Teisė kreiptis į teismus aplinkosaugos klausimais

Vokietija

Daugiau šalių pateikiamos informacijos apie teisę kreiptis į teismus aplinkosaugos klausimais rasite spustelėję vieną iš toliau pateiktų nuorodų:

1. Teisė kreiptis į teismą valstybėje narėje
2. Teisė kreiptis į teismą, nepatenkanti į PAV (poveikio aplinkai vertinimo), TIPK/PITD (Taršos integruotos prevencijos ir kontrolės (TIPK) / Pramoninių išmetamųjų teršalų direktyvos (PITD)) taikymo sritį, galimybė susipažinti su informacija ir AAAD (Atsakomybės už aplinkos apsaugą direktyva)
3. Kitos svarbios taisyklės dėl apeliacinių skundų, teisių gynimo priemonių ir teisės kreiptis į teismą aplinkosaugos klausimais

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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

The Federal Republic of Germany is a federation and consists of 16 states (“*Bundesländer*” or just “*Länder*”). According to the German constitution, the so-called Basic Law (*Grundgesetz*, *GG*), state power is divided between the federal level (*Bund*) and the level of the states (*Länder*). As a general rule, the constitution assigns state power to the state level under Article 30 GG, Article 70 (1) GG (legislative power) and Article 83 GG (executive power). The federal level has administrative and legislative power only if the constitution expressly says so. In practice, however, the federal level has the largest share of legislative power. Article 73 (1) No. 1-14 GG assigns an important number of exclusive legislative powers to the federal level. In the areas of “concurrent legislative powers” (*konkurrierende Gesetzgebung,* see Article 74 (1) No. 1-33 GG in conjunction with Article 72 GG) the states (Länder) may legislate as long as and to the extent that the federal legislator has not (or not yet) exercised its legislative powers in the respective area. Article 72 (3) GG enlists certain fields of concurrent legislative powers, in which the states (*Länder*) may deviate from federal legislation by introducing their own legislation.

Today, most environmental acts in Germany are federal law. Very often these norms transpose EU law. More than two thirds of environmental legislation in Germany can be traced back to EU norms.[1] This is especially the case in the areas of

air pollution control,
noise protection,
waste management,
chemicals,
genetic engineering and
nuclear safety.

Fields of concurrent federal legislation in which the states may deviate from federal legislation according to Article 72 (3) GG include

management of water resources (except for regulations related to materials or facilities),
protection of nature and landscape management (except for the general principles governing the protection of nature, the law on protection of plant and animal species or the law on protection of marine life) and
regional planning.[2]

The German system of administrative justice is designed to guarantee individual rights against the exercise of public power. Claimants generally have to assert a violation of an individual right (“subjective public right” / *subjektiv öffentliches Recht*) in order to have access to justice, Art. 19 (4) GG.

Public interest litigation is an exception to the general rule. It has to be justified by special statutes. The Environmental Appeals Act (*Umwelt-Rechtsbehelfsgesetz*, *UmwRG*) makes it possible for NGOs (see 1.4), legal and natural persons to appeal against the violation of important environmental provisions.

However, the underlying concept of the Aarhus Convention according to which the “public concerned” should have access to justice in all environmental matters is not made visible by a comprehensive domestic provision.

A green *actio popularis* has not been established.

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

Since 1994 the German constitution has enshrined environmental protection as a national objective in Article 20a GG. Environmental protection and sustainability have thus gained constitutional status. According to the wording of Article 20a, the state and its legislative, executive and judicial organs are bound to protect the natural foundations of life and animals, also as a responsibility towards future generations.

Still, up until now, Article 20a GG is not understood as a legal provision that grants an individual right to natural or legal persons or associations to initiate legal proceedings in cases concerning environmental matters.

The main constitutional provision on access to justice is Article 19 (4) GG. This is a constitutional guarantee that does not refer to environmental cases specifically. It states: “Should any person’s rights be violated by public authority, he may have recourse to the courts”. The provision thus reflects the traditional rights-based approach to access to justice in Germany.

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

Regarding access to justice in environmental matters, the Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung*, *VwGO*) applies to cases brought by individuals and legal entities. Under § 42 (2) VwGO a person has locus standi if they claim that their rights have been violated by the administrative act or its refusal or omission, unless otherwise provided by law. According to § 43 (1) VwGO the establishment of the existence or non-existence of a legal relationship or of the nullity of an administrative act may be requested by means of an action if the plaintiff has a justified interest in the establishment being made soon (action for a declaratory judgment).

Special provisions on environmental access to justice for NGOs can be found in federal law (*Bundesrecht*) as well as in the respective laws of the states (*Landesrecht*).
On the federal level the most important pieces of legislation are:
the Environmental Appeals Act (*Umwelt-Rechtsbehelfsgesetz*, *UmwRG*) and
the Federal Nature Conservation Act (*Bundesnaturschutzgesetz*, *BNatSchG*).
A number of states (*Länder*) have included complementary provisions on environmental access to justice in their respective nature conservation legislation, see for example:
Baden-Württemberg: § 50 of the Nature Conservation Act (*Gesetz des Landes Baden-Württemberg zum Schutz der Natur und zur Pflege der Landschaft, NatSchG BW*)
Berlin: § 46 of the Nature Conservation Act *(Gesetz über Naturschutz und Landschaftspflege von Berlin, NatSchG Bln)*
Brandenburg: § 37 of the Implementation Act for the Federal Nature Conservation Act *(Brandenburgisches Ausführungsgesetz zum Bundesnaturschutzgesetz, BbgNatSchAG)*
Mecklenburg-Western Pomerania: § 30 of the Implementation Act for the Federal Nature Conservation Act *(Gesetz des Landes Mecklenburg-Vorpommern zur Ausführung des Bundesnaturschutzgesetzes, NatSchAG MV)*
North Rhine-Westphalia: § 68 of the Nature Conservation Act *(Gesetz zum Schutz der Natur in Nordrhein-Westfalen, LNatSchG NRW)*
Rhineland-Palatinate: § 31 of the Nature Conservation Act *(Landesnaturschutzgesetz Rheinland-Pfalz, LNatSchG Rheinland-Pfalz)*
Saxony: § 34 of the Nature Conservation Act Saxony *(Sächsisches Naturschutzgesetz, SächsNatSchG)*
Thuringia: § 29 of the Nature Conservation Act Thuringia *(Thüringer Gesetz zur Ausführung des Bundesnaturschutzgesetzes und zur weiteren landesrechtlichen Regelung des Naturschutzes und der Landschaftspflege, ThürNatG)*

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

In Germany there is no Supreme Court in charge of all branches of the court system. The Federal Constitutional Court (*Bundesverfassungsgericht, BVerfG*) and the constitutional courts of the *Länder* do not function as supreme courts, and they are not part of the regular court system. Their jurisdiction is restricted to constitutional questions, which might, however, also arise in certain environmental cases (e.g. regarding the scope of fundamental rights or of the national objective of environmental protection enshrined in Article 20a GG).
Cases involving environmental issues generally fall within the competence of administrative courts. Therefore, the Federal Administrative Court (*Bundesverwaltungsgericht*, *BVerwG)* in Leipzig plays the most important role when it comes to establish jurisprudence in environmental cases because it is the final instance in this branch of the judiciary. For more information about the judicial system see 1.2.
Three recent landmark decisions by the *BVerwG* are to be mentioned:
2018: “Air quality and diesel ban” [3]
Decision of the *BVerwG* on a controversial case initiated by an NGO, inter alia on the question, whether a ban on diesel-powered vehicles can be the only appropriate measure to secure that air pollution is tackled in the quickest possible way to an extent still in compliance with the law in force and whether, in consequence, such a ban has to be enacted to comply the obligations of Article 23 (1) (2) of Directive 2008/50/EC on ambient air quality and cleaner air for Europe.
2019: “NGO standing”[4]
Decision of the *BVerwG* on the question whether an environmental organisation has standing in a situation where the NGO potentially would have had the right to take part in a public participation process which did not take place, when the NGO claims that participation was omitted without good reason.[5]
2020: “Area of natural beauty and NGO standing?”[6]
In a pending case[7] an environmental NGO is challenging a local regulation that establishes an area of “outstanding natural beauty”. Does the procedure to adopt such a regulation require a Strategic Environmental Assessment (the “SEA”) or at least a reasoned decision by the competent authority not to do one? If so, the environmental NGO would have access to justice to invoke a violation of EU law on the SEA in court proceedings under the Environmental Appeals Act (*Umweltrechtsbehelfsgesetz, UmwRG*). The *BVerwG* has therefore requested a preliminary ruling from the CJEU under Article 267 TFEU.[8]

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

International environmental agreements (for example the ESPOO Convention) require implementation by the German legislator in order to become part of the domestic legal system. Only then can a person rely on its provisions before a domestic court.
Of course, EU law can be invoked by a party. However, the national court has to check whether the relevant provision of EU law is meant to have direct effect according to the Treaties and/or to the case-law of the CJEU. Therefore, beneficial provisions in a not duly implemented EU Directive can be referred to if this provision is “unconditional and sufficiently clear”.
To give an example: In the environmental landmark case C-115/09 (BUND/Trianel) from May 2011 the CJEU held that an individual rights approach to establishing NGO standing in environmental matters used by the German legislator is not a sufficient implementation of the access to justice clause in Directive 2003/35/EC. As a result environmental NGOs in Germany could directly rely on the access to justice provisions under Directive 2003/35/EC when bringing actions to court. This legal situation lasted till Germany enacted an amendment to the Environmental Appeals Act (*Umweltrechtsbehelfsgesetz, UmwRG*) which widened NGO standing in order to comply with Directive 2003/35/EC.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

As a general rule the German court system has three levels or instances.
Very often, the first and second instance belong to the judiciary of the respective state (*Land*) and the third instance court is a federal court (*Bundesgericht*).
The court system has several branches. For instance, the so-called ordinary jurisdiction (*ordentliche Gerichtsbarkeit*) has jurisdiction to decide cases of private and criminal law. Cases involving environmental issues are very often public law cases and thus fall within the competence of the administrative courts. Administrative courts (*Verwaltungsgerichte*) belong to a separate branch of the judiciary (*Verwaltungsgerichtsbarkeit*) and are to some extent subject to specific rules on court procedure laid down in the Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung, VwGO*).
The three levels of the German administrative judiciary are:
Administrative Court / several in each state (*Verwaltungsgericht, the “VG”*)
Higher Administrative Court / one for each state (*Oberverwaltungsgericht, the “OVG”* or *Verwaltungsgerichtshof, the „VGH*)
Federal Administrative Court / one for Germany based in Leipzig *(Bundesverwaltungsgericht, the “BVerwG”*)
In general, administrative court proceedings start at the administrative court. The losing party has a restricted possibility to appeal (*Berufung*) to the Higher Administrative Court and, after that, a restricted possibility to further appeal (*Revision*) to the Federal Administrative Court on questions of federal law.

A number of important environmental cases (e.g.: nuclear energy projects or offshore wind farms) start in the Higher Administrative Court, see § 48 (1) VwGO.[9] In those cases, the Federal Administrative Court is a court of second instance.
Some environmental cases of fundamental importance start (and end) in the Federal Administrative Court. Examples are big infrastructure projects like federal highways (Federal Highways Act), projects falling under the General Rail Act or federal waterways (Federal Waterways Act). The planning of such big projects is subject to a formal administrative procedure where the public and other authorities have to be heard. The final development consent by the public authority is called the "plan approval decision" (*Plangenehmigung* or *Planfeststellungsbeschluss*). All and any disputes related to project approval procedures and plan approval procedures for projects falling under the legal acts mentioned in § 50 (1) no.6 VwGO can be legally challenged at the Federal Administrative Court, see § 50 (1) no. 6 VwGO.
As mentioned above, the Federal Constitutional Court (*Bundesverfassungsgericht, "BVerfG"*) and the constitutional courts of the states are not part of the regular court system. Their jurisdiction is restricted to constitutional questions. However, citizens can apply to the constitutional courts to ascertain whether their constitutional rights have been violated, with the basic right to health (Art. 2 (2) GG) being the most relevant to environmental cases. The so-called constitutional complaint (*Verfassungsbeschwerde*) is of utmost importance. The decisions of the *BVerfG* on constitutional complaints are numerous and enjoy a high reputation as cornerstones of the rule of law in Germany.

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

Jurisdiction is clearly defined by law beforehand.
The court has to verify its competence by its own motion (*ex officio*). The judge has to decide whether he/she is competent to rule on the case or not. This concerns the competent branch of the judiciary and substantive jurisdiction (see above, 1)) as well as territorial jurisdiction, which is determined according to § 52 (1) No. 1-5 VwGO. In disputes regarding immovable property or a local entitlement or legal relationship, territorial jurisdiction shall lie solely with the administrative court within whose district the assets or the site are located or the local entitlement applies (§ 52 Nr. 1 VwGO). Other cases of territorial jurisdiction are determined in § 52 (1) No. 2, 3 and 5 VwGO.
If the court comes to the conclusion that it lacks substantive, territorial or hierarchical jurisdiction it has to hear the parties on the matter and then take a decision to refer the case to the competent court (the *"Verweisungsbeschluss"*). If this decision becomes final it has a binding force on the court chosen to decide, even if this court belongs to another branch of the judiciary, see §§ 17 ss., § 17b (1) of the Courts Constitution Act (*Gerichtsverfassungsgesetz*, *GVG*).
The German Courts Constitution Act is not a sufficient legal basis to refer a case to the competent court of another Member State.

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

In Germany there are no special environmental courts that deal exclusively with environmental issues. In general, administrative courts are competent to decide environmental law cases because, typically, these cases involve an action or non-action by a public law body (e.g. permitting or inspection authority). Most administrative courts have chambers that are specialized in environmental law.
It is noteworthy that state liability cases are not under the jurisdiction of the administrative courts but are decided by ordinary courts.

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

Insofar as the administrative act is unlawful and the plaintiff's rights have been violated, the court shall rescind the administrative act and any ruling on an objection. If the administrative act has already been executed, the court may also state on request that the administrative authority has to countermand execution, and how. This statement shall only be permissible if the authority is able to do so and this question is mature for adjudication. If the administrative act has been settled previously by withdrawal or otherwise, the court shall declare on request by judgment that the administrative act was unlawful if the plaintiff has a justified interest in this finding, § 113 (1) VwGO.
Insofar as the rejection or omission of the administrative act is unlawful and the plaintiff's rights are violated thereby, the court shall announce the obligation incumbent on the administrative authority to effect the requested official act if the case is ready for adjudication. Otherwise, it shall hand down the obligation to notify the plaintiff, taking the legal view of the court into consideration, § 113 (5) VwGO.
Also, administrative discretion is not without reviewable legal limits. Insofar as the administrative authority is empowered to act on its discretion, the court shall also examine whether the administrative act or the refusal or omission of the administrative act is unlawful because the statutory limits of discretion have been overstepped or discretion has been used in a manner not corresponding to the purpose of the empowerment, § 114 (1) sentence 1 VwGO. The exercise of administrative discretion has to be in conformity with the aim of the legal empowerment, considering all relevant factual and legal aspects by taking due account, inter alia, of the fundamental rights at stake and the principle of proportionality. If this exercise has not been done properly by the public administration, the court grants injunctive relief under § 113 (5) sentence 2 VwGO and obliges the public administration to take a new decision in which the legal opinion of the court has to be taken into consideration (*Neubescheidung unter Beachtung der Rechtsauffassung des Gerichts*).
Sometimes legal proceedings lead to the assumption of the court that in the individual case the margin of administrative discretion is "reduced to zero" (*Ermessensreduzierung auf Null*), meaning the rule of law only allows one specific administrative action to be taken. If this specific administrative action is identical with the one requested by the claimant, the power of the court is not any longer restrained by the principle of the separation of powers. The administrative court directly obliges the public administration to act, see § 113 (5) sentence 1 VwGO.

1.3. Organisation of justice at administrative and judicial level

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

The Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (*Bundesministerium für Umwelt, Naturschutz und nukleare Sicherheit, the "BMU"*) is responsible for a wide range of government policy areas in environmental matters, including preparing legislation and transposing directives of the European Union into national law, as well as issuing ordinances and administrative regulations.[10]
Four federal environmental agencies exist:
Federal Environment Agency (*Umweltbundesamt*, the *"UBA"*),
Federal Agency for Nature Conservation (*Bundesamt für Naturschutz*, the *"BfN"*),
Federal Office for Radiation Protection (*Bundesamt für Strahlenschutz*, the *"BfS"*)
Federal Office for the Safety of Nuclear Waste Management (*Bundesamt für die Sicherheit der nuklearen Entsorgung*, the *"BASE"*).
They are specialised in tasks such as providing scientific support and advice to the *BMU*, monitoring specific federal issues such as air pollution, emissions from nuclear power plants or assessment of environmental risks in fields such as medical products and biocides.[11]
Administrative competence in environmental matters in most cases lies within the competences of the states (*Länder*). The states implement both federal and their own state environmental law. State authorities are responsible for e.g. granting construction permits and permits for installations, inspecting installations and enforcing environmental law in case of non-compliance by means of administrative fines, interdiction of plants or withdrawal of permits.[12]
The structural set-up of the administrative system depends on the state as each state has the autonomy to establish its own administrative structure and procedure. Thus, some states have introduced a hierarchy of administrative bodies on three different levels while others employ a two-level system in this

context. Additionally, the cities of Berlin, Hamburg and Bremen, which form their own respective states, have adopted administrative structures of their own. [13]

The diversity of administrative procedures and appeals among the states leads to the situation that access to justice can vary from state to state.[14]

2) How can one appeal an administrative environmental decision before court?

Prior to lodging a rescissory action, the lawfulness and expedience of the administrative act shall be reviewed in preliminary proceedings (administrative appeal procedure, Vorverfahren or Widerspruchsverfahren). Such a review shall not be required if a statute so determines, or if the administrative act has been handed down by a supreme federal authority or by a supreme Land authority, unless a statute prescribes the review, or the remedial notice or the ruling on an objection contains a grievance for the first time, § 68 (1) VwGO.

This applies mutatis mutandis to the enforcement action if the motion to carry out the administrative act has been rejected, § 68 (2) VwGO. An administrative decision has to provide an information on legal remedies (*Rechtsbehelfsbelehrung*) at its end.

In environmental law, there are several provisions that exclude the administrative appeals procedure.

For the area of federal environmental law this is the case inter alia for:

actions brought against plan approval decisions (*Planfeststellungsbeschlüsse*), see §§ 74 (1), 70 Administrative Procedure Act (*Verwaltungsverfahrensgesetz*, the "VwVfG")

actions brought against planning permissions (*Plangenehmigung*), see § 74 (6) sentence 3 VwVfG.

State law may have its own provisions regarding the necessity of preliminary administrative proceedings before having access to court, for example:

North Rhine-Westphalia: § 110 Judiciary Act of North Rhine-Westphalia (*Justizgesetz Nordrhein-Westfalen*, *JustG NRW*)

Lower Saxony: § 80 (1) Judiciary Act of Lower Saxony (*Niedersächsisches Justizgesetz, NJG*).

Bavaria: in this state the administrative appeal is optional and thus not mandatory, see § 15 of the Bavarian Act on the Implementation of the Federal Code of Administrative Court Procedure (*Gesetz zur Ausführung der Verwaltungsgerichtsordnung, BayAGVwGO*).

The general time limit for bringing administrative appeals (objections) or court actions is

one month after the administrative act has been announced to the aggrieved party, § 70 (1) VwGO (administrative appeal), or of service of the ruling on the objection, § 74 (1) sentence 1 VwGO (judicial appeal). If in accordance with § 68 VwGO a ruling on an objection is not required, a judicial appeal must be lodged within one month of announcement of the administrative act or announcement of its rejection, § 74 (1) sentence 2 VwGO.

one year if the information on legal remedies has not been provided or has been incorrectly provided, § 58 (2) VwGO.

Specific limits are provided in the Environmental Appeals Act, namely

one year, if members of the public concerned were not notified of the administrative decision, and if there was no public notification either. The time limit starts from the day the decision came to attention of the claimant or could have come to its attention, see § 2 (3) sentence 1 UmwRG,

two years, meaning that NGOs, after this time period, are excluded from bringing judicial complaints against certain environmental administrative decisions, § 2 (3) sentence 2 VwGO.[15] The time limit starts and expires regardless of their awareness of the existence of the respective administrative decision.

When can one expect the final ruling?

There are no fixed deadlines for the courts to deliver a judgment. After Germany was criticized by the European Court of Human Rights in November 2011, new legislation was enacted which enables the parties to the proceedings to warn a court when the procedures are on the verge of taking excessive time, and to claim special damages if the procedure takes too long.[16]

According to data published by the Federal Statistical Office (*Statistisches Bundesamt*) in 2018, for the year of 2018 there was a duration of 12.1 months for proceedings in the first instance (*Klageverfahren*) at the Administrative courts on average, with 6.3 months being the shortest average time in some states and 19.6 months being the longest average time in other states.[17]

For proceedings continuing at the level of Higher Administrative Courts the duration of the appeal proceedings (*Berufung*) is 11.7 months as a national average, with 5.3 months being the shortest average time in some Länder and 25.5 months being the longest average time in other states.[18]

For 2018, the statistics of the Federal Administrative Court list an average duration of revision proceedings (*Revision*) of about 11.5 months.[19]

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

In Germany there are no special courts that deal exclusively with environmental issues. In general, administrative courts are competent to hear environmental law cases (see above at I.2). Some aspects of liability fall within the competence of ordinary courts. Most administrative courts have chambers specialized in environmental law.

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

Appeals against an environmental administrative decision

In general, there is a regular administrative appeal against first instance administrative decisions in environmental matters, which is mandatory according to the general rule in § 68 VwGO, unless statutes determine otherwise (see above at 1.3.2). Administrative decisions must give the addressee all the necessary information on the remedy, the time limit to be observed and where to lodge it, see § 58 (1) VwGO. If necessary preliminary administrative proceedings are unsuccessful, the appeal may be brought before the administrative courts.

Appeals against court decisions

Court decisions, other than judgments, can be challenged by a complaint (*Beschwerde*), see §§ 146 et seq. VwGO.

Judgments of administrative courts can be challenged by an appeal (*Berufung*) - appeal on points of fact and law - to the Higher Administrative Court, see § 124 (1) VwGO. The Administrative Courts admits the appeal under § 124a (1) sentence 1 VwGO in conjunction with section 124 (2) VwGO

if serious doubts exist as to the correctness of the judgment,

if the case has special factual or legal difficulties,

if the case is of fundamental significance,

if the judgment derogates from a ruling of the Higher Administrative Court, of the Federal Administrative Court, of the Joint Panel of the supreme courts of the Federation or of the Federal Constitutional Court, and is based on this derogation, or

if a procedural shortcoming subject to the judgment of the court of appeal on points of fact and law is claimed and applies on which the ruling can be based.

If the appeal on points of fact and law is not admitted in the judgment of the Administrative Court, admission shall be applied for within one month after service of the complete judgment, § 124a (4) sentence 1 VwGO. The Higher Administrative Court refuses to admit the appeal by an order (*Nichtzulassungsbeschluss*) if none of these grounds can be demonstrated by the claimant. This court order cannot be appealed, see § 124a (5) sentence 4 VwGO. If the Higher Administrative court admits the appeal by an order it then continues to conduct appeal proceedings taking into account all points of fact and law raised in the case presented.

Against judgments of the Higher Administrative Court parties have recourse to an appeal on points of law to the Federal Administrative Court (*Revision*). This recourse has to be admitted by the Higher Administrative Court or, upon request, by the Federal Administrative Court itself.

Against the judgment of an administrative court those concerned have recourse to an appeal on points of law, circumventing the appeal on points of fact and law instance, if the plaintiff and the defendant agree in writing to the submission of the appeal on points of law in lieu of an appeal on fact and law, and if it is admitted by the administrative court in the judgment or on request by order, § 134 (1) sentence 1 VwGO - "leapfrog" appeal (*Sprungrevision*).
Furthermore, parties have recourse to an appeal on points of law to the Federal Administrative Court against the judgment of an administrative court if the appeal on points of fact and law is ruled out by federal law. The appeal on points of law can only be lodged if the administrative court has admitted it, or if the Federal Administrative Court has admitted it in response to a complaint against non-admission, § 135 sentence 1 VwGO.
In some environmental matters, in particular in cases concerning infrastructural projects, the Federal Administrative Court is competent as a court of first instance, see § 50 (1) no. 6 VwGO. This means that there is only one instance in which all factual and legal aspects of the case are examined. A further appeal procedure is not possible, see 1.2.1.

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

In environmental matters there are no extraordinary remedies or ways of appeal.
When a court is uncertain as to the interpretation or validity of an act adopted by the European Union it will stay the proceedings by analogy to § 94 VwGO and refer the matter to the CJEU and request a preliminary ruling according to Article 267 TFEU. After the CJEU decision on the interpretation or the validity of the provisions in question, the national court will continue its own proceedings.
According to the CJEU´s statistics, with a total of 2249 requests between 1952 and 2017, German national courts have the highest share of requests for preliminary rulings, including 149 requests in 2017.[20]

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

Alternative dispute resolution (ADR) is still not very frequently used in Germany in environmental matters. Some well-known mediation procedures took place in the course of big infrastructure permit procedures, by example
Airport Berlin (*Flughafen Berlin Brandenburg "Willy Brandt"*),
Frankfurt Airport,
Main Station Stuttgart ("*Stuttgart 21"*)[21].
However, the ADR processes in these cases were not binding and in each of the cases the administrative decision was followed by several lawsuits.
It is noteworthy that the German judiciary provides an optional mediation procedure during the litigation which is conducted by the court's judge mediator (*Güterichter*).

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

Other actors play hardly any role in Germany. Ombudspersons are only available in a private context – for instance in daily newspapers etc. and are not specialized in environmental matters. Some commissioners for data protection are also responsible for access to information under the Freedom of Information Acts (*Informationsfreiheitsgesetze* - federal and state level) and in only few German States also for the provisions on access to environmental information.[22] They act as mediators between those holding information and those requesting access to information. On the Federal level the German Parliament (*Deutscher Bundestag*) adopted in December 2020 a new law (that will enter into force in spring 2021) – based on this the Federal commissioner for data protection will be in charge as well for requests that refer to the Environmental Information Act (*Umweltinformationsgesetz*, *UIG*).

1.4. How can one bring a case to court?

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

In general, individuals, legal entities and NGOs can challenge administrative decisions. In principle, this covers ad-hoc groups of citizens or foreign individuals as well.

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

There are different rules applicable for individuals and NGOs but also depending on sectoral legislation, see 1.4. 3) and 1.8.1 - 1.8.3, and 2.1 – 2.4.

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

Standing rules applicable for individuals and legal entities

Individuals and other legal entities only have standing at the judicial level if they can maintain that their "own rights" (such as health or property) have been possibly violated by the administrative decision, see § 42 (2) VwGO. In other words: Individual standing is denied if any "possible or thinkable" violation of such an individual right can be excluded by a prima facie assessment of the court.
The individual rights concept has two important consequences.
Firstly, the claimant can neither invoke the violation of someone else's rights nor "the rights of nature"; an *actio popularis* launched by an individual is manifestly inadmissible.
Secondly, if the individual claimant is a third party, being for example the neighbour of a permitted industrial facility, they must show a possible violation of their own rights.
More precisely, the claimant has to demonstrate a possible violation of an individual right (*subjektiv öffentliches Recht*) by invoking a violation of public law that is aimed to protect not only the public interest but – "at least also" – the specific private interests of the claimant who brought the action.
This legal concept is a cornerstone of administrative justice in Germany. It is referred to as "protective norm theory" (*Schutznormtheorie*) and leads to two different categories of German public law:
legal norms that protect the private interest of the third party conferring standing (*drittschützende Normen*) and
legal norms that do not protect the private interests of the third party (*Normen ohne drittschützende Wirkung*).
Over the last 60 years German administrative courts have developed a detailed case law on the question "whether" and "for whom" a specific provision of public law is considered to be "protective" and therefore confers standing. All major provisions are covered; German law commentaries very often have a special chapter on the issue.
These principles of German procedural law also apply in environmental law cases: individual standing is granted if the public administration by permitting (for example) an industrial facility did not comply with the public law provisions which are meant to protect the health or the property of the individual claimant.
The claimant can for instance invoke the public law statutes against harmful environmental effects (air pollution, noises, odour etc) and the statutes on construction law (distances between buildings, type of use under the binding municipal development plan). If the only concern of the individual claimant is of a mere public interest ("danger for the protection of flora and/or fauna") the action is considered to be clearly inadmissible. In this case an individual claimant lacks standing.
The Federal Administrative Court, in principle, also applies this legal concept in actions brought by individuals under the Environmental Appeals Act *(Umweltrechtsbehelfsgesetz, UmwRG)*. According to § 4 (1) and (3) UmwRG, both individuals and environmental NGOs can demand the revocation of a decision on the permissibility of a project if a necessary Environmental Impact Assessment (EIA) has not been conducted or the procedure has been seriously flawed. However, private individuals cannot bring an action only based on the claim that an EIA was not conducted (correctly), as an EIA is

conducted solely in the public interest. Therefore, individual claimants always also have to maintain a violation of their individual rights to overcome the hurdle of standing. If they have overcome this hurdle, however, the individual claimant can successfully invoke violations of the duty to conduct an EIA. In this case, the merits of the action do not depend on an actual violation of individual rights. This remarkable gap between a private interest assessment at the stage of the admissibility and a public interest assessment at the stage of the merits seems quite unusual in German administrative justice.
It has not yet been decided by the CJEU whether the Aarhus Convention and the corresponding European legislation will allow such a split approach to access to justice for individuals and other legal entities.

Standing rules applicable for NGOs

Recognised environmental organisations are granted legal standing in all cases explicitly specified in § 1 Environmental Appeals Act (*Umweltrechtsbehelfsgesetz, UmwRG*).
This includes, for example, permit procedures for projects requiring an environmental impact assessment (EIA) or for industrial sites covered by the Industrial Emissions Directive.
The Federal Nature Conservation Act (*Bundesnaturschutzgesetz*, *BNatSchG*) and some state nature conservation acts[23] grant legal standing to recognised nature conservation organisations in specified areas of nature conservation, see § 64 BNatSchG. In these cases, recognised NGOs can challenge, for example, decisions to grant an exemption from rules for the protection of Natura 2000 sites or for protected areas of marine environment.
In order to be able to rely on the special procedural rights of recognised environmental organisations, NGOs have to obtain the status of an officially recognised environmental or nature conservation organisation. This requires NGOs to fulfil the conditions stipulated by § 3 UmwRG or the state nature conservation acts respectively and to request recognition from the competent federal or state authority. Recognition must be granted when the legal requirements are met.[24] Some important requirements of § 3 UmwRG are that the organisation is committed to the protection of the environment, has been active in protection activities for at least three years and grants membership and voting rights in the internal members´ meeting to any person willing to support the environmental work of the organisation.
For NGOs that are active on a national scale or on the territory of several states, and for foreign NGOs, the competent recognition authority is the German Environment Agency (*Umweltbundesamt*, the "*UBA*"). If an NGO is only active on the territory of one state, the recognition process has to be completed with the respective state authority.[25]
For ad-hoc groups of citizens the same rule applies as for individuals, unless they successfully register as recognised environmental organisations.
Foreign individuals are subject to the same the rules as national individuals. This is the case also for foreign NGOs, unless they successfully register as recognised environmental organisations according to § 3 (1) and (2) UmwRG[26].

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

According to § 184 Courts Constitution Act (*Gerichtsverfassungsgesetz*, *GVG*), § 55 Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung*, *VwGO*) the language used in court and court procedures is German. The only exception concerns certain areas of the *Land* of Brandenburg, where the Sorbian-speaking minority has the right to use their language.
According to § 185 GVG and § 55 VwGO in oral hearings of administrative court procedures, translation has to be provided if there are persons directly involved who are not able to communicate in German. Apart from this general rule, there are no further legal requirements on translation. In general, courts will choose an interpreter from a list of registered and court-certified interpreters. In administrative court hearings, the costs of interpretation may be regarded as court expenses (*Auslagen*) and would then have to be borne by the losing party.

1.5. Evidence and experts in the procedures

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

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

When administrative courts decide cases in environmental matters they are not restricted to the information the parties bring. Courts can (and must, if necessary) explore the facts on their own motion and also produce evidence themselves. The principle of ex officio investigation (*Amtsermittlungsgrundsatz*) applies, see § 86 (1) Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung, VwGO*). The same principle applies to administrative proceedings (*Untersuchungsgrundsatz*), see § 24 Administrative Procedure Act (*Verwaltungsverfahrensgesetz, VwVfG*).
Nevertheless, it is up to the parties to clarify the facts in question. They are obliged to cooperate with the court, see § 86 (1) sentence 1 VwGO. This often requires the parties to refer to expert opinions. Thus, environmental organisations as well as the other parties to the dispute cooperate with and pay for experts in the specific fields to provide evidence.

2) Can one introduce new evidence?

According to § 6 Environmental Appeals Act (*Umweltrechtsbehelfsgesetz, UmwRG*), claimants must submit the full statement of grounds for the appeal including all relevant facts and evidence within 10 weeks after the action was initiated.
In contrast to the regular provisions of administrative procedural law and to the situation before the amendment of the UmwRG in 2017, when the prolonging of the time limit was more or less at the court´s discretion, the deadline of § 6 UmwRG is a strict one and can only be waived under clearly exceptional circumstances, if the plaintiff had no chance to participate during the preceding administrative procedure, § 6 (4) UmwRG, or if the plaintiff can adequately excuse the delay, § 6 (4) UmwRG.

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

In principle, the parties are free to introduce evidence in the form of an opinion by an expert of their choice. It is up to the parties to choose experts who are qualified for the matter in question. The court cannot prevent the parties from choosing a particular expert to provide evidence in the form of an expert opinion. However, if the court is not convinced of the professional qualification of the expert or the quality of the expert opinion itself, it will not take that opinion into consideration when deciding upon the case.
A helpful source is the online publication of the Bavarian Environmental Agency (*Bayerisches Landesamt für Umwelt, LfU Bayern*) of 2017 on laboratories and experts in environmental matters such as soil, contaminated sites, waste, water, air, noise, radiation[27].
Also the Hessian Agency for Nature Conservation, Environment and Geology (*Hessisches Landesamt für Naturschutz, Umwelt und Geologie, HLNUG*) provides information online[28].
The following lists are publicly available:
Federal Association of Experts and Reviewers[29];
register of experts provided by the chambers of commerce[30] *(IHK – Industrie- und Handelskammern).*
See also 1.3.3 and 1.6.2.

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

The court shall rule in accordance with its free conviction gained from the overall outcome of the proceedings, see § 108 (1) sentence 1 Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung, VwGO*). It is therefore up to the court to evaluate the expert opinions. The courts are independent and free to review the evidence, to judge whether there is a breach of law and to evaluate the severity of the infringement. In the judgment, the

grounds which were decisive for the judicial decision must be named. The judgment may only be based on such facts and pieces of evidence on which those concerned have been heard.

3.2) Rules for experts being called upon by the court

The court is free to choose an expert and is not bound by the suggestions of the parties. Technically, the expert is not required to meet any specific qualifications set by law, it is enough if the court is convinced that the expert is adequately qualified in general and for the matter of the specific case. In practice, however, the courts choose experts from a list of publicly certified experts. The court is free to evaluate the content of the expert opinion and is not bound by conclusions of the expert opinion.

3.3) Rules for experts called upon by the parties

In principle, the parties are free to introduce evidence in the form of an opinion by an expert of their choice. It is up to the parties to choose experts who are qualified for the matter in question. The court cannot prevent the parties from choosing a particular expert to provide evidence in the form of an expert opinion. However, if the court is not convinced of the professional qualification of the expert or the quality of the expert opinion itself, it will not take that opinion into consideration when deciding upon the case.

The costs for the preparation of the expert opinion or for the expert being present at the court hearing are borne by the party relying on the respective expert, unless the court comes to the conclusion that the expert opinion or the expert being present at the court hearing were necessary to adequately pursue the matter before the court, as a whole or to a certain extent[31], see § 162 (1) Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung, VwGO*). According to the case-law of the Federal Administrative Court, this is only the case if the party relying on the expert cannot rely on sufficient expertise of its own to prove its reasoning.[32] Whether this is the case is to be assessed from the point of view of a reasonably acting party who would do their best to represent their interests while aiming to keep the costs at a reasonable level.[33]

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

There are no special procedural fees that arise for expert opinions. The general procedural fees are calculated on the basis of the estimated value in dispute regardless of the actual efforts of the court. Still, if the court has hired an expert, the expert is paid according to the rates set by the law on the remuneration of experts, interpreters, translators etc. (*Justizvergütungs- und –entschädigungsgesetz, JVEG*). The court can decide that these expenses (Auslagen) have to be borne by the losing party. These costs can exceed the procedural fees, especially when the value in dispute is relatively low.

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

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

If the court of first instance is an administrative court (*Verwaltungsgericht, VG*), representation by a lawyer is not mandatory. If the court of first instance is a Higher Administrative Court (*Oberverwaltungsgericht, OVG or Verwaltungsgerichtshof, VGH*) or the Federal Administrative Court (*Bundesverwaltungsgericht, BVerwG*), representation by a lawyer is compulsory.

However, almost all lawsuits in environmental matters are conducted with the assistance of a lawyer because, as with other areas of administrative law, environmental procedures are so complex that laypeople cannot oversee all legal consequences. Specialised environmental lawyers give advice at all stages of the procedure, often beginning with the public consultation during the administrative procedure. Legal representation plays a crucial role for the success of proceedings. The service of environmental lawyers often goes far beyond usual legal counselling. They work very closely with the claimants; often responses are co-authored by environmental lawyers and other experts on the issues concerned.

1.1 Existence or not of pro bono assistance

German lawyers are only allowed to waive fees under certain conditions according to § 49b of the Federal Lawyers´ Code (*Bundesrechtsanwaltsordnung, BRAO*). Environmental organisations usually hire specialists on a regular basis and use their funds to pay the lawyers.

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

According to the Act on Advisory Assistance and Representation for Citizens with a Low Income (Advisory Assistance Act; *Gesetz über Rechtsberatung und Vertretung für Bürger mit geringem Einkommen, Beratungshilfegesetz - BerHG*) persons seeking legal aid have access to advisory assistance for the exercise of rights **outside court proceedings and in mandatory conciliation proceedings**. Litigants can apply for a certificate of eligibility at the local court. If legal aid is granted the person has to pay at most 15 euros to the attorney. Provisions to be met are as follows: litigants cannot mobilise the necessary resources due to their personal and economic circumstances (determined according to the standards set out for assistance with court costs under the provisions of the Zivilprozessordnung - Code of Civil Procedure); there are no other possibilities for assistance, use of which can be expected from the litigant; use of advisory assistance does not seem frivolous. Advisory assistance consists of advice and necessary representation (§ 2 para. 1 and 3 BerHG).

With regard to legal aid for **court proceedings**: See explanations to questions 3) and 4) in point 1.7.3 below. The respective provisions are laid down in § 166 VwGO and §§ 114 et seq. of the Code of Civil Procedure. German law provides for a means and a merits test. Subject to further details the prerequisites are as follows: If a party is unable to bear the costs of court proceedings and – if necessary – of a lawyer in full or in part due to its economic and personal circumstances, it can apply for legal aid to the court, if the party has a reasonable prospect of success in the proceedings and the proceedings are not wilful. For the purpose of examination a party's application, the party is obligated to submit a declaration of its economic and personal circumstances, e. g. family background, job status, financial circumstances, earning capacity, financial burdens and potential legal expenses insurances.

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

One possibility is to contact an environmental NGO active in the area at issue. The NGO might be willing to take over the case in question, or can possibly help with some aspects of the case.

Lawyers can be found via internet research. The Federal Bar Association *(Bundesrechtsanwaltskammer - BRAK*) provides a register listing all lawyers admitted to the legal profession in Germany (Bundesweites Amtliches Anwaltsverzeichnis). However, with regard to lawyers' specialisations, the register's search function is limited. However, almost all lawyers have a webpage that provides information about their specialisation. Some environmental lawyers are part of the IDUR – Informationsdienst Umweltrecht (information service environmental law) network.

Another website listing several environmental lawyers is umweltanwaelte.de.

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

A helpful source is the following online publication of the Bavarian Environmental Agency (*Bayerisches Landesamt für Umwelt, LfU Bayern*) of 2017 on laboratories and experts in environmental matters such as soil, contaminated sites, waste, water, air, noise, radiation.[34]

Also the Hessian Agency for Nature Conservation, Environment and Geology (*Hessisches Landesamt für Naturschutz, Umwelt und Geologie, HLNUG*) provides information online.[35]

The following lists are publicly available:

Federal Association of Experts and Reviewers[36]

register of experts provided by the chambers of commerce[37] (*IHK – Industrie- und Handelskammern)*

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

An up-to-date list of all environmental organisations recognised on the federal level, also providing links to the *Länder* authorities that are competent for the recognition process on *Länder* level, is published by German Environment Agency (*Umweltbundesamt, UBA*)[38].

Some of the most active NGOs in environmental litigation are the “BUND” and the “NABU” and their regional organisations.

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

With regard to international NGOs that are active in environmental litigation in Germany, Friends of the Earth/BUND (*Bund für Umwelt und Naturschutz Deutschland e.V.*) and their regional organisations play a crucial role.

Also the other actively litigating NGO in Germany, NABU, has an international affiliation as a partner of BirdLife International.

The following international environmental NGOs active in Germany do not regularly initiate environmental proceedings as they are not registered as recognised environmental organisations under the Environmental Appeals Act (*Umweltrechtsbehelfsgesetz, UmwRG*):

Client Earth

WWF[39]

Greenpeace[40]

1.7. Guarantees for effective procedures

1.7.1. Procedural time limits

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

If an administrative appeal is mandatory, see § 68 Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung, VwGO*, see also above at 1.3.2) the time limit to launch it is one month after the party was notified of the administrative decision, see §§ 70 (1) sentence 1 VwGO, 58 VwGO.

The determination of this deadline follows the rules of § 57 (2) VwGO, § 222 (1) Code of Civil Procedure (*Zivilprozessordnung, ZPO*) and §§ 187 et seq. German Civil Code (*Bürgerliches Gesetzbuch, BGB*). With some exceptions, the time limit to lodge an appeal will expire at the end of the day with the number of the day of the notification, § 188 (2) sentence 1 BGB. For example, if the administrative decision was notified on October 23, the one-month time limit expires at the end of the day of November 23.

The deadline for an appeal or another legal remedy is only initiated if the party concerned has been informed in writing or in electronic form of the appeal, the administrative authority or the court at which the appeal is to be lodged, the seat and the deadline to be adhered to, § 58 (1) VwGO. If the information has not been provided or has been incorrectly provided, the lodging of the appeal is permissible within one year of service, publication or pronouncement, unless submission was impossible prior to expiry of the year’s deadline period as a result of force majeure, or a written or electronic notification was given that an appeal was not possible, § 58 (2) VwGO.

If members of the public concerned were not notified of the administrative decision, and if there was no public notification either, the decision must be challenged within one year from the day when the administrative decision came its attention or could have come to its attention according to § 58 (2) VwGO and § 2 (3) sentence 1 Environmental Appeals Act (*Umwelt-Rechtsbehelfsgesetz, UmwRG*).

If an administrative decision falling into the categories of § 1 (1) sentence 1 no. 5 or no. 6 UmwRG[41] is at stake, for NGOs, there is a deadline excluding any appeal against an administrative decision, when two years have expired since the administrative decision has been granted, regardless of whether the environmental organisation was aware or could have been aware of the decision, § 2 (3) sentence 2 UmwRG.

2) Time to deliver a decision by an administrative organ

Time limits to deliver a decision apply to decisions in administrative permit procedures. In permit procedures for general industrial plants, for example, a time limit of seven months applies to large projects and a period of three months to smaller projects, see § 10 (6a) Federal Immission Control Act (*Bundes-Immissionsschutzgesetz, BImSchG*). The period starts from the day when the application documents submitted to the competent authority are complete. The authority can prolong the period for up to three additional months if it can show that there is a valid reason.

In permit procedures for large-scale projects such as national roads, railways and waterways there are no fixed time limits. In such cases, decisions must be taken “within reasonable time” or in “an efficient manner”.

If with regard to an objection or an application to carry out an administrative act it has not been decided on the merits within a suitable period without sufficient reason, the action shall be admissible in derogation from § 68 VwG (see 1.3.2). The action may not be lodged prior to the expiry of three months after the lodging of the objection or since the filing of the application to carry out the administrative act, unless a shorter period is required because of special circumstances of the case. If an adequate reason applies why the objection has not yet been ruled on or the requested administrative act has not yet been carried out, the court shall suspend the proceedings until expiry of a deadline set by it, which can be extended. If the objection is admitted within the deadline set by the court or the administrative act carried out within this deadline, the main case shall be declared to have been settled.

In case of urgency, even prior to the lodging of an action, the claimant may request an interim court order to prevent the enforcement of his or her individual right being prevented or considerably impeded by the administrative inaction, see §§ 80 (5), 123 VwGO.

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

Claimants have to check very carefully whether an direct appeal to the court is admissible or not because it may be mandatory that before going to court – the claimant has to seek relief in a preliminary proceeding within the administration itself (administrative appeal procedure *Vorverfahren* or *Widerspruchsverfahren*). An administrative decision has to provide information on legal remedies (*Rechtsbehelfsbelehrung*) at its end.

The framework legislation on the administrative appeal procedure is enshrined in §§ 68 et seq. VwGO. The provisions underline the fact that launching administrative proceedings without success is a prerequisite to the admissibility of judicial proceedings before the court, unless it is determined otherwise, see § 68 (1) sentences 1 and 2 VwGO.

Concerning environmental public law, there are several provisions that allow a direct action to the court by excluding the administrative appeal procedure or making clear that it is not mandatory in the respective field of law.

Federal law allows for direct access to court, for example, for big infrastructure projects:

actions brought against plan approval decisions (*Planfeststellungsbeschlüsse*), see §§ 74 (1), 70 Administrative Procedure Act (*Verwaltungsverfahrensgesetz*, the “VwVfG”)

actions brought against planning permissions (*Plangenehmigung*), see § 74 (6) sentence 3 VwVfG.

State law may have its own provisions regarding the necessity of preliminary administrative proceedings before having access to court, for example:

North Rhine-Westphalia:§ 110 Judiciary Act of North Rhine-Westphalia (*Justizgesetz Nordrhein-Westfalen*, *JustG NRW*)

Lower Saxony: § 80 (1) Judiciary Act of Lower Saxony (*Niedersächsisches Justizgesetz, NJG*).

Bavaria: In this state the administrative appeal is optional and thus not mandatory, see § 15a of the Bavarian Act on the Implementation of the Federal Code of Administrative Court Procedure (*Gesetz zur Ausführung der Verwaltungsgerichtsordnung, BayAGVwGO*).

The general time limit for bringing administrative appeals or, if excluded, court actions is

one month after the notification of the challenged administrative decision, see § 74 VwGO;

one year if the information on legal remedies was missing or incorrect, § 58 (2) VwGO.
Specific limits for are provided in the Environmental Appeals Act, namely
one year, if members of the public concerned were not notified of the administrative decision, and if there was no public notification either. The time limit starts from the day the decision came to attention of the claimant or could have come to its attention, see § 2 (3) sentence 1 UmwRG,
two years, meaning that NGOs, after this time period, are excluded from bringing judicial complaints against certain environmental administrative decisions, § 2 (3) sentence 2 VwGO.[42] The time limit starts and expires regardless of their awareness of the existence of the respective administrative decision.

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

There are no fixed deadlines for the courts to deliver a judgment. After Germany was criticised by the European Court of Human Rights in November 2011, new legislation was enacted which enables the parties to a court case to warn a court when the procedures are on the verge of taking excessive time, and to claim special damages if the procedure takes too long.[43]
The main provisions can be found in § 198 et seq. of the Courts Constitution Act (*Gerichtsverfassungsgesetz,GVG*).
According to data published by the Federal Statistical Office (*Statistisches Bundesamt*) in 2018, for the year of 2018 there was a duration of 12.1 months for proceedings in the first instance at the Administrative courts (*Verwaltungsgerichte, VG*) on average, with 6.3 months being the shortest average time in some *Länder* and 19.6 months being the longest average time in other *Länder*. For proceedings continuing at the level of Higher Administrative Courts, the duration of the appeal proceedings is 11.7 months as a national average, with 5 months being the shortest average time in some Länder and 25.5 months being the longest average time in other *Länder*.[44]
For 2018, the statistics of the Federal Administrative Court list an average duration of revision proceedings of about 11.5 months.[45]

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

Apart from the time limits described under 1) and 3) there is a specific deadline that has to be observed during the environmental litigation.
According to § 6 Environmental Appeals Act (*Umwelt-Rechtsbehelfsgesetz, UmwRG*), claimants must submit the full statement of grounds for the appeal including all relevant facts and evidence within 10 weeks after the action was initiated.
In contrast to the regular provisions of administrative procedural law and to the situation before the amendment of the *UmwRG* in 2017, when the prolongation of the time limit was more or less at the court´s discretion, the deadline of § 6 UmwRG is a strict one and can only be set aside under clearly exceptional circumstances.
The same time limit was introduced into specific sectoral legislation, e.g. for national roads, see § 17e Federal Highways Act (*Bundesfernstraßengesetz, FStrG*).
During the judicial procedures, individual deadlines can arise when the court asks the parties to substantiate their submissions. The court can set these deadlines independently according to § 87b Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung, VwGO*).

1.7.2. Interim and precautionary measures, enforcement of judgments

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

In general, both administrative and judicial appeals against an administrative decision have suspensive effect (*"aufschiebende Wirkung"* or *"Suspensiveffekt"*), see § 80 (1) Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung, VwGO*).[46]
However, § 80 (2) VwGO provides important exceptions to this rule. The administrative decision is immediately enforceable, and the appeal has no suspensive effect
if public charges and costs are called for,
with non-postponable orders and measures by police enforcement officers,
in other cases prescribed by a federal statute or state statute, in particular for objections and actions on the part of third parties against administrative acts relating to investments or job creation, or
in cases where an immediate execution is separately ordered by the authority which has issued the administrative act or has to decide on the objection in the public interest or in the overriding interest of a party concerned.
Examples where the suspensive effect is precluded by federal law are:
§ 14e (2) Act on Federal Waterways (*Bundeswasserstraßengesetz, WaStrG*),
§17e (2) Federal Highways Act (*Bundesfernstraßengesetz, FStrG*)
If the authority which has issued the administrative act orders its immediate execution, the special interest in immediate execution of the administrative act shall be reasoned in writing. No special reasoning shall be required if the authority takes an emergency measure designated as such in the public interest where a delay is likely to jeopardise the success, in particular with impending disadvantages for life, health or property as a precautionary measure, § 80 (3) VwGO. An order for immediate execution (*Anordnung der sofortigen Vollziehung*) removing the suspensive effect of the appeal is subject to judicial control. On request, the court dealing with the main case may completely or partly order the suspensive effect in cases falling under subsection 2 Nos. 1 to 3, and may restitute it completely or partly in cases falling under subsection 2 No. 4. The request is already admissible prior to filing of the rescissory action. If the administrative act has already been implemented at the time of the decision, the court may order the rescission of implementation, see § 80 (5) VwGO.

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

During an administrative appeal procedure, the claimant may request "the restitution of the suspensive effect" from the administration, unless otherwise is provided by federal law, see § 80 (4) VwGO.

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

The request can be introduced during the appeal procedure. As the request is usually based on the urgency of the matter (i.e., irreversible damage might occur if the project is realised during the time it takes to evaluate the merits of the appeal, such as cut trees etc.) there are no fixed deadlines for the request for restitution of the suspensive effect. It is most efficient to combine the request with the appeal against the administrative decision.

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

If there is no suspensive effect according to § 80 (2) VwGO, see 1.7.2.1), the administrative decision is legally valid and can be immediately enforced or executed, irrespective of any pending appeal or court action.
In these cases it is possible to request restitution of the suspensive effect from the administration, see § 80 (4) VwGO, or from the court, see § 80 (5) VwGO, as an order for interim relief (*vorläufiger Rechtsschutz*), see 1.7.2.5).

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

See above 1), page 30-31.

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

In general, judicial procedures provide for the possibility of injunctive relief. In environmental matters this remedy plays an important role, e.g. when irreversible damage to natural resources is at stake. The injunctive relief is directed against the administrative decision in the form of a preliminary injunction (

vorläufiger Rechtsschutz) seeking the restitution of the suspensive effect by a court order, see § 80 (5) Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung, VwGO*) or demanding interim measures to be taken until the merits of the case have been decided, see § 123 VwGO.
In order for a request for injunctive relief to be admissible, the plaintiff must show that the claim would also be admissible as a regular, non-injunctive action, i. e. the plaintiff must fulfil all conditions, e.g. on standing, which would apply for assessing the main case. In addition to that, in order to obtain interim relief, the plaintiff must prove that a preliminary decision is necessary (and it is not acceptable to wait for the regular judicial decision). This urgency can arise from different circumstances. For example, urgency can be based on the fact that if a project was not stopped before the court's main decision, irreversible damage would occur (i.e. trees cut down, natural landscape destroyed etc.). As injunctive relief can only be asked for when the matter is urgent, there is no fixed deadline.
The restitution of the suspensive effect may be made dependent on the provision of a security or on other instructions, § 80 (5) sentence 4 VwGO.
An appeal (*Beschwerde*) against a court decision (granting or denying interim relief) to the Higher Administrative Court is possible, see § 146 VwGO.

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

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

When seeking access to justice in environmental matters, parties face the following costs:

Costs for administrative appeal procedures (*Widerspruchsverfahren*)

In some environmental matters, applicants seeking justice must first initiate an administrative appeal procedure (see above at 1.3.2). To commence such a procedure, applicants have to submit a written complaint (*Widerspruch*) to the competent authority in which they explain why the authority's decision or action is violating their rights. Costs for this procedure are relatively low.
However, in some environmental matters, especially regarding big infrastructure planning procedures, an administrative review or appeal procedure is not available. Instead, applicants have to bring judicial proceedings directly against the responsible authority.

Court fees in judicial proceedings

The court fees in environmental matters depend on the number of instances and the type of remedies pursued during the proceedings.
There are:
Fees for the commencement of a procedure.
Fees for appeal proceedings.
Fees for interim measures: If a case is so urgent that the time for a regular court case would result in major harm, applicants can seek interim measures, also called injunctive relief (einstweiliger Rechtsschutz). Court fees also apply to these cases.
Lawyers´ fees can add a significant amount to a case's costs. If according to the final decision the case is lost, applicants may have to pay not only for their own legal costs, but can be ordered to bear (a share of) the defendant's legal costs. Usually, public authorities will try to avoid legal fees and will be represented by their employees. Under certain circumstances, however, other private parties such as operators or investors might be included in court cases. This is necessary where the court's decision has direct legal consequences for those parties, § 65 (2) VwGO. A typical example would be the operator of a plant whose permit is appealed in court. Those private are usually represented by lawyers which may result in costs to be covered by the losing party.
Costs for evidence, expert fees: In environmental matters, many facts that are important for the decision of the case (evidence) need to be ascertained by specialists. The more skills and time are required for analysing and presenting the relevant facts, the higher the costs for scientific analyses and experts. The costs for the provision of evidence in a typical environmental case are difficult to estimate. On average, costs of evidence in the form of an expert opinion would range from a minimum of EUR 5,000 up to EUR 25,000. In the case of complex proceedings, where several expert opinions are required for different matters, the total amount can be significantly higher. These costs are estimates for expert opinions called for by the parties. If an expert is called upon by the court, the costs are calculated according to the law on the remuneration of experts, interpreters, translators etc. (*Justizvergütungs- und –entschädigungsgesetz, JVEG*).
Estimation of costs for a judicial procedure:
Both court and lawyers' fees depend on the "value in dispute" (*Streitwert*). Fees are regulated in the Act on Court Fees (*Gerichtskostengesetz, GKG*) and the Act on the Remuneration of Lawyers (*Rechtsanwaltsvergütungsgesetz, RVG*) respectively.
In administrative court proceedings, the value in dispute is determined by the court. This means that the court assesses how the interest of the case could be expressed in monetary terms. The higher the amount in dispute set by the court, the higher will be the court fees and other related costs (such as lawyers' fees) which, to a certain extent, are determined on the basis of the value in dispute.
The Federal Administrative Court provides guidance in the determination of the value in dispute in the form of a catalogue of values in dispute. This catalogue makes the court fees and legal fees predictable. For cases brought by environmental organisations, the catalogue suggests a value in dispute of between EUR 15,000 and EUR 30,000.[47] Based on this, for an ordinary case, court fees for the commencement of a procedure can vary from EUR 879 to EUR 1,218 and each party's statutory lawyer fees for first instance court proceedings from EUR 1,957.55 to EUR 2,591.23. The exact amount of the fees will depend on numerous factors, such as the number of parties involved. Costs for the party's own lawyer can be considerably higher as most experts do not base their remuneration on the lawyers' fee scheme set by law but on individual contracts with hourly rates that can in total exceed the statutory fee. On top of that, the costs for the provision of evidence and expert opinions have to be added.

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

The value in dispute (*Streitwert*) as well as the court fees usually amount to about 50% of the fees for the main proceedings. However, a case usually does not end at that interim stage. The costs for injunctive relief follow the same logic as for the main proceedings, and they are *additional* costs that will be added to the costs of the main proceedings. Deposits normally do not arise in the procedure of injunctive relief/interim measures.

3) Is there legal aid available for natural persons?

According to § 114 Code of Civil Procedure (*Zivilprozessordnung, ZPO*) and § 166 Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung, VwGO*), in order to obtain legal aid, individuals must show that that they lack the financial resources to conduct a lawsuit without legal aid, that the action they want to bring has sufficient chances of success and that it is not abusive. For legal aid in out of court matters see explanation in in point 1.6-1)-1.2 above.

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

According to § 116 of the Code of Civil Procedure (*Zivilprozessordnung, ZPO*) and § 166 Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung, VwGO*), legal entities (i.e. also environmental organisations[48]) can also request legal aid when they are based in or a resident of Germany or a Member State of the EU or EEA. They can ask for financial assistance when they want to bring a case to court and lack the resources to do so. As an additional requirement, legal personalities such as environmental organisations must also show that refraining from pursuing the action would be contrary to the public interest. For legal aid in out of court matters see explanation in in point 1.6-1)-1.2 above.

5) Are there other financial mechanisms available to provide financial assistance?
There are no other regular mechanisms available to provide financial assistance. Sometimes, individuals, ad-hoc groups of citizens or environmental organisations launch public fundraising campaigns in order to cover the costs of a particular case. Recently, also crowdfunding has been a popular method.
6) Does the 'loser party pays' principle apply? How is it applied by courts, are there exceptions?
In environmental matters, the general rules for administrative court proceedings apply. One of these rules is the "loser pays principle" in § 154 of the Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung, VwGO*). Thus, the defeated party has to pay for all the court fees, pay their own lawyer and also reimburse the winning party's lawyer. The opposing party's legal fees, however, will only have to be covered for the amount set by law. Furthermore, as public authorities often are represented by their own employees instead of lawyers, the costs of this party may be lower.
With regard to evidence and experts' fees, the "loser pays principle" does not fully apply:
Costs for evidence that has been ordered by the court have to be borne by the losing party. In general, costs for evidence and expert reports introduced by one of the parties are borne by the party that introduced the evidence. The winning party is not automatically reimbursed. However, the court can decide that the defeated party must bear the costs of evidence of the other party in total. For environmental organisations, in practice, chances are good that the private expert opinions they have commissioned will be reimbursed.[49]
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?
There are no exemptions from procedural or related costs in environmental matters.
1.7.4. Access to information on access to justice - provisions related to Directive 2003/4/EC
1) Where are the national rules on environmental access to justice available? Internet link to be provided. Are there other forms of structured dissemination?
Information on access to justice in environmental matters can be found on the websites of the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (*Bundesministerium für Umwelt, Naturschutz und nukleare Sicherheit, the "BMU"*) and the German Environment Agency (*Umweltbundesamt*, the *"UBA"*).
The BMU gives an overview of the background of access to justice in environmental matters and provides links to the "Handbook on Access to Justice under the Aarhus Convention of the Regional Environmental Centre for Central and Eastern Europe (2003)" and to the national Environmental Information Act (*Umweltinformationsgesetz, UIG*) and Environmental Appeals Act (*Umwelt-Rechtsbehelfsgesetz, UmwRG*).[50]
The UBA provides on its website information on the recognition process for environmental organisations to gain standing in environmental matters, and a list of all environmental organisations that are recognised on the federal level. It lists research reports commissioned by the UBA and other scientific studies on the topic of access to justice and gives an overview of important case law by the Court of Justice of the European Union (CJEU) and the Federal Administrative Court (*Bundesverwaltungsgericht*, *BVerwG*). Most of the information is in German language. UBA also provides a brochure published in May 2018 by the Ministry for the Environment, Nature Conservation and Nuclear Safety and the German Environment Agency, giving useful information for the public and environmental organisations,[51] including a description of the available legal remedies and information on costs.
The Independent Institute for Environmental Issues (the *"UfU"*) operates a website on environmental participation which also has a section on access to justice.[52] In 2017, the UBA published a study conducted by the UfU on access to justice by environmental associations.[53] Both the website and the study are in German.
2) During different environmental procedures how is this information provided? From whom should the applicant request information?
Administrative decisions must clearly state whether an appeal is possible, and, if so, specify the administrative unit or court that is competent to receive the appeal and the time limit for an appeal.
There is a special section at the end of the decision titled *"Rechtsbehelfsbelehrung"* or *"Rechtsmittelbelehrung"* ("instructions on available remedies"). If this information is missing or incorrect, the time limit for the appeal will not start running according to § 58 (1) Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung, VwGO*), and, in consequence, an appeal is possible within one year of service, publication or pronouncement, § 58 (2) sentence 1 VwGO. See also the following section 3).
3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)? Are there different ways of active dissemination of information on access to justice in the areas of EIA, IPPC/IED, regarding plans and programmes, etc.)?
For projects under the regime of the Federal Immission Control Act (*Bundes-Immissionsschutzgesetz, BImSchG*) the permit has to be issued in written form and must either be sent to the applicant and to all those involved that raised objections or be published via public announcement, § 10 (7), (8) BImSchG. The written permit has to include information on access to justice, which is usually provided in a special section at the end of the permit titled *"Rechtsbehelfsbelehrung"* ("instructions on available remedies"), cf. § 10 (8) BImSchG.
For projects under the regime of the IED, the permit also has to be published via the internet, § 10 (8a) BImSchG; this includes the instructions on available remedies.
For projects under the regime of the EIA Act (*Gesetz über die Umweltverträglichkeitsprüfung, UVPG*), the permit has to be published via public announcement and must be made available for perusal including information on access to justice provided in a special section headed *"Rechtsbehelfsbelehrung"* or *"Rechtsmittelbelehrung"* ("instructions on available remedies"), § 27 UVPG, § 74 (5) sentence 2 and (4) sentence 2 of the federal Administrative Procedure Act (*Verwaltungsverfahrensgesetz, VwVfG*).
For plans and programmes under the regime of the EIA Act (*Gesetz über die Umweltverträglichkeitsprüfung, UVPG*) – which also implements the SEA directive – the adopted plan or programme has to be made available for perusal together with several documents including information on access to justice provided in a special section headed *"Rechtsbehelfsbelehrung"* or *"Rechtsmittelbelehrung"* ("instructions on available remedies"), except if the plan or programme was adopted in form of a legislative act, § 44 (2) sentence 4 UVPG.
4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment?
There are no special rules on this in the environmental sector. The general rule applies, see § 58 Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung, VwGO*):
"Administrative decisions as well as court decisions must clearly state whether an appeal is possible, and, if so, specify the administrative unit or court that is competent to receive the appeal and the time limit for an appeal."
Thus, there is a special section at the end of the decision titled *"Rechtsbehelfsbelehrung"* or *"Rechtsmittelbelehrung"* ("instructions on available remedies"). If this information is missing or incorrect, the time limit for the appeal will not start running according to § 58 (1) VwGO, and, in consequence, appeal is possible within one year of service, publication or pronouncement, § 58 (2) sentence 1 VwGO.
5) Is translation, interpretation provided to foreign participants? What are the rules applicable?
According to law, German has to be used in court and court procedures, see § 184 Courts Constitution Act (Gerichtsverfassungsgesetz, GVG), § 55 Code of Administrative Court Procedure (Verwaltungsgerichtsordnung, VwGO). If persons are participating in a court hearing who do not have a command of German, an interpreter shall be called in, § 185 (1) sentence 1 of the Courts Constitution Act (Gerichtsverfassungsgesetz, GVG).

In administrative procedures, German has to be used as well, see § 23 (1) Administrative Procedure Act (*Verwaltungsverfahrensgesetz, VwVfG*). Thus, in general, foreign individuals or NGOs are required to provide for translation themselves. In the case of transboundary procedures, different rules apply, see 1.8.4.

1.8. Special procedural rules

1.8.1. Environmental Impact Assessment (EIA) - provisions related to Directive 2003/35/EC Country-specific EIA rules related to access to justice

With regard to EIA, access to justice is granted regarding decisions on the permitting of projects in the meaning of § 2 (6) EIA Act (*Gesetz über die Umweltverträglichkeitsprüfung, UVPG*), which cover, inter alia, projects within the scope of the EIA Directive, § 1 (1) sentence 1 no. 1 Environmental Appeals Act (*Umwelt-Rechtsbehelfsgesetz, UmwRG*). Access to justice is provided as soon as there is the possibility that an EIA might be mandatory.

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

Focus on screening only, scoping and the substantive decision (permit) will come later.

Screening (as well as scoping) decisions cannot be challenged in court separately, but only together with the administrative act that includes the EIA, see § 44a Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung, VwGO*): § 4 EIA Act (*Gesetz über die Umweltverträglichkeitsprüfung, UVPG*) stipulates that the EIA is a non-independent part of administrative permit procedures.

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

Scoping decisions cannot be challenged in court separately, but only together with the administrative act that includes the EIA, such as a permit or the adoption of a plan, see 1.8.1 1).

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

Screening as well as scoping decisions cannot be challenged in court separately, but only together with the administrative act that includes the EIA, see 1.8.1 1) and 2). The administrative decisions on environmental projects can thus only be challenged at the stage of final authorisation.[54] The regular deadlines for administrative law apply, along with the deadlines of § 2 (3) sentence 1 UmwRG and § 6 UmwRG, see 1.7.1 3).

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

The general rules apply, see 1.4.

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

In general, Article 19 (4) of the Basic Law (*Grundgesetz, GG*) obliges courts to review all factual and legal points of an administrative decisions.

According to § 2 (1) sentence 1 no. 1 UmwRG, § 2 (4) sentence 1 UmwRG and § 1 (1) sentence 1 no. 1 UmwRG, the full scope of review (objektive Rechtskontrolle) applies for actions brought by NGOs.

The scope of judicial review is limited if the legislator confers a margin of discretion to the competent administrative authority. If statutes empower the authority to choose between different options, the court has to accept that and is limited in its judicial control. It only can examine whether the discretion has been exercised in a legally correct way by the administration. An error of discretion arises when the margin of discretion is exceeded or the objective of the authorisation has been disregarded, see § 114 Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung, VwGO*). This rule applies without special regulations in the field of environmental law.[55]

There is another exemption from full judicial review that is still to some extent relevant in environmental law. The administration hitherto enjoyed a certain margin of appreciation with regard to the interpretation of certain legal provisions (*behördliche Einschätzungsprärogative*). In the case of such a margin of appreciation a court would only examine whether the authority

complied with the procedural rules,

shows a correct understanding of the legal concept at stake,

ascertained the facts in a correct and comprehensive manner,

complied with standards of assessment, in particular the prohibition of arbitrariness,

and the margin of appreciation had to follow directly from a legal provision or from interpretation.[56]

An example in the field of EIA is § 5 (3) sentence 2 EIA Act (*Gesetz über die Umweltverträglichkeitsprüfung, UVPG*) which explicitly specifies a margin of appreciation by limiting judicial review. Authorities thus enjoyed a margin of appreciation when deciding whether a project requires an EIA or not, if this decision derived from a preliminary examination according to § 7 UVPG. In the event that an authority decided that a project does not require an EIA, and it has conducted a preliminary examination according to § 7 UVPG, judicial review of the permit decision was limited to the question whether the preliminary examination complied with the requirements of § 7 UVPG and whether the outcome is reasonable.

In its decision from 2018 in the field of nature protection, the Federal Constitutional Court (*Bundesverfassungsgericht, BVerfG*), criticised the use of this margin of appreciation.[57] The BVerfG stated that the limitation of the scope of judicial review would not follow from a margin of appreciation granted to the administration, but that the court could take the administration´s evaluation as a basis for its decision on the scientific and practical question at stake, if the court had reached the limits of possible clarification in terms of the state of scientific and practical knowledge in the field of nature protection. The court stated further that it was up to the legislator to provide, in the long run, at least regulatory standards on the underlying scientific findings.[58]

When administrative courts decide cases in environmental matters they are not restricted to the information the parties provide. Courts can (and must, if necessary) examine the facts on their own motion and also produce evidence themselves on the principle of ex officio investigation (*Untersuchungsgrundsatz*), see § 86 (1) Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung, VwGO*). The courts are free to evaluate evidence following their conviction gained from the overall outcome of the proceedings, see § 108 VwGO. It is up to the court to evaluate the expert opinions - whether they are expert opinions introduced by the parties or opinions of court-appointed experts.

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

Administrative decisions on environmental projects can be challenged at the stage of final authorisation, see § 44a VwGO.

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

The regular rules apply, see 1.3.2. and 1.1.7 3).

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

If a permit procedure requiring an EIA is at stake, standing does not require participation in the public consultation phase of the administrative procedure, see § 1 (1) sentence 1, § 7 (4) Environmental Appeals Act (*Umwelt-Rechtsbehelfsgesetz, UmwRG*).[59]

§ 5 UmwRG stipulates that if an individual or an association raises concerns for the first time during the judicial procedure and if this is done in an abusive or dishonest way, these concerns are to be left unconsidered by the court. § 5 UmwRG copies the limitations as envisaged by the CJEU.[60] Up until now national courts have not attached great importance to this legal norm and it is still open whether it will become more important in practice.

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

The national jurisdiction uses the framework given by the principles of an effective procedure as guaranteed in Article 19 (4) Basic Law (*Grundgesetz, GG*) to provide for a fair and equitable procedure as required in Article 9 (4) of the Aarhus Convention.

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

The notion of "timely" is an essential component of the constitutional guarantee for an effective legal remedy which is enshrined in Article 19 (4) Basic Law (*Grundgesetz, GG*). There are no fixed deadlines for the courts to deliver a judgment.

After Germany was criticised by the European Court of Human Rights in November 2011, new legislation was enacted which enables the parties to a court case to warn a court when the procedures are on the verge of taking excessive time, and to claim special damages if the procedure takes too long.[61] The main provisions can be found in §§ 198 et seq. of the Courts Constitution Act (*Gerichtsverfassungsgesetz, GVG*).

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

Injunctive relief is available according to the general rules, see 1.7.2 6).

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

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

The IED was transposed into German national law in 2013 via amendments to the existing sectoral environmental legislation, mainly to the
Federal Pollution Control Act (*Bundes-Immissionsschutzgesetz, BImSchG*),
the Waste Management Act (*Kreislaufwirtschaftsgesetz, KrwG*) and
the Federal Water Act (*Wasserhaushaltsgesetz, WHG*).

For this reason, there is no specific standalone IED process or procedure, but the IED requirements are integrated into the generally applicable permission processes. Access to justice related to the IED is granted in the wide range of cases when IED requirements are part of projects and permission procedures listed in § 1 (1) sentence 1 no. 1 and (2) Environmental Appeals Act (*Umwelt-Rechtsbehelfsgesetz, UmwRG*). For the projects and permission procedures listed in no. 2, the same rules apply as for those in no. 1, so that in general, the answers given under 1.8.1 are also valid for 1.8.2.

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

There is no specific standalone IED process or procedure, but the IED requirements are integrated into the generally applicable permission processes. The general standing rules apply, see 1.7.2. Only the final decision is challengeable, following the general rules.

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

There is no specific standalone IED process or procedure, but the IED requirements are integrated into the generally applicable permission processes. The general standing rules apply see 1.7.2. Only the final decision is challengeable, following the general rules.

Screening decisions cannot be challenged in court separately, but only together with the administrative act when the final authorisation is published.

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

There is no specific standalone IED process or procedure, but the IED requirements are integrated into the generally applicable permission processes. The general standing rules apply see 1.7.2. Only the final decision is challengeable, following the general rules.

Scoping decisions cannot be challenged in court separately, but only together with the administrative act when the final authorisation is notified.

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

There is no specific standalone IED process or procedure, but the IED requirements are integrated into the generally applicable permission processes. The general standing rules apply, see 1.7.2. Only the final decision is challengeable, following the general rules. The regular deadlines for administrative law apply, additionally the deadlines of § 2 (3) sentence 1 Environmental Appeals Act (*Umwelt-Rechtsbehelfsgesetz, UmwRG*) and § 6 UmwRG apply, see 1.7.1 3).

6) Can the public challenge the final authorisation?

(Only) the final decision is challengeable, following the general rules.

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

See 1.8.1. 5).

8) At what stage are these challengeable?

See 1.8.2. 5).

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

The general rules apply, see 1.3.2. and 1.1.7 3).

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

For projects listed and referred to in § 1 (1) sentence 1 no. 1 and no. 2 Environmental Appeals Act (*Umwelt-Rechtsbehelfsgesetz, UmwRG*), standing does not require participation in the public consultation phase of the administrative procedure, see § 7 (4) UmwRG.[62]

§ 5 UmwRG stipulates that if an individual or an association raises concerns for the first time during the judicial procedure and if this is done in an abusive or dishonest way, these concerns are to be left unconsidered by the court. § 5 UmwRG copies the limitations as envisaged by the CJEU[63]. Up until now national courts haven´t attached great importance to this legal norm and it is still open whether it will become more important in practice.

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

The national jurisdiction uses the framework of the constitutional guarantee for an effective legal remedy which is enshrined in Article 19 (4) Basic Law (*Grundgesetz, GG*) to provide for a fair and equitable procedure as required by Article 9 (4) of the Aarhus Convention.

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

Indeed in the context of IED decision-making and/or challenging IED related decisions (screening, scoping, authorization).

The notion of timely is an essential component of the constitutional guarantee for an effective legal remedy which is enshrined in Article 19 (4) Basic Law (*Grundgesetz, GG*). There are no fixed deadlines for the courts to deliver a judgement. After Germany was criticised by the European Court of Human Rights in November 2011, new legislation was enacted which enables the parties to a court case to warn a court when the procedures are on the verge of taking excessive time, and to claim special damages if the procedure takes too long.[64] The main provisions can be found in §§ 198 et seq. of the Courts Constitution Act (*Gerichtsverfassungsgesetz – GVG*).

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

The IED requirements are integrated in the generally applicable permission processes, injunctive relief is available according to the general rules, see 1.7.2 6).

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

There are no specific shortcomings as to information on access to justice concerning IED requirements.

1.8.3. Environmental liability[65]

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

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

Cover the legal standing requirements here that apply to national or legal persons (NGOs) in request for action cases for the judicial review of the environmental authorities.

In Germany, the ELD has been transposed by the Environmental Damages Act (*Umweltschadensgesetz, USchadG*). This law sticks closely to the wording of the Directive.[66] The USchadG is a framework law setting minimum standards. More specific legal regulations with stricter requirements prevail over the provisions of the USchadG, § 1 (2) USchadG.[67]

The standing rules for challenging decisions on environmental remediation that fall within the scope of the USchadG do not differ from the standing rules in other environmental cases[68], see 1.4.3) for more details. In general, the provisions of the Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung, VwGO*) apply.[69] Private persons have standing if they can claim an impairment of their own rights, see § 42 (2) VwGO.

According to § 11 (2) USchadG, NGOs (officially recognised environmental associations) have standing to challenge acts or omissions by authorities based on § 2 and § 1 (1) sentence 1 no. 3 Environmental Appeals Act (*Umwelt-Rechtsbehelfsgesetz, UmwRG*), see also 1.4. 3) for more details[70]. According to § 2 (1) sentence 2 UmwRG, their standing covers only cases where the association claims an infringement of provisions relating to the environment in the meaning of § 1 (4) UmwRG.

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

The procedural requirements for legal actions against acts or omissions under the USchadG are generally the same as for other environmental acts[71], see 1.7.1. This means that a remedy first has to be sought at the administrative level; if relief is denied, the general deadline to appeal in court is one month, § 74 (2) of the Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung, VwGO*).

Additionally, the deadlines of § 2 (3) sentence 1 UmwRG (one year, if members of the public concerned were not notified of the administrative decision, and if there was no public notification either; the time limit starts from the day the decision came to attention of the claimant or could have come to its attention) and § 6 UmwRG (10 weeks to substantiate an NGO claim and to provide evidence) apply, see 1.7.1 3).

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones? Does the request for action need to be accompanied by scientific underpinning or data?

The request for action in the meaning of Article 12 ELD is transposed by § 10 USchadG. This provision gives a right to individuals and environmental associations to request action and requires the applicant to submit evidence showing in a plausible manner that environmental damage exists.[72]

4) Are there specific requirements regarding 'plausibility' for showing that environmental damage occurred, and if yes, which ones? Does the person requesting action need to substantiate its request with data?

With regard to the plausibility requirement, the applicant who filed the request for action carries the burden of proof and is under an obligation to cooperate with the competent authorities. While the applicant is under an obligation to submit evidence showing that the occurrence of environmental damage is "plausible", the competent authority is under an obligation to take into account any information that it has of its own. The plausibility requirement does not need to be fulfilled *only* on the basis of the information given by the applicant. However, if the information provided by the applicant is insufficient and the authority does not have additional evidence to confirm the existence of environmental damage, the request can be rejected.[73]

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

Negative decisions constitute administrative decisions under German law, they must be reasoned and give details of the available remedies and must be notified to the applicant.[74]

If the competent authority decides to pursue the request, this conclusion does not amount to an administrative decision. The competent authority notifies the individuals and organisations that are entitled to request action according to § 10 USchadG of the remedial measures planned and gives them the opportunity to comment, § 8 (4) USchadG. The notification can be realised in form of a public announcement and § 8 (4) USchadG does not determine a deadline for comments but stipulates that the authority has to consider the comments arriving "on time" when deciding on the remedial measures.

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

Germany did not extend the entitlement to request action of the competent authority to cases of imminent threat of such damage. According to § 10 USchadG, individuals affected by environmental damage or NGOs can only request action with regard to damage that already occurred.

However, despite the absence of an obligation, an authority has the option to act in cases of imminent danger. If individuals or NGOs bring evidence of an imminent danger to the attention of an authority, the authority can ask the operator to take preventive measures. However, as stated above, in the absence of an obligation to act, in this case an action by the authority is not enforceable on the basis of § 10 USchadG.[75]

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

The USchadG does not determine the competent authorities. The competence of authorities is allocated by the states (*Länder).* In principle, the authority that is competent in a specific field is also competent for the enforcement of the USchadG in that field.[76]

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings? It applies only in cases where there is an administrative review available, obviously.

If an individual or an NGO demands that the competent authority take action according to § 10 USchG and the authority refuses this in its decision, the administrative review procedure is mandatory according to the general rule of § 68 VwGO prior to judicial review.

1.8.4. Cross-border rules of procedures in environmental cases

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

In the event that a project is likely to have a significant impact on the environment of another country, a transboundary EIA has to be carried out. This is stipulated by the international Espoo Convention[77] and has been transposed into German law. The competent foreign authorities are to be notified "in good time" (*"frühzeitig"*), § 54 (1) sentence 1 EIA Act (*Gesetz über die Umweltverträglichkeitsprüfung, UVPG*), see also 1.8.4 6). When the decision on a project has been taken, the issuing German authority is under an obligation to forward the decision to the foreign authorities involved, see § 57 (1) UVPG . Only the final decision is challengeable.

For plans and programmes in a transboundary context the SEA Protocol[78] stipulates in Article 10 (1) that if a party to the protocol considers that the implementation of a plan or programme is likely to have significant transboundary environmental effects this party shall notify the affected party as early as possible before the adoption of the plan or programme. This requirement is transposed into German law in § 60 (1) UVPG.

According to Article 11 (2) of the SEA Protocol after the adoption of a plan or programme the parties consulted according to Article 10 are to be informed. This requirement is transposed into German law in § 61 UVPG.

2) Notion of public concerned?

In cases of cross-border EIA or SEA as set out in § 56 EIA Act (*Gesetz über die Umweltverträglichkeitsprüfung, UVPG*) or § 61 UVPG, the notion of the public concerned is – just like for national cases – defined by § 2 (9) UVPG. It includes any person whose interests are affected by a permit decision or a plan or a programme, including associations and environmental NGOs whose interests, as laid down in their statutes, are affected by a permit decision or a plan or a programme.

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

In principle, foreign NGOs enjoy the same rights to challenge acts and decisions taken during procedures in environmental cases as domestic NGOs.[79] In order to be able to exercise the special procedural rights of recognised environmental organisations, NGOs have to fulfil the conditions laid down in § 3 Environmental Appeals Act (*Umwelt-Rechtsbehelfsgesetz, UmwRG*) and make a request for recognition. Recognition must be granted when the legal requirements are met[80]. For foreign NGOs, the Federal Environmental Agency (*Umweltbundesamt, the "UBA"*) is in charge of the recognition process. The competent court is the same as for domestic NGOs and is specified in the information on legal remedies that is published along with the decision, § 57 (1) sentence 2 no. 2, § 61 (2) sentence 2 no. 3 EIA Act (*Gesetz über die Umweltverträglichkeitsprüfung, UVPG*). For more details see section 1.4, inter alia on the safeguard measure for foreign associations in § 2 (2) sentence 2 UmwRG.

Injunctive relief is available according to the general rules, see 1.7.2 6).

According to § 116 Code of Civil Procedure (*Zivilprozessordnung, ZPO*) and § 166 Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung, VwGO*), legal entities (i.e. also environmental organisations) can also request legal aid, when they are based in or a resident of Germany or in a Member State of the EU or EEA. For more details see section 1.7.3. 4) and 5).

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

In principle, access to justice by the foreign public concerned is subject to the same rules that apply to the domestic public, see 1.4 3). In the case of individuals who are affected by a project as neighbours, for example, it is presumed that the requirement for standing is fulfilled.[81]

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

For information on the project and public participation: see 6).

Information on the decision and access to justice: When the decision (positive or negative) has been taken, the issuing German authority is under an obligation to forward the decision to the foreign authorities involved, see § 57 (1), § 61 (2) EIA Act (*Gesetz über die Umweltverträglichkeitsprüfung, UVPG*). [82] While § 57 (1) sentence 1 UVPG explicitly only prescribes the communication of a positive decision, the objectives of the law also require rejections to be transmitted.[83]

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

In the event that a project is likely to have a significant impact on the environment of another country, the competent foreign authorities are to be notified "in good time" ("*frühzeitig*"), see § 54 (1) sentence 1 EIA Act (*Gesetz über die Umweltverträglichkeitsprüfung, UVPG*). If the other country declares that it wishes to participate, a cross-border participation process is carried out, § 54 (5) UVPG, following the rules stipulated in §§ 55 – 57 UVPG.

If the other country does not wish to participate, the public concerned from this country can take part in the domestic participation process, § 54 (6) UVPG, following the rules stipulated in §§ 18 - 22 UVPG, so that the same time limits apply as to foreign stakeholders as for national actors, see also section 1.7.1.

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

The decision submitted to the foreign authorities must include a translation of the information on legal remedies. The German authorities have to help to ensure (*"darauf hinwirken"*) that the foreign public concerned is informed of the decision by the competent foreign authorities, § 57 EIA Act (*Gesetz über die Umweltverträglichkeitsprüfung, UVPG*).

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

The authority must provide the notification as well as other documents that are relevant in the participation process in the language of the neighbouring country, § 55 EIA Act (*Gesetz über die Umweltverträglichkeitsprüfung, UVPG*). In the same way, foreign authorities and the foreign public have the right to submit their comments in their own language, § 56 (4) UVPG.

The decision can be submitted in German, but a translation has to be provided of the sections that are of particular relevance for the foreign authorities and the foreign public and of the information on legal remedies, § 57 UVPG. According to the law, sections of particular relevance include information on how the likely transboundary environmental effects of the project and the statements of the foreign authorities and the foreign public have been considered in the decisions and what remedial measures have been taken to offset transboundary environmental effects.

9) Any other relevant rules?

Germany has concluded agreements with some of its neighbouring countries to flesh out the requirements of the Espoo Convention and to lay down concrete rules and procedures:

For the Netherlands: Common Declaration of the Ministry of Infrastructure and Environment of the Netherlands and the Ministry for the Environment of Germany, 2013.

For Poland: Agreement between the Governments of Poland and Germany, 2007 (an amendment will enter into force in 2021).

For France and Switzerland: Guidelines on transboundary collaboration in environmental projects, and plans and programmes. Issued by the Parties of Upper Rhine Conference of Germany, France and Switzerland in 2016.

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[1] *Umweltbundesamt*, A Guide to Environmental Administration in Germany, 2019, p. 42.
[2] For more detailed information in English see Umweltbundesamt, footnote 1, p. 39.
[3] Federal Administrative Court (BVerwG), Judgment of 27 February 2018, - 7 C 26/16 (in German).
[4] Federal Administrative Court (BVerwG), Judgment of 26 September 2019, - 7 C 5/18 (in German)
[5] Federal Administrative Court (BVerwG), Judgment of 26 September 2019, - 7 C 5/18 (in German)
[6] Federal Administrative Court (BVerwG), Decision of 4 May 2020, - 4 CN 4.18 (in German).
[7] Federal Administrative Court (BVerwG), Decision of 4 May 2020, - 4 CN 4.18 (in German).
[8] CJEU, case C-300/20.
[9] The list has recently been extended by the Investment Acceleration Act (*Investitionsbeschleunigungsgesetz*) of 3.12.2020, BGBl. I S. 2694.
[10] For detailed information in English see Umweltbundesamt (Ed.). (2019). A Guide to Environmental Administration in Germany. S. 46
[11] For detailed information in English see Umweltbundesamt (Ed.). (2019). A Guide to Environmental Administration in Germany. S. 47 ff.
[12] For detailed information in English see Umweltbundesamt (Ed.). (2019). A Guide to Environmental Administration in Germany. S. 51.
[13] For detailed information in English see Umweltbundesamt (Ed.). (2019). A Guide to Environmental Administration in Germany. S. 52.

[14] For detailed information in English see Umweltbundesamt (Ed.). (2019). A Guide to Environmental Administration in Germany. S. 53 ff.
[15] I.e., inter alia, about (formal) administrative decisions (Verwaltungsakte) permitting projects and public law contracts