the age of 18.
If granted, the legal aid covers expenses related to all court registry and lawyers’ fees until the case procedures have been exhausted. Legal Aid Malta does not cover expenses related to court expert reports.
Although legal aid is available to natural persons who satisfy the means and merit test criteria described above, it is usually availed of in domestic litigation matters and there is no record of it having been availed of in the environmental litigation sector.
Legal Aid Malta is the agency which provides legal aid and pro bono assistance in Malta. In order to qualify for legal aid, an applicant has to pass a means test and a merit test. This is assessed by the agency. Application forms can be filled in at Legal Aid Malta’s office premises or by downloading them from the website indicated below. The contents of the application have to be sworn by the applicant. The request for legal aid may also be made by filing an application before the civil court. The contact details are as follows:

Address
188-189 Old Bakery Street,
Valletta, Malta
Telephone
+356 2247 1500
Email: info.legalaidmalta@gov.mt
Website: http://www.legalaidmalta.gov.mt

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

Article 926 of Chapter 12 of the Laws of Malta states that companies registered under the Companies Act ***shall not*** be entitled to the benefit of legal aid.
There is no specific mention of whether NGOs are eligible to receive legal aid or not. A recent request by an eNGO for legal aid has been turned down.

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

There are no legally binding financial mechanisms available to provide financial assistance for natural persons, associations, legal persons and/or NGOs to file appeals to the Environment and Planning Review Tribunal or the Court of Appeal or to access justice. This is a severe obstacle to access to justice as appellants must bear Tribunal Registry costs, professional costs, the costs of experts and studies as well as the costs of the other party if they lose the case.

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

The court has the discretion to award or apportion costs in any way it deems fit. However, the general principle is that the losing party usually pays costs.
When an appeal is decided upon by the EPRT, and the appeal is upheld, the Tribunal may order that the fees paid for filing the appeal, or part of them, shall be refunded to the appellant. When any interested person, or an environmental NGO, or an external consultant has lodged an appeal before the Tribunal, and the Tribunal finds in favour of any such appellant, the appeal fee paid by the said appellant shall be reimbursed to the appellant in equal proportions by the parties and, for the purposes of this regulation, the Tribunal decision shall be an executive title.

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

The court apportions costs according to the “loser pays” principle. In certain exceptional cases, such as those where the subject matter of the case is innovative or complex, the court may decide not to apportion costs in this manner. However, this is entirely at the court’s discretion.

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

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

The Environment and Resources Authority (ERA) is the main entity which publishes information regarding environmental access to justice.
Information and guidance for persons wishing to exercise their right to access to justice is available online on the ERA’s website.
Some environmental information relating to planning applications is available on the PA’s website. However, it should be noted that this is only rudimentary information about the individual planning applications. More detailed information may only be obtained by registration on the PA’s E-App system.
Moreover, new planning laws and policies are constantly being published and practitioners in the field need to keep abreast of the situation by referring to the website where the Laws of Malta and newly published legal notices are uploaded.
Further information regarding the Aarhus Convention can be found on the ERA’s website.
There is no other structured form of dissemination of information.

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

Information regarding access to justice is provided in different ways under different environmental procedures which are described below.

The procedural rights of the public with respect to participation are provided for in general terms under the Environment Protection Act (Chapter 549 of the Laws of Malta) and the Development Planning Act (Chapter 552 of the Laws of Malta).

The applicant may request information from the Freedom of Information officer of the relevant authority in question.

The email addresses of the Freedom of Information contact points may be accessed here.

The public may also make requests for environmental information directly to the ERA, as the competent authority under S.L 549.39, through a dedicated email interface with the public (info@era.org.mt).

It should be noted that refusals or delays in responding to freedom of information requests often take place in Malta. As a result, the information requested may not be obtained in time to challenge certain acts or decisions. There is an appeal procedure to the Information and Data Protection Commissioner and thereafter to the Court of Appeal, but this is a parallel and lengthy procedure usually determined well after the lapse of the time limits to challenge the administrative act or decision being originally challenged.

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

Planning Authority (PA)

The PA is regulated by the Development Planning Act (Chapter 552 of the Laws of Malta) which incorporates the obligations found in the Aarhus Convention by providing for public access and dissemination of information on the environment, facilitating the participation of the public in decisions which affect the environment, and containing specific provisions on access to justice.

The Development Planning Act provides for public participation in decision-making for any development, whether it requires an environmental impact assessment (EIA) or not. In particular the Development Planning (Procedure for Applications and their Determination) Regulations 2016 provide more detailed provisions regarding public participation where development applications, planning regularisation procedures and summary planning procedures are concerned.

For the regularisation procedure (which does not require an EIA), an application needs to be submitted, which is published in the Government Gazette, and is subject to public consultation.

With respect to the summary procedure, applications are published in the Government Gazette and on the Department of Information website, and on a site notice affixed to the site, and the public is allowed to submit any comments/objections generally within 15 days.

As regards planning applications, the Development Planning (Procedure for Applications and their Determination) Regulations 2016 oblige the Executive Chairperson (established under the Development Planning Act) to ensure that information about the applications are available online and at the actual site at an early stage in order to allow for members of the public to make representations.

Article 72(2) of the Development Planning Act states that in its decision on an application for development permission, the Planning Board shall have regard to representations made in response to the publication of the development proposal.

According to Article 71(8) of the Development Planning Act and regulations 5(4) and 12(6) of the Development Planning (Procedure for Applications and their Determination) Regulations, 2016), when material changes in the application are proposed, or fresh/revised drawings or documents are submitted, those who had previously made representations on the original proposal are informed and are allowed to make comments.

EIA

The Environmental Impact Assessment Regulations (EIA Regulations) (S.L. 549.46) enacted under the Environment Protection Act call for public participation in the EIA process as explained below.

Under the said regulations there are various opportunities for public participation, e.g. at the scoping stage and at the review stages of the process. Members of the public are allowed 30 days to submit any issues they wish to see included in the EIA Terms of Reference. Another 30 days are given to the public to comment on the EIA Report, once this is submitted to the Authority for review.

A public meeting is held for Category I projects. The public is to be informed at least 15 days before the date of the public hearing about their right to attend and make comments on the proposals during the meeting itself as well as written submissions up to 7 days after the meeting. The public will be informed of the date, time and place of the hearing through a publication in a local newspaper, in Maltese and English, as well as on Authority's website.

All submissions and comments by the public are to be collated in a report by the ERA and referred to the EIA coordinator for a response. The coordinator's responses are referred to the ERA and are included as an Addendum to the EIA Report. At this stage, the EIA Report may be further revised should there be any material considerations.

For the comments to be included in this report, these have to reach the ERA by the stipulated deadline.

The final assessment by the ERA is made publicly available on the website of the Authority. This report is also referred to the permitting authority.

Regulation 30 of the EIA Regulations obliges the competent authority to inform the public of a decision taken regarding the application – including the content of the decision, any conditions, and main reasons and considerations on which the decision is based, including information about the public participation process.

The EIA Regulations also provide scope for updating an EIA or undertaking a fresh assessment (regulation 24(3)), if there are any requested changes or extensions to a development which would result in significant adverse effects on the environment. In this regard, the normal procedures in the EIA Regulations would apply, including a public consultation.

In accordance with regulation 34 of the EIA Regulations, aggrieved persons may file appeals before the EPRT to challenge a decision, act or omission related to any matter regulated under the EIA regulations.

IPPC

The Industrial Emissions (Integrated Pollution Prevention and Control) Regulations (S.L. 549.77) (Industrial Emissions (IPPC) Regulations) provides for public participation with regard to the permitting of installations.

Regulation 18 of these regulations states that the Environment Resources Authority (ERA) must ensure that the public concerned are given early and effective opportunities to participate. Details of the public participation procedure are then provided in Schedule 4.

According to Schedule 4 of the Industrial Emissions (IPPC) Regulations (S.L. 549.77), the public consultation process shall be initiated through a notice in at least one local newspaper and on ERA's website.

The periods for public consultation applicable to installations covered by the Regulations shall be thirty days for the procedures described in Regulation 18(1)(a) to (d) and which relate to the granting, upgrading and reconsideration of permits. The public consultation period shall be 15 days in all other cases where the competent authority deems consultation to be necessary, with the proviso that where the application for reconsideration of a permit in accordance with Regulation 18(1)(e) includes a request for a substantial change, the timeframe for public consultation shall be 30 days.

Moreover, the ERA may also require the operator to organise one or more public meetings as part of the public consultation process.

Under the Industrial Emissions (IPPC) Regulations, regulation 18 states that the reasons on which the decision is based must be published, and these would include an explanation of how the results of public consultation were taken into account, as well as more technical points as listed in regulation 18(2).
The above-mentioned rules relating to the Industrial Emissions (IPPC) Regulations apply to a decision on granting, reconsidering or updating a permit
A change in the operating conditions of IPPC installations requires a variation of the permit, which in turn requires public consultation procedures as regulated by the Industrial Emissions (IPPC) Regulations).
In accordance with regulation 20 of the IPPC Regulations, members of the public concerned having a sufficient interest shall have access to a review procedure before the EPRT to challenge the substantive or procedural legality of decisions, acts or omissions subject to regulation 18 of the IPPC Regulations. Notably, the interest of any NGO promoting environmental protection and meeting any requirements under national law shall be deemed sufficient. Under this regulation the competent authority (ERA) is also obliged to ensure that practical information is made available to the public on access to administrative and judicial review procedures.

Plans and Programmes

The public is given the opportunity to participate in the preparation of plans, programmes and policies relating to the environment by virtue of the following pieces of legislation: the Environment Protection Act (Chapter 549 of the Laws of Malta), the Development Planning Act (Chapter 552 of the Laws of Malta), the Strategic Environmental Assessment Regulations (SEA Regulations) (S.L. 549.61), and the Plans and Programmes (Public Participation) Regulations (S. L. 549.41).
The relevant definitions in Directive 2003/4/EC have been transposed through these Acts and Regulations, and they are all non-discriminatory as they provide all members of the public with equal rights of participation.
Under the **Environmental Protection Act**, the ERA is required to draw up the National Strategy for the Environment as per Article 45, which is a strategic governance document setting the policy framework for the preparation of plans, policies and programmes issued under this Act or under any other Act for the protection and sustainable management of the environment. During the preparation or review of the Strategy, the Minister responsible for the environment shall make known to the public the matters intended for consideration and shall provide adequate opportunities for individuals and organisations to make representations (within a time frame of at least six weeks). The Strategy, together with a statement of the representations received and the responses made to those representations, is then published.
The ERA may also publish subsidiary plans, defined as: a plan that deals with a specific environmental policy or matter setting out detailed specifications for its implementation, as per Article 48; as well as more detailed plans and policies as per Article 50.
In preparing or reviewing such plans, the ERA must inform the public of the matters it intends to consider and provide for public consultation on such preliminary issues. Public consultation is also provided for after the draft plan has been prepared and published (for a period of at least six weeks). The plan is formally adopted by the ERA after taking into consideration all the representations submitted to it.
The **Development Planning Act** contains similar provisions as regards the preparation of the Spatial Strategy for Environment and Development (SPED) and other subsidiary plans.
The former is a strategic document regulating the sustainable management of land and sea resources covering the whole territory and territorial waters of the Maltese Islands; whilst the latter include subject plans, local plans, action plans or management plans and development briefs. Articles 44 and 53 of the Development Planning Act state that public consultation must be provided for during the preparation of the plan, as well as after the draft has been published in a similar manner as that described above.
Provisions for public participation are also included in the **SEA Regulations** (S.L. 549.61) for plans and programmes undertaken by public authorities which are likely to have significant environmental effects. The above Regulations define “the public” as one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups. In addition, the said Regulations define “make available to the public” to mean publishing in the Government Gazette or in at least one daily newspaper, in English and in Maltese, a notice indicating where the document may be viewed or obtained; the price of the said document shall not exceed the cost of its printing and distribution. This with a view to ensuring access to documentation to all interested stakeholders without any barriers.
According to these Regulations, there are opportunities for the public to be constantly informed and to comment during the Strategic Environmental Assessment (SEA) process. Responsible authorities are obliged to ensure that their conclusions on the need or otherwise for a SEA are made available to the public. Moreover, legislation also requires that the draft plan or programme and the environmental report prepared are made available to the public. In so doing, the public is given an early and effective opportunity within an adequate time-frame, which shall not exceed sixteen weeks from the publication of the plan or programme and its environmental report, to express its opinion on the draft plan or programme and the accompanying environmental report before the adoption of the plan or programme or its submission to the legislative procedure.
In order to reach out to the public affected or likely to be affected by, or having an interest in, the decision-making (e.g. those promoting environmental protection and other organisations concerned), the notice of availability of the plan or programme and the environmental report shall be published in at least the Government Gazette together with specific details of where the documentation is available and how comments can be submitted and by which date.
As a matter of good practice, responsible authorities are also advised to make the Scoping Report available to the public and interested stakeholders. In concluding the SEA process and communicating the decisions taken, the responsible authority is obliged to ensure that, when a plan or programme is adopted, the public is informed and the following items are made available:
the plan or programme as adopted;
a statement summarising how environmental considerations have been integrated into the plan or programme and how the environmental report prepared, the opinions expressed and the results of consultations have been taken into account and the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with;
the measures that have been decided concerning monitoring.
In addition to the above, the **Plans and Programmes (Public Participation) Regulations (S.L. 549.41)** provide for public participation in the drawing up of specific plans and programmes that relate to waste, water and air as specified in the Schedule therein.
The competent authority (ERA) must ensure that the public is given early and effective opportunities to participate in the preparation, modification or review of the specified plans or programmes.
The ERA must take into account the results of the public participation when making its decision and must inform the public of the final decisions along with the reasons and considerations upon which those decisions are based, including information about the public participation process.

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

When the Planning Authority makes a decision regarding development applications, regulation 13 (7) of the Development Planning (Procedure for Applications and their Determination) Regulations, 2016 (S.L. 552.13) stipulates that the decision notice is to be communicated to the applicant, the architect, external consultees, any other consultees and any registered interested party, within fifteen days from the date of the decision.

Article 33 of Chapter 552 obliges the PA to provide the parties with detailed information about the right to submit an appeal and the applicable legislation regulating the filing of appeals and applicable time limits.
With regard to decisions of the Environment and Planning Review Tribunal, a notice of the date of reading of the decision is usually sent to the interested parties in the appeal. This is not sent by registered post so there may be (and have been) cases where notification is not confirmed. The decision of the EPRT is read in public and a hard copy of the decision is given to the parties in the case. The decision does not contain any reference to modes of appeal.

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

The working language of the Environment and Planning Review Tribunal is Maltese, and the decisions are likewise published in Maltese. However, in line with Article 21 of Chapter 12 and Article 12 of Chapter 551, where any party does not understand the language in which the proceedings are conducted, such proceedings shall be interpreted to him/her.

1.8. Special procedural rules

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)

The Environment and Resources Authority (ERA) is the competent authority for the Environmental Impact Assessment (EIA) process, which is regulated by the Environmental Impact Assessment Regulations (S.L. 549.46).
Schedule I of the EIA Regulations contains a list of development projects which may qualify for an EIA. A detailed list of criteria can be accessed on the ERA website. Once a project is deemed to fall under Schedule I, a Project Description Statement (PDS) is requested in line with the criteria laid down in Schedule II of the EIA Regulations (S.L. 549.46).
If a development proposal falls under Category I of Schedule I of the EIA Regulations (S.L. 549.46), the EIA process will commence immediately, following the submission of the PDS.
Should the proposal fall under Category II, a detailed EIA screening is carried out in accordance with Schedule III of the same Regulations to identify whether the proposal is likely to have any significant impacts arising from the same proposal. If the detailed screening does not envisage any significant environmental effects, the proposal would not require the submission of an EIA Report. Should significant impacts be identified in the EIA screening document, the proposal would qualify for further EIA studies through the request on an EIA Report.
There is no public participation in the EIA screening process.

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

In the case of EIAs, the EIA Regulations (S.L.549.46) in Malta provide an opportunity for public participation at the scoping stage. According to regulation 16 (2), Government entities, local councils responsible for the localities where the project is proposed to be sited, other local councils that may be affected, as well as the public (including NGOs), are invited by the competent authority (ERA) to make recommendations and ancillary reasoned justifications, within 30 days, on any relevant matters that they wish to see included in the EIA Terms of Reference (TOR). The TOR, which are tailor-made to the project, will determine the content of the EIA Report.
The developer is responsible for appointing an EIA coordinator and independent consultants to undertake the necessary studies and assess the likely impacts of the environmental parameters identified in the EIA TORs.
The EIA findings are then incorporated through the preparation of an EIA Report. This is a coordinated report prepared by an independent EIA coordinator and a team of individual independent consultants. This report consists of a coordinated assessment, technical appendices containing the specialised studies and a non-technical summary. Once the EIA Report is complete, the developer is responsible for publishing a notification in local newspapers to inform the public that an EIA Report has been submitted to the ERA and is available for public consultation. A digital copy of the EIA is made available on the Authority' s website for a 30-day consultation period. In the meantime, consultation is also undertaken with entities of Government, the local council(s) and NGOs. Comments made by the ERA and the consultees, including the public, are referred to the EIA coordinator for a reply.
For Category I projects, a public hearing is organised by the developer within or after the 30-day consultation period stipulated above. All comments made during the public hearing and its subsequent consultation period are referred to the EIA coordinator for a reply.
At this stage, any necessary revisions are made in the EIA Report, as relevant either through the re-submission of a new EIA report or an Addendum.
At the end of the process, the ERA prepares a report based on the EIA findings together with a recommendation. This report feeds into the overall decision-making process whereby a decision is taken with regard to a proposed development permit application. Should the development be approved, this would be subject to specific conditions and post-permit monitoring.

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

In accordance with regulation 34 of the EIA Regulations, aggrieved persons may file appeals before the EPRT to challenge a decision, act or omission related to any matter regulated under the EIA regulations.
In Chapter 551 of the Laws of Malta, Article 47 also provides for an appeal to the EPRT. According to this, 'any person may appeal any decision of the Environment and Resources Authority only in relation to environment assessments, access to environmental information and the prevention and remedying of environmental damage'.
An appeal to the EPRT may be filed on any ground including:
that a material error as to the facts has been made;
that there was a material procedural error;
that an error of law has been made;
that there was some material illegality, unreasonableness, ineffective or insufficient consideration of adverse effects, or lack of proportionality.
According to law, an appeal should be lodged before the EPRT within thirty days from the date of publication of the decision on the Department of Information website. In cases concerning appeals against decisions which do not need to be published, appeals shall be lodged before the EPRT within thirty days from the date of notification of the decision.

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

The EIA is not a permit or an authorisation. However, in accordance with regulation 34 of the EIA Regulations, aggrieved persons may file appeals before the EPRT to challenge a decision, act or omission related to any matter regulated under the EIA regulations, and furthermore, Article 47 of Chapter 551 may be invoked to challenge any decision relating to the EIA by appealing to the EPRT. According to this, any person may appeal any decision of the Environment and Resources Authority only in relation to environment assessments, access to environmental information and the prevention and remediation of environmental damage. This right of appeal to the EPRT shall be available to any party aggrieved by the decision without the need to prove its interest in the matter.
The final result of the EIA process is the publication of an EIA report which is to be taken into consideration in the decision-making process relating to the development consent or permit applied for. The development consent or permit is ultimately decided upon by the relevant permitting authority in Malta (which

is the public authority responsible for issuing, refusing or otherwise regulating the development consent in question) e.g. the PA. Therefore if individuals and /or NGOS, including foreign NGOs, wish to challenge the EIA process as described above, they may resort to regulation 34 of the EIA Regulations. If the applicant, members of the public, NGOs or interested third parties wish to challenge the development consent or permit issued by the permitting authority, one must have regard to the legislation regulating the development process or regulating the permitting authority in question. For instance, in those cases where the permitting authority is the PA, Article 11(e) of Chapter 551 is applicable, which provides the opportunity for an appeal of the decision to the EPRT.

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

An action for judicial review of the legality of administrative action, decisions or omissions in the EIA process may be filed before the First Hall of the Civil Court (which is the court of first instance). Such an action would be based on Article 469A of Chapter 12 of the Laws of Malta, and must be filed within a period of six (6) months from the date when the interested person becomes aware or could have become aware of such an administrative act, whichever is the earlier.

The court may not initiate such proceedings on its own motion.

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

As stated above, an appeal to the EPRT from administrative decisions, acts or omissions must be filed within 30 days of publication or notification.

An action for judicial review within the Civil Court must be filed within a period of six (6) months from the date when the interested person becomes aware or could have become aware of such an administrative act, whichever is the earlier.

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

Redress by means of judicial review is only available when 'the mode of contestation or of obtaining redress, with respect to any particular administrative act before a court or tribunal is not provided for in any other law.' This means that the remedies of before the EPRT and an appeal against the EPRT's decision to the Court of Appeal, if relevant, must have been availed of beforehand.

8) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc., not meaning the requirement determined under point 7

In order to have standing before the EPRT to appeal decisions of the ERA, no prior participation is formally required, however the Tribunal may consider the lack of participation in its decision. However in order to have standing before the EPRT to challenge certain decisions of the PA, prior participation in the form of registration as an interested third party is at times required. In terms of standing before the Civil Courts, no prior participation is required, but legal interest must be proved.

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

Chapter 551 of the Laws of Malta states that the EPRT is to adhere to and apply the principles of good administrative behaviour and respect the parties' right to a fair hearing, including the principles of natural justice, namely: (i) *nemo judex in causa sua*, and (ii) audi et alteram partem. The EPRT is to ensure procedural equality between the parties to the proceedings. Each party is to be given an opportunity to present its case, whether in writing or orally, or both, without being placed at a disadvantage. These principles are enshrined in the Maltese Constitution and observed by the courts.

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

Chapter 551 of the Laws of Malta stipulates that the EPRT is to reach its decisions in a timely manner. However, in the case of appeals against decisions of the ERA to the EPRT, there are no time limits stipulated within which the EPRT must make its decision.

There is no time limit stipulated at law within which the courts must make its judgment.

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

With regard to appeals against decisions taken in the course of the EIA process, the effect of a decision shall not be suspended simply because an appeal has been lodged, unless the EPRT or the Court of Appeal, as the case may be, so orders.

In the case of an appeal against the approval or partial approval of a potentially irreversible action or an action that may potentially be of significant damage to the environment, the approval may be suspended by the EPRT pending a final decision by the EPRT if the said EPRT deems that this would be in the interests of avoiding any likely significant or irreversible effects or implications on the environment or for similarly justified reasons.

Injunctive relief must be requested by means of an application requesting suspension of the execution of the administrative environmental decision filed with the EPRT concurrently with the application for appeal or by means of an application for the issue of a warrant of prohibitory injunction filed before the courts, as the case may be.

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

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

S. L. 549.77 Industrial Emissions (Integrated Pollution Prevention and Control) Regulations state that the competent authority shall ensure that practical information is made available to the public on access to administrative and judicial review procedures

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

According to regulation 20 of S. L. 549.77 Industrial Emissions (Integrated Pollution Prevention and Control) Regulations, members of the public concerned having sufficient interest shall have access to a review procedure before the Environment and Planning Review Tribunal to challenge the substantive or procedural legality of decisions, acts or omissions subject to regulation

An appeal may be lodged before the Tribunal within thirty days after a decision has been made on granting, reconsidering or updating of a permit.

For the purposes of these regulations, the interest of any non-governmental organisation promoting environmental protection and meeting any requirements under national law shall be deemed sufficient.

Moreover, Chapter 551 entitles all persons having sufficient interest to have access to a review procedure before the EPRT to challenge the substantive or procedural legality of any decision, act or omission relating to a development or an installation which is subject to an environmental impact assessment (EIA) or an integrated pollution prevention and control (IPPC) permit.

A party may also file an action for judicial review challenging an administrative act within 6 months of the date of commission of the said act or omission, or within six months of when the party became aware of it – whichever is the earlier.

In order to have standing, the party filing such an action must have sufficient interest. This has been interpreted widely by the Maltese Tribunal and the courts, in relation to NGOs with aims of safeguarding the environment. They are assumed to have sufficient interest. Individuals have to prove personal and direct interest.

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

There is no opportunity for public participation in the screening phase. However, members of the public concerned having sufficient interest shall have access to a review procedure described above to challenge the substantive or procedural legality of decisions, acts or omissions made at this stage.

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

The opportunity for public consultation is provided for during the permitting stage. This is explained in the answer to 1.7.4.2.

Members of the public concerned having sufficient interest shall have access to the review procedure described above to challenge the substantive or procedural legality of decisions, acts or omissions made at this stage.

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

As stated above, an appeal to the EPRT against administrative decisions, acts or omissions must be filed within 30 days of publication or notification.

An action for judicial review must be filed within a period of six (6) months from the date when the interested person becomes aware or could have become aware of such an administrative act, whichever is the earlier.

6) Can the public challenge the final authorisation?

The public can challenge the final authorisation by means of an appeal filed before the EPRT within 30 days of publication of the decision or of its notification.

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

An action for judicial review of the legality of administrative action (including environmental decisions) may be filed before the First Hall of the Civil Court which is the court of first instance. Such an action is based on Article 469A of Chapter 12.

Administrative acts may be challenged where they are in violation of the Constitution, or when they emanate from a public authority that is not authorised to perform them, or when a public authority has failed to observe the principles of natural justice or mandatory procedural requirements in performing the administrative act or in its prior deliberations thereon, or when the administrative act constitutes an abuse of the public authority's power in that it is done for improper purposes or on the basis of irrelevant considerations; or when the administrative act is otherwise contrary to law. An administrative act includes the issuing by a public authority of any order, licence, permit, warrant, decision, or a refusal of any demand from a claimant.

The court looks into the procedural legality of the act or omission which is being challenged. The court may annul the challenged act or omission and order redress or a remedy, however it may not substitute its discretion for that of the authority which committed the act or omission.

The court may act on the advice of experts – appointed by the court itself or summoned as "ex parte" witnesses to assess the reasonableness or soundness of the act or omission which is being challenged, or the prior deliberations made thereon. However, this will only be done to see if the correct, legal procedures and level of care has been abided by, or otherwise.

The court may not initiate such proceedings on its own motion.

8) At what stage are these challengeable?

An action for judicial review must be filed within a period of six months from the date when the interested person becomes aware or could have become aware of such an administrative act, whichever is the earlier.

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

Redress by means of judicial review is only available when 'the mode of contestation or of obtaining redress, with respect to any particular administrative act before a court or tribunal is not provided for in any other law.'

10) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc., not meaning the requirement determined under point 9

In order to have standing before the EPRT to appeal decisions of the ERA, no prior participation is required. However in order to have standing before the EPRT to challenge certain decisions of the PA, prior participation in the form of registration as an interested third party is at times required. In terms of standing before the Civil Courts, no prior participation is required, but legal interest must be proved.

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

Chapter 551 of the Laws of Malta states that the EPRT is to adhere to and apply the principles of good administrative behaviour and respect the parties' right to a fair hearing, including the principles of natural justice, namely: (i) *nemo judex in causa sua*, and (ii) audi et alteram partem. The EPRT is to ensure procedural equality between the parties to the proceedings. Each party is to be given an opportunity to present its case, whether in writing or orally, or both, without being placed at a disadvantage. These principles are enshrined in the Maltese Constitution and observed by the courts.

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

Chapter 551 stipulates that the EPRT is to reach its decisions in a timely manner. As explained above (Answer to 1.7.1.2) there are time limits within which the EPRT should reach its decision, however these are not enforceable.

There is no time limit stipulated by law within which the court must make its judgment. This leads to a situation whereby the appeal or court action becomes an exercise in futility, as if injunctive relief is not ordered by the EPRT or the court, the effects of the challenged decision become executable whilst the relative legal challenge is still ongoing.

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

With regard to appeals against decisions taken in the course of granting a permit in the IPPC process, the effect of a decision shall not be suspended simply because an appeal has been lodged, unless the EPRT or the Court of Appeal, as the case may be, so orders.

In the case of an appeal against the approval or partial approval of a potentially irreversible action or an action that may potentially be of significant damage to the environment, the approval may be suspended by the Tribunal pending a final decision by the Tribunal if the said Tribunal deems that this would be in the interests of avoiding any likely significant or irreversible effects or implications on the environment or for similarly justified reasons.

Injunctive relief must be requested by means of an application requesting suspension of the execution of the administrative environmental decision filed with the EPRT concurrently with the application for appeal before it, or by means of an application for the issue of a warrant of prohibitory injunction filed before the courts, as the case may be.

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

The Industrial Emissions (Integrated Pollution Prevention and Control) Regulations (S.L. 549.77) (Industrial Emissions (IPPC) Regulations) makes provision for information on access to justice as per response to question 1.7.4.2.

In the decision notices published by the ERA and uploaded to the ERA's website, the possibilities of filing an appeal to that decision are included therein. Furthermore, the decision notice sent to the applicant relating to environmental permits also includes a reference to the appeal procedure.

1.8.3. Environmental liability[6]

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?

S.L. 549.97 Prevention and Remedying of Environmental Damage Regulations stipulate the remedies available to parties aggrieved by environmental damage or the imminent threat of such damage.

Regulation 13 states that natural or legal persons affected or likely to be affected by environmental damage, or having a sufficient interest in environmental decision-making relating to the damage, shall be entitled to submit to the competent authority (ERA) any observations relating to instances of environmental damage of which they are aware and shall be entitled to request the competent authority to take action under these regulations.
If the aggrieved party decides to challenge the ERA's decision or lack thereof, then an appeal against that can be filed to the EPRT within thirty days from date of publication of the decision on the Department of Information website by the Environment and Resources Authority or within thirty days from the date of notification of the decision in the case of decisions which do not need to be published. As this is a case where the decision is notified to the aggrieved party, the appeal must be lodged within 30 days of notification.
Once the EPRT has reached that decision, then the decision may be appealed against by lodging an appeal to the Court of Appeal within 20 days of the EPRT's decision.
According to the Regulations, a person shall be deemed to have a sufficient interest if he has filed representations with regard to the issue of a permit, or if he qualifies as a consultee or an identified stakeholder under the provisions of the Environmental Impact Assessment Regulations.
Any non-governmental organisation promoting environmental protection shall be deemed to have sufficient interest for this purpose.

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

If the aggrieved party decides to challenge the ERA's decision or lack thereof, then an appeal against that can be filed to the EPRT within thirty days from the date of publication of the decision on the Department of Information website by the Environment and Resources Authority or within thirty days from the date of notification of the decision in the case of decisions which do not need to be published. As this is a case where the decision is notified to the aggrieved party, the appeal must be lodged within 30 days of notification.
Once the EPRT has reached that decision, then the decision may be appealed against by lodging an appeal to the Court of Appeal within 20 days of the EPRT's decision.

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

According to S.L. 549.97 Prevention and Remedying of Environmental Damage Regulations, natural or legal persons affected or likely to be affected by environmental damage, or having a sufficient interest in environmental decision-making relating to the damage, shall be entitled to submit to the competent authority any observations relating to instances of environmental damage of which they are aware and shall be entitled to request the competent authority to take action under these regulations.
Regulation 13(3) states that the request for action shall be accompanied by the relevant information and data supporting the observations submitted in relation to the environmental damage in question. Apart from the requirement of relevance there are no criteria set for the kind of information to be submitted.

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

Although the request for action and the accompanying observations must show in a plausible manner that environmental damage exists, the regulations do not stipulate any criteria regarding "plausibility", however such damage must fall within the definition of 'environmental damage' as contained in S.L. 549.97.

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

S.L. 549.97 Prevention and Remedying of Environmental Damage Regulations simply stipulate that the competent authority shall, as soon as possible, inform the person(s) who submitted observations to the authority of its decision to accede to or refuse the request for action and shall provide the reasons for it. However, there is no indication as to the time limits within which the competent authority must make the notification.

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

Under regulation 13 of S.L. 549.97, requests for action can be made for environmental damage caused by any of the occupational activities listed therein, and for any imminent threat of such damage occurring by reason of any of those activities.

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

The competent authority in this case is the ERA.

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

An action for judicial review of the legality of administrative action (including environmental decisions) may be filed before the First Hall of the Civil Court which is the court of first instance. Such an action is based on Article 469A of Chapter 12. However, this only available when the mode of contestation or of obtaining redress, with respect to any particular administrative act before a court or tribunal is not provided for in any other law. Therefore, all other legal avenues including administrative review procedures, must have been exhausted before restoring to an action for judicial review.

1.8.4. Cross-border rules of procedures in environmental cases

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

The Environmental Impact Assessment Regulations (Subsidiary Legislation 549.46) provide for transboundary consultations through Part VII of the said legislation. Where the Minister responsible for the environment is aware that a project in Malta is likely to have significant effects on the environment in another State, or where a State likely to be significantly affected so requests, the Minister shall notify the affected State as soon as possible and no later than when the Maltese public is informed, and shall include the following information within the notification:
information on the project and its location together with the available information on the possible transboundary impacts;
information on the nature of the possible decisions
any other information which the Minister deems reasonable
The Minister shall also give the interested State thirty calendar days within which to indicate whether it wishes to participate in the environmental decision-making procedures, including the development consent procedure, the environmental impact assessment and/or scoping, as the case may be.
If another State considers that the environment under its jurisdiction is likely to be adversely affected by a project which is proposed to be carried out in Malta and which is within the scope of the EIA regulations, but no notification has taken place in accordance with the above, the Minister shall, at the request of that State, exchange sufficient information for the purpose of holding discussions on whether there is likely to be a significant adverse transboundary impact.
If the interested State indicates to the Minister that it intends to participate in such consultation procedures, the Minister shall send to that State the required information as laid down in these regulations and, once it is submitted to the Environment and Resources Authority, the EIA report.
The interested State may enter into consultations with the Minister concerning, inter alia:
the potential transboundary effects of the project;
possible alternatives to the project, including the no-action alternative where relevant;
measures to prevent, reduce, eliminate or offset any significant transboundary impacts;
monitoring of the effects of such measures, and of the project;
possible mutual assistance in preventing, reducing, eliminating or offsetting any significant adverse impact of the project; and or
any other appropriate matters as relevant to the project.

To this effect, the interested State shall agree with the Minister on a reasonable time-frame for the consultation period, taking into account the nature, scale and characteristics of the proposed project and its location. The interested State shall also promptly provide the Minister with information relating to the environment under its jurisdiction which may potentially be adversely affected, where such information is necessary or relevant for the assessment.
The interested State may arrange for the information to be made available, within a reasonable time, to the relevant authorities and the public in its territory such that they can forward their opinion within a reasonable time and participate effectively in the relevant environmental decision-making procedures before any consent for the project is granted. The interested State shall forward its opinion to the Minister within the timeframe established by the Regulations, who shall in turn forward the opinion to the ERA.
The Minister shall provide to the interested State information about the final decision on the proposed project and the reasons and considerations on which the decision was based, together with the terms and conditions attached to the decision and information about the public participation process. The interested State may make such information available in an appropriate manner to the public concerned in its own territory.
If additional information on the significant transboundary impact of a project proposed in Malta, which was not available at the time a decision was made and which could have materially affected the decision, becomes available to the Minister or to an interested State before work on the project commences, the Minister shall immediately inform the interested State and vice-versa, as relevant. In such cases any one or both parties may request that consultations be held on whether the decision needs to be revised.
Where the monitoring of a project or any other post-project analysis reveals significant adverse transboundary impacts or any factors that may result in such impacts, the Minister shall immediately inform the interested State or vice-versa, as relevant. Both parties shall then enter into consultations on the measures that should be undertaken to prevent, reduce, eliminate or offset such impact, including any mutual assistance to this effect.
The transmission of information to the interested State, and the receipt of information by such State, shall be subject to the limitations contained in any law in force in Malta.
Regulation 26 of the EIA Regulations then regulates the consultation procedure when a project occurring in another State may have potential transboundary impacts on Malta.
Regulation 27 of the EIA Regulations caters for the situation where a project or combination of projects not listed in Schedule I of the EIA Regulations (or in the respective legislation of that State) is likely to cause a significant adverse transboundary impact. In such cases, the Minister responsible for the environment in Malta may, acting on the advice of ERA, enter into discussions with such State, and the above provisions may thereby be applicable.
The Strategic Environmental Assessment Regulations (S.L 549.61) also provide for transboundary consultations through regulation 8, which states that:
Where the responsible authority considers that the implementation of a plan or programme being prepared in relation to its territory is likely to have significant effects on the environment in another Member State, or where a Member State likely to be significantly affected so requests, the Member State in whose territory the plan or programme is being prepared shall, before its adoption or submission to the legislative procedure, forward a copy of the draft plan or programme and the relevant environmental report to the other Member State at the earliest stage possible.
The Prevention and Remedying of Environmental Damages Regulations (Subsidiary Legislation 549.97) also contain provisions concerning transboundary environmental damage where the environmental damage affects or is likely to affect other EU Member States. If environmental damage has occurred, Malta would need to provide sufficient information to the potentially affected EU Member States.

2) Notion of public concerned?

The notion of public concerned in a transboundary context is the same as for nationals, any person whether legal or natural, and environmental NGOs. There is no specific list of cases where individuals or NGOs could choose between courts of different countries. The choice would depend on the outcome of the courts taking cognisance of the case.

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

The principle of non-discrimination is applicable, and NGOs of affected countries which are registered in the EU have standing in the same way in which local NGOs have standing. No form of procedural assistance is available to either local or foreign NGOS.

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

Unless it is specifically stated in the applicable law, as in the case of access to environmental information, EIA and IPPC legislation, there is no right of access to justice for individuals who do not have a direct interest. This is equally applicable to individuals of affected countries.

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

The affected State is to be provided with the information as soon as possible and no later than when the Maltese public is informed.

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

There is a 30-day consultation period covering the Terms of Reference of the EIA and another 30-day period for consultation on the EIA Report.

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

Information regarding the public consultation exercise, consultation periods, the draft terms of reference for the EIA, assessments and the final EIA report are published on the ERA website. NGOs, local councils and other stakeholders are usually notified by electronic mail. There is no specific reference to modes of challenging the EIA process in any notification sent.

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

The information is published in English and there is no provision for its translation or interpretation to foreign participants.

9) Any other relevant rules?

There are no other relevant rules.

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[1] Article 9 (2)
[2] Article 116
[3] Article 50(1) of the EPRT Act (Chapter 551)
[4] Article 598 of Chapter 12
[5] Article 47(3) of Chapter 551
[6] See also Case C-529/15.

Last update: 03/08/2021

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?

Decisions, acts, and omissions falling within the scope of EU environmental legislation but outside the scope of the EIA and IED Directives may be challenged by means of two different legal avenues depending on which entity made the said decisions, acts or omissions.

Appeal against decisions made by ERA

The ERA is the competent authority which would be expected to make a good number of this sort of decisions or to issue regulations, orders or authorisations falling within the scope of EU environmental legislation. With regard to these types of decision taken by the ERA, an appeal procedure is provided for by Article 47 of Chapter 551.

This states that any aggrieved party may appeal against decisions of the ERA to the EPRT in accordance with the provisions of the Environment Protection Act and any regulations pursuant to it, and any person may appeal any decision of the Environment and Resources Authority only in relation to environmental assessments, access to environmental information and the prevention and remediation of environmental damage.

The above would indicate that any of the ERA's decisions made in accordance with the Environment Protection Act or any regulations pursuant to it could be appealed against by an aggrieved party such as the applicant who has been denied a nature permit or a third party who would have objected to the issue of the said nature permit by ERA. The second limb of this provision of law allows an appeal by any person in relation to the three spheres listed therein.

An appeal to the EPRT may be filed on any ground including:

that a material error as to the facts has been made;

that there was a material procedural error;

that an error of law has been made;

that there was some material illegality, unreasonableness, ineffective or insufficient consideration of adverse effects, or lack of proportionality

The lack of adherence to EU environmental legislation may be considered as a material procedural error or an error of law and can therefore be a ground for appeal under this provision.

It should be noted that the definition of a person under this law includes an association or body of persons, whether registered as a legal person or not. This concurs with the definition of a person under Chapter 549 of the Laws of Malta (the Environment Protection Act) which defines a "person" as a body or other association of persons, whether granted legal personality or not, and includes environmental voluntary organisations. Consequently, both individuals and associations who feel they have been affected by the decision may appeal. Appellants need not prove an interest in that appeal in terms of the doctrine of juridical interest, but are required to submit reasoned grounds based on environmental considerations to justify their appeal.

With regard to the time limits involved in order to file this appeal, an appeal should be lodged before the EPRT within 30 days from the date of publication of the decision on the Department of Information website by the ERA. Appeals against decisions which do not need to be published are to be lodged before the EPRT within 30 days from the date of notification of the decision. At present, ERA decisions are not published on the website of the Department of Information. There is no official regular system of notification of decisions, orders or authorisations made by the ERA to interested third parties, so it is not clear when the period within which to appeal lapses. Presumably the 30-day period starts from the date on which the interested third party became aware of the decision.

An appeal against the decision of the EPRT may be made to the Court of Appeal only on a point of law. This appeal must be lodged within 20 days of the EPRT reading its decision in public.

Decisions taken by other entities

If the decision to be challenged emanates from an entity other than ERA, such as a ministry or a department of government, recourse may be had by filing an action for judicial review as described below. Such an action must be instituted within 6 months from the date of the decision which is to be challenged, or from when the person filing the action could have been aware of such a decision, whichever is the earlier.

The effectiveness of access to the national courts is questionable mainly because of the limited chances of obtaining interim relief (as explained elsewhere in this fact sheet) and because of the extremely long period of time within which the national courts reach their decisions. It is not uncommon for a case for judicial review to be decided upon after 6 to 7 years, after which period, the whole point of the lawsuit would have become a purely academic exercise. A case in point is the action for judicial review in relation to the extension of the building development zones in Malta. A lawsuit requesting judicial review was filed by a local eNGO[2] in 2007 and no judgment has been reached after 13 years. Bearing in mind that judgment is still pending before the court of first instance and that this may eventually be appealed against, the extraordinary length of time which has elapsed means that there is no real effective remedy.

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

An appeal for **administrative review** before the EPRT may be filed on a wide number of grounds as explained above. These cover both procedural and substantive legality of the decision which is to be challenged.

An action for **judicial review** of the legality of administrative action (including environmental decisions) may be filed before the First Hall of the Civil Court which is the court of first instance. Such an action is based on Article 469A of Chapter 12 of the Laws of Malta.

Administrative acts may be challenged where they are in violation of the Constitution, or when they emanate from a public authority that is not authorised to perform them, or when a public authority has failed to observe the principles of natural justice (i.e. 'nemo iudex in causa propria' and 'audi alteram partem') or mandatory procedural requirements in performing the administrative act or in its prior deliberations thereon, or when the administrative act constitutes an abuse of the public authority's power in that it is done for improper purposes or on the basis of irrelevant considerations; or when the administrative act is otherwise contrary to law. An administrative act includes the issuing by a public authority of any order, licence, permit, warrant, decision, or a refusal of any demand from a claimant.

The court looks into the legality of the act or omission which is being challenged. The court may annul the challenged act or omission and order redress or a remedy, however it may not substitute its discretion for that of the authority which committed the act or omission.

During the course of the hearing of the action for judicial review before the First Hall of the Civil Court, a **request for a preliminary reference** may be made as per Article 267 of the Treaty on the Functioning of the EU (TFEU) requesting the European Court of Justice to rule on the conformity of the national

provision with EU law. However, only a court of last instance is obliged to make the request if it deems it necessary. Consequently, the court of first instance may turn down the request for a reference, in which case the preliminary reference may be requested during appeal procedures before the Court of Appeal.
Another possible mode of judicial review would be a **lawsuit filed on the grounds of the alleged violation of one's fundamental human rights** such as the right to a fair hearing within a reasonable time. The right to a fair hearing would be invoked to include applicability of the Aarhus Convention and other applicable EU norms on public participation requirements. The right to life could also be invoked to include the right to a safe and healthy environment, invoking the non-conformity of the measures sought to be challenged with Article 37 of the EU Charter of Fundamental Rights which requires a high level of environmental protection and improvement of the quality of the environment[3].
A person filing such an action must show a direct and personal juridical interest, in that the alleged or potential breach of human rights must be done "*in relation to him*"[4].

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

Redress by means of judicial review is only available when 'the mode of contestation or of obtaining redress, with respect to any particular administrative act before a court or tribunal is not provided for in any other law.' This means that if there is an alternative mode of redress, this must have been resorted to before filing an action for judicial review.
When filing a constitutional case, one should have exhausted alternative remedies. However, the Constitutional Court has discretion on this matter and may choose to retain jurisdiction if the alternative remedies are not accessible, adequate and effective[5].

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

Parties may only avail themselves of the action for judicial review if they have exhausted all other remedies. The other remedy which parties must have exhausted is that of appeal. The filing of an appeal is open to all persons aggrieved by a decision – not necessarily those who participated in the administrative procedure. Consequently, it may be stated that prior participation is not a necessary requisite.
Moreover, as there are instances when there is no public consultation phase during the course of an administrative procedure, then prior participation would not have been possible. This would not be a bar to filing an action for judicial review.
There may also be cases where no appeal procedure is available (as would be the case when the administrative decision being challenged is being taken by a public authority other than ERA and/or a minister) and consequently the action for judicial review would be the only remedy available. In this case, the issue of prior participation would not arise.
In order to have standing before the EPRT to challenge certain decisions of the PA, prior participation in the form of registration as an interested third party is at times required.

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

The grounds for judicial review are listed in the response to 2.2 above. They are wide-ranging – especially in view of the fact that an administrative act which is contrary to law may be challenged. This broad provision may be interpreted to mean that an administrative act which is contrary to European legislation may be challenged.

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

Chapter 551 of the Laws of Malta states that the EPRT is to adhere to and apply the principles of good administrative behaviour and respect the parties' right to a fair hearing, including the principles of natural justice, namely: (i) *nemo judex in causa sua*, and (ii) audi et alteram partem. The EPRT is to ensure procedural equality between the parties to the proceedings. Each party is to be given an opportunity to present its case, whether in writing or orally, or both, without being placed at a disadvantage. These principles are enshrined in the Maltese Constitution and observed by the courts. There is a body of case-law relating to the equality of arms principle which has been developed across different branches of law.

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

When an appeal against a decision of the ERA is filed before the EPRT, there are no deadlines stipulated for the date within which the EPRT must reach its decision. Nor is there any indication as to when the EPRT must decide upon the application for suspension of the execution of the permit, authorisation or decision which is being challenged.
There is no time limit or deadline within which the courts of law must reach their decision – which is one of the greatest obstacles to effective access to justice.
Appellants whose appeals have languished before the EPRT or the national courts for an inordinate amount of time may opt to file a lawsuit claiming that their constitutional right to have their case decided within a reasonable amount of time has been breached. However, this involves further costs in terms of financial outlay and professional resources – costs which may not easily be borne by NGOs which are not provided with legal aid.

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

Injunctive relief may be obtained by filing of an application for a warrant of prohibitory injunction requesting the court to restrain a person from doing anything which might be prejudicial to the person requesting the warrant. The court shall not issue any such warrant unless it is satisfied that such a warrant is necessary in order to preserve a right of the person requesting the warrant, and that prima facie this person appears to possess such a right. The Maltese courts also place great importance on the irremediable nature of the action which is sought to be prevented – or that it cannot be compensated for in a pecuniary manner. This is a very high standard of proof to overcome – as theoretically every form of action and/or decision can be reversed.
The court must also be satisfied, after hearing the explanations given, that unless the warrant is issued the prejudice that would be caused to the person requesting the warrant would be disproportionate when compared with the actual doing of the thing to be restrained.
If the court accedes to the request for the issuance of a warrant of prohibitory injunction, the claimant must file a lawsuit within twenty day in furtherance of the claims made. In this case, the lawsuit would be the action requesting judicial review. There are no special sector rules which are applicable.

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

The filing of an application for a warrant of prohibitory injunction in the Civil Courts costs 250 to 300 euros in Court Registry fees (depending on the number of parties which have to be notified)
The fees payable to the legal practitioners (lawyer and legal procurator) for drafting and filing the relevant application have to be added to this amount. Although there is an official tariff for these professional fees specified by law, this does not make reference to extra-judicial fees. These may be significant.
The application for a warrant of prohibitory injunction must be followed by the filing of a lawsuit for judicial review. The Court Registry fee for this ranges from 200 to 500 euros. There are further costs involved in the summoning of witnesses and for any expert witness summoned.
The court apportions the payment of costs, with the losing party usually being ordered to pay the costs. If there are several parties to the lawsuit, the payment of costs can be significant and run into several thousands of euros.

There is no statutory reference requiring costs not to be prohibitive. This is an obstacle which NGOs and individuals in Malta face when seeking access to environmental justice. Moreover, parties filing for the issue of a warrant of prohibitory injunction may be required to provide a guarantee or security to cover the costs in the event of them losing the case. Again, this poses an obstacle to NGOs and individuals who are parties in this sort of public interest litigation.

1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[6]

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

The Strategic Environmental Assessment Regulations, 2010 (Legal Notice 497 of 2010, S.L. 549.61), streamline the SEA process in Malta.

According to the regulations, plan proponents in the public sector are responsible for carrying out a SEA of their plans and programmes and are legally referred to as “responsible authorities”. In their capacity as plan proponents, they determine whether an SEA is required for their own plans and programmes in accordance with the provisions of S.L. 549.61.

The regulations stipulate that the SEA Focal Point is the competent authority for the purposes of the regulations. The SEA Focal Point is composed of a chairperson and two other members. The competent authority may request the responsible authority to submit a detailed plan or programme description identifying the effects on the environment. The competent authority may then take a decision as to whether a SEA is required. This decision is final.

The regulations stipulate that they should not be construed as implying that the competent authority shall be responsible for the carrying out of any SEA and that any SEA which is required shall fall under the responsible authority.

There is no provision for administrative redress if any person wants to challenge an act or omission in the SEA process. A legal challenge requesting judicial review in accordance with Article 469A of the Civil Code may be filed before the First Hall of the Civil Court.

An action for judicial review may be filed to challenge administrative acts which are in violation of the Constitution, or which emanate from a public authority which is not authorised to perform them, or when a public authority has failed to observe the principles of natural justice or mandatory procedural requirements in performing the administrative act or in its prior deliberations thereon, or when the administrative act constitutes an abuse of the public authority’s power in that it is done for improper purposes or on the basis of irrelevant considerations; or when the administrative act is otherwise contrary to law. An administrative act includes the issuing by a public authority of any order, licence, permit, warrant, decision, or a refusal of any demand from a claimant. In the SEA scenario, an action for judicial review could be filed against the responsible authority (the proponent entity), the competent authority (the SEA Focal Point) and any other authorities which have been involved in the process.

An action for judicial review must be filed within six months of the decision or action being challenged or within six months from when the person could have become aware of it, whichever is the earlier.

In the scenario where the responsible authority does not provide information as to whether a SEA is going to be carried out or not, persons can challenge the omission to do so. There is no time limit prescribed by law within which the responsible authority must decide whether to carry out a SEA or not. Article 469A of the Civil Code states that the absence of a decision of a public authority following a claimant’s written demand served upon it shall, after two months from such service, constitute a refusal. In these circumstances, a person may first file a judicial protest calling upon the responsible authority to take a decision regarding the carrying out of a SEA. If there is no response within two months, that will be deemed to be a refusal and may be challenged within six months from the presumed refusal.

NGOs with an interest in upholding environmental objectives are considered to have sufficient interest to file actions for judicial review. Individuals are required to have a direct juridical interest.

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

When an action for judicial review is filed, the court looks into the procedural legality of the act or omission which is being challenged. The court may annul the challenged act or omission and order redress or a remedy, however it may not substitute its discretion for that of the authority which committed the act or omission.

During the course of the hearing of the action for judicial review before the First Hall of the Civil Court, a **request for a preliminary reference** may be made as per Article 267 of the Treaty on the Functioning of the EU (TFEU) requesting the European Court of Justice to rule on the conformity of the national provision with EU law. However only a court of last instance is obliged to make the request if it deems it necessary. Consequently the court of first instance may turn down the request for a reference, in which case the preliminary reference may be requested during appeal procedures before the Court of Appeal.

Another possible mode of judicial review would be a **lawsuit filed on the grounds of the alleged breach of the Constitutional rights** such as the right to a fair hearing within a reasonable time. The right to a fair hearing would be invoked to include applicability of the Aarhus Convention and other applicable EU norms on public participation requirements. The right to life would be invoked to include the right to a safe and healthy environment, invoking the non-conformity of the measures to be challenged with Article 37 of the EU Charter of Fundamental Rights, which requires a high level of environmental protection and improvement of the quality of the environment[7]. A person filing such an action must show a direct and personal juridical interest, in that the alleged or potential breach of human rights must be done “*in relation to him*”[8].

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

Redress by means of judicial review is only available when ‘the mode of contestation or of obtaining redress, with respect to any particular administrative act before a court or tribunal is not provided for in any other law.’

When filing a constitutional case one should have exhausted alternative remedies. However the Constitutional Court has discretion on this matter and may choose to retain jurisdiction if the alternative remedies are not accessible, adequate and effective[9].

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

Persons and NGOs upholding environmental objectives are considered to have standing to file an action for judicial review and there is no set requirement for prior consultation during the administrative phase. Moreover, in cases where the responsible authority omits or refuses to carry out an SEA, there would have been no provision for previous participation.

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

Injunctive relief may be obtained by filing a warrant of prohibitory injunction requesting the court to restrain a person from doing anything which might be prejudicial to the person requesting the warrant.

The court shall not issue any such warrant unless it is satisfied that such warrant is necessary in order to preserve a right of the person requesting the warrant, and that prima facie this person appears to possess such a right.

The court must also be satisfied, after hearing the explanations given, that unless the warrant is issued the prejudice that would be caused to the person suing out the warrant would be disproportionate when compared with the actual doing of the thing to be restrained.
If the court accedes to the request for the issuance of a warrant of prohibitory injunction, the claimant must file a lawsuit within twenty days in furtherance of the claims made. In this case, the lawsuit would be the action requesting judicial review.

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

The filing of an application for a warrant of prohibitory injunction in the Civil Courts costs 250 to 300 euros in Court Registry fees (depending on the number of parties which have to be notified)
The fees payable to the legal practitioners (lawyer and legal procurator) for drafting and filing the relevant application have to be added to this amount. Although there is an official tariff for these professional fees specified by law, this does not make reference to extra-judicial fees. These may be significant.
The application for a warrant of prohibitory injunction must be followed by the filing of a lawsuit for judicial review. The Court Registry fee for this ranges from 200 to 500 euros. There are further costs involved in the summoning of witnesses and for any expert witness summoned.
The court apportions the payment of costs, with the losing party usually being ordered to pay the costs. If there are several parties to the lawsuit, the payment of costs can be significant and run into several thousands of euros.
There is no statutory reference requiring costs not to be prohibitive. This is an obstacle which NGOs and individuals in Malta face when seeking access to environmental justice.

1.3. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with the public participation requirements of Article 7 of the Aarhus Convention in respect of plans and programmes not submitted to the procedures set out in the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[10]

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

The plans and programmes not necessarily subject to the procedures in the SEA but which are still subject to public consultation procedures include the following:
The National Strategy for the Environment - a strategic governance document which sets the policy framework for the preparation of plans, policies and programmes issued under the Environmental Protection Act (Chapter 549 of the Laws of Malta) or under any other Act for the protection and sustainable management of the environment, including land and sea resources. In preparing or reviewing the National Strategy for the Environment, the Minister for the Environment shall have regard to:
the environmental policies and the State of the Environment Report;
the current economic and financial policies;
the current social policies;
the policies of the Government;
the environmental issues and concerns of material relevance to the strategy;
the resources likely to be available in all relevant government entities for the implementation of the strategy; and
the European Union environmental acquis and other international environmental convention obligations to which Malta is a party.
The ERA prepares the National Strategy for the Environment after consulting with relevant entities, whether public or otherwise.
During the preparation or review of the National Strategy for the Environment, the Minister shall make known to the public the matters intended for consideration and shall provide adequate opportunities for individuals and organisations to make representations. When the National Strategy for the Environment or a review thereof has been completed, the Minister shall publish the strategy together with a statement of the representations received and the responses made to those representations. Representations on the strategy are to be submitted within a specified period of not less than six weeks. At the conclusion of these consultation procedures, the National Strategy for the Environment shall be considered by the Cabinet of Ministers together with the position statement from the Environment Minister and the representations made with respect to the strategy or its review. The National Strategy for the Environment, or its revision, together with the Minister's position statement, is then to be laid before Parliament for its approval.
Public consultation is also carried out on any draft regulations issued by the Minister for the Environment under Chapter 549, as laid down in Article 55.
There is a similar public consultation procedure for the enactment of **subsidiary plans and policies** relating to the environment, provided for by Article 51 of the Environmental Protection Act. There is a six-week consultation period during the preparation of such plans and policies or when they are altered significantly.
The Plans and Programmes (Public Participation) Regulations (Subsidiary Legislation 549.41) provide for public participation in respect of the drawing up of certain plans and programmes relating to the environment. The Regulations state that the ERA is the competent authority to ensure that the public is given early and effective opportunities to participate in the preparation and modification or review of the plans or programmes required to be drawn up under certain provisions of:
The Waste Management (Waste Batteries and Accumulators) Regulations S.L. 549.54.
The Protection of Waters against Pollution caused by Nitrates from Agricultural Sources Regulations. S.L. 549.25
The Ambient Air Quality Regulations. S.L 549.59
The ERA is to ensure that a public information and participation mechanism is in place as outlined by the Regulations to inform the public of the decisions taken and the reasons and considerations upon which those decisions are based, including information about the public participation process.
As regards the possibility for administrative review of the abovementioned procedures, Article 63 of Chapter 549 states that any aggrieved party may appeal against any decision of the Authority to the EPRT in accordance with the provisions of the EPRT Act and any regulations pursuant to it. Article 47 of Chapter 551 allows for appeals by any aggrieved party, and any person may appeal a decision of ERA insofar as environmental impact assessments, access to information and prevention and remedying of environmental damage are concerned. Such an appeal would not require proof of juridical interest.
An action for judicial review may be filed under Article 469A of Chapter 12.
With regard to the issue of standing, although notionally the requirement of a juridical interest still exists, this is no longer interpreted restrictively by the courts. Recent jurisprudence has seen eNGOs being assumed to have the necessary juridical interest and "locus standi". Following the decision of the Court of Appeal in the case instituted by the Ramblers of Malta eNGO[11], it is widely accepted that NGOs have legal standing. It is still not clear whether an individual would always be considered to possess the necessary juridical interest to pose such a challenge.

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

In judicial review procedures, administrative acts may be challenged where they are in violation of the Constitution, or when they emanate from a public authority that is not authorised to perform them, or when a public authority has failed to observe the principles of natural justice or mandatory procedural requirements in performing the administrative act or in its prior deliberations thereon, or when the administrative act constitutes an abuse of the public authority's power in that it is done for improper purposes or on the basis of irrelevant considerations; or when the administrative act is otherwise contrary to law (including EU law).

During the course of the hearing of the action for judicial review before the First Hall of the Civil Court, a **request for a preliminary reference** may be made as per Article 267 of the Treaty on the Functioning of the EU (TFEU) requesting the European Court of Justice to rule on the conformity of the national provision with EU law. However, only a court of last instance is obliged to make the request if it deems it necessary. Consequently, the court of first instance may turn down the request for a reference, in which case the preliminary reference may be requested during appeal procedures before the Court of Appeal.

Another possible mode of judicial review would be a **lawsuit filed on the grounds of the alleged breach of the Constitutional rights** such as the right to a fair hearing within a reasonable time. The right to a fair hearing would be invoked to include applicability of the Aarhus Convention and other applicable EU norms on public participation requirements. The right to life would be invoked to include the right to a safe and healthy environment, invoking the non-conformity of the measures to be challenged with Article 37 of the EU Charter of Fundamental Rights, which requires a high level of environmental protection and improvement of the quality of the environment[12]. A person filing such an action must show direct and personal juridical interest, in that the alleged or potential breach of human rights must be done "*in relation to him*"[13].

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

Redress by means of judicial review is only available when the mode of contestation or of obtaining redress, with respect to any particular administrative act before a court or tribunal is not provided for in any other law.

When filing a constitutional case one should have exhausted alternative remedies. However the Constitutional Court has discretion on this matter and may choose to retain jurisdiction if the alternative remedies are not accessible, adequate and effective[14].

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

Although there is no form of administrative review procedure statutorily available to challenge acts or omissions of authorities during the processes laid down in the Environmental Protection Act or the Plans and Programmes (Public Participation) Regulations, there is provision for public consultation and participation as described above.

As parties may only avail themselves of the action for judicial review if they have exhausted all other remedies, it may be argued that the lack of participation during the public consultation phase would exclude the possibility of judicial review.

However, judicial review may also be sought in cases where the responsible authority refuses to carry out a public consultation exercise or because of procedural irregularities pertaining to the public consultation exercise. In these cases, it is presumed that that judicial review would still be possible.

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

There are no express statutory provisions or mechanisms for obtaining injunctive relief during the process laid down in the Environmental Protection Act or the Plans and Programmes (Public Participation) Regulations. There is only the general national provision for filing for the issue of a warrant of prohibitory injunction and, according to Chapter 551, one may request suspension of the appealed decision before the EPRT pending the outcome of the case as discussed in other parts of this factsheet.

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

The filing of an application for a warrant of prohibitory injunction in the Civil Courts costs 250 to 300 euros in Court Registry fees (depending on the number of parties which have to be notified).

The fees payable to the legal practitioners (lawyer and legal procurator) for drafting and filing the relevant application have to be added to this amount. Although there is an official tariff for these professional fees specified by law, this does not make reference to extra-judicial fees. These may be significant.

The application for a warrant of prohibitory injunction must be followed by the filing of a lawsuit. The Court Registry fee for this ranges from 200 to 500 euros. Legal and technical counsel also has to be paid. There are further costs involved in the summoning of witnesses and for any expert witness summoned. If witnesses or parties cannot be notified in the usual fashion, this would require the publication of the notification requests in local newspapers and the Government Gazette, which are further costs to be borne by the plaintiffs.

The court apportions the payment of costs, with the losing party usually being ordered to pay the costs. If there are several parties to the lawsuit, the payment of costs can be significant and run into several thousands of euros.

There is no statutory reference requiring costs not to be prohibitive. This is an obstacle which NGOs and individuals in Malta face when seeking access to environmental justice. Moreover parties filing for the issue of a warrant of prohibitory injunction may be required to provide a guarantee or security to cover the costs in the event of them losing the case. Again, this poses an obstacle to NGOs and individuals who are parties to this sort of public interest litigation.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[15]

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

The following are all examples of national legislation required by EU Directives and which require the drawing up of plans and programmes:

The Assessment and Management of Environmental Noise Regulations (S.L. 549.37) – require the drawing up of an action plan.

The Flora, Fauna and Natural Habitats Protection Regulations (S.L. 549.77) – provide for the drawing up of management plans and appropriate action for the conservation of protected habitats and species.

The Ambient Air Quality Regulations (S.L. 549.59) – provide for the drawing up of an Air Quality Action Plan

The Waste Regulations (S.L. 549.63) – provide for the drawing up of Waste Management Plans.

The Water Policy Framework Regulations (S.L. 549.100) – provide for the drawing up of Water Catchment Management Plans.

All the above regulations include provisions allowing for information dissemination and public participation procedures during the drawing up of the relevant plans.

The only form of administrative review which can be envisaged in this case is an appeal against a decision of the competent authority (ERA) made in the course of the public consultation exercise or the preparatory exercise leading to the publication of the plan and not of the contents of the plan itself.

Article 63 of Chapter 549 states that any aggrieved party may appeal against any decision of the Authority to the EPRT in accordance with the provisions of the EPRT Act and any regulations pursuant to it. Article 47 of Chapter 551 allows for appeals by any aggrieved party, and also specifies that any person may

appeal any decision of the Environment and Resources Authority only in relation to environment assessments, access to environmental information and the prevention and remediation of environmental damage.
An appeal to the EPRT may be filed on any ground including:
that a material error as to the facts has been made;
that there was a material procedural error;
that an error of law has been made;
that there was some material illegality, unreasonableness, ineffective or insufficient consideration of adverse effects, or lack of proportionality.
According to law, an appeal should be lodged before the EPRT within thirty days from the date of publication of the decision on the Department of Information website. In cases regarding appeals against decisions which do not need to be published, the appeal shall be lodged before the EPRT within thirty days from the date of notification of the decision. It is not clear when this time period starts when there is no provision for publication or notification of the decision. Any persons, including NGOs, have standing without the need to prove juridical interest. There is an appeal against the decision of the EPRT to the Court of Appeal which must be filed within 20 days of the date of the decision from the EPRT.
There is no form of judicial review procedure possible for the contents of the published plan which has the same status as a legislative act.

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

As the plan or programme constitutes an instrument having the force of law there is no judicial avenue to challenge its contents.

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

The scope of possible administrative review of the preparatory exercise leading to the enactment of plans and programmes is described above. There is no possibility of judicial review of the published plan or programme.

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

Judicial review is not applicable.

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

Judicial review is not applicable.

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

Judicial review is not applicable.

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

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

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

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

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[16]

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

If the executive regulations or legally binding normative instruments take the form of legislation there is no possibility of administrative review or judicial review according to Article 469A of Chapter 12 of the Laws of Malta, as these remedies are reserved for administrative acts as defined therein.
Such executive regulation/legislation could possibly be challenged by filing an action alleging breach of fundamental human rights, or in terms of Article 46 of the Constitution. In this case, both individuals and NGOs filing the action would have to prove that the alleged breach was being done in relation to them.

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

The Constitutional Court deciding on an action regarding an alleged breach of human rights would consider both the procedural and substantive legality of the claim.

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

When filing a constitutional case, one should have exhausted alternative remedies. However the Constitutional Court has discretion on this matter and may choose to retain jurisdiction if the alternative remedies are not accessible, adequate and effective.

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

When filing a Constitutional case, one would have ideally exhausted all other remedies. However, when claiming a breach of human rights, the issue of prior participation does not arise.

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

Injunctive relief may be applied for by filing an application for a warrant of prohibitory injunction in the Civil Courts. This costs 250 to 300 euros in Court Registry fees (depending on the number of parties which have to be notified).
The fees payable to the legal practitioners (lawyer and legal procurator) for drafting and filing the relative application have to be added to this amount. Although there is an official tariff for these professional fees specified by law, this does not make reference to extra-judicial fees. These may be significant.
The application for a warrant of prohibitory injunction must be followed by the filing of a lawsuit. The Court Registry fee for this ranges from 200 to 500 euros. Legal and technical counsel also has to be paid. There are further costs involved in the summoning of witnesses and for any expert witness summoned. If witnesses or parties cannot be notified in the usual fashion, this would require the publication of the notification requests in local newspapers and the Government Gazette, which are further costs to be borne by the plaintiffs.

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

The costs involved are indicated above. The court apportions the payment of costs, with the losing party usually being ordered to pay the costs. If there are several parties to the lawsuit, the payment of costs can be significant and run into several thousands of euros.

There is no statutory reference requiring costs not to be prohibitive. This is an obstacle which NGOs and individuals in Malta face when seeking access to environmental justice. Moreover, parties filing for the issue of a warrant of prohibitory injunction may be required to provide a guarantee or security to cover the costs in the event of them losing the case. Again, this poses an obstacle to NGOs and individuals who are parties to this sort of public interest litigation.

7) Is it possible to bring a legal challenge before a national court concerning any related EU regulatory act with a view to a validity reference under Article 267 TFEU, and if so how[17]?

There is no legal procedure providing for such a challenge. A party may request a preliminary reference to the CJEU at any stage of the proceedings in line with Article 267 of the TFEU, which is applicable in Malta under Chapter 460. The procedure is also regulated by Article 21 of the Court Practice and Procedure and Good Order Regulations (S.L 12.09).

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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] FLIMKIEN GHAL AMBJENT AHJAR ET vs CIANTAR CHRISTOPHER DR. ENG. PRO ET NOE ET 75/2007.

[3] In *Cecil Herbert Jones vs Attorney General* (Application no. 95/2018) decided on 15 February 2019, the First Hall of the Civil Court acting in its Constitutional jurisdiction stated that the Charter of Fundamental Rights is based on the principle of direct effect and national courts are obliged to interpret national measures in conformity with the Charter whenever they come within the scope of EU law. The judgment was not appealed.

[4] Article 46(1) of the Constitution of Malta.

[5] These principles were enunciated in *Ryan Briffa –v- Attorney General* decided on 14 March 2014.

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

[7] In *Cecil Herbert Jones vs Attorney General* (Application no. 95/2018) decided on 15 February 2019, the First Hall of the Civil Court acting in its Constitutional jurisdiction stated that the Charter of Fundamental Rights is based on the principle of direct effect and national courts are obliged to interpret national measures in conformity with the Charter whenever they come within the scope of EU law. The judgment was not appealed.

[8] Article 46(1) of the Constitution of Malta.

[9] These principles were enunciated in *Ryan Briffa –v- Attorney General* decided on 14 March 2014.

[10] 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.

[11] 228/2010, Is-Socjeta' The Ramblers' Association of Malta vs. L-Awtorita' ta' Malta dwar l-Ambjent u-Ippjanar [First Hall, Civil Court] 6 March 2012 (Ramblers case, Court of First Instance). The case was appealed in Is-Socjeta' The Ramblers' Association of Malta vs L-Awtorita' ta' Malta dwar l-Ambjent u l-Ippjanar et [Court of Appeal Civil, Superior] 27 May 2016. (Ramblers case, Court of Appeal)

[12] In *Cecil Herbert Jones vs Attorney General* (Application no. 95/2018) decided on 15 February 2019, the First Hall of the Civil Court acting in its Constitutional jurisdiction stated that the Charter of Fundamental Rights is based on the principle of direct effect and national courts are obliged to interpret national measures in conformity with the Charter whenever they come within the scope of EU law. The judgment was not appealed.

[13] Article 46(1) of the Constitution of Malta.

[14] These principles were enunciated in *Ryan Briffa –v- Attorney General* decided on 14 March, 2014.

[15] These fall within the scope of both Article 7 and Article 9(3) of the Aarhus Convention. See also relevant case-law of the Court of Justice of the European Union such as Case C-237/97, Janecek and cases such as 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.

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

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

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

The only applicable judicial avenue which can be sought in cases where the State fails to provide effective access to justice or an effective remedy is the filing of a case claiming violation of a fundamental human right. In this regard, consideration should be given to a recent judgment of the Constitutional Court in its appellate jurisdiction, wherein the Court ruled that the State had a positive obligation to safeguard and uphold a plaintiff's human right to life and not to be subject to domestic violence[1]. The Court stated that she had been deprived of an effective remedy. Possibly this could be extrapolated to the field of environmental law through a broad interpretation of the right to life and/or the right to the enjoyment of property and family life.

With regard to penalties for disregarding court orders and judgments, these are referred to in Article 997 of the Code of Organisation and Civil Procedure (Chapter 12). This states that in proceedings for any act or omission amounting to contempt of court, the offender shall, on conviction, be liable to imprisonment for a term up to one month or to a fine of not less than two hundred and thirty-two euros and ninety-four cents (232.94) but not more than two thousand and three hundred and twenty-nine euros and thirty-seven cents (2,329.37) or to both the fine and imprisonment.

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[1] State found guilty of failing to protect woman from abuse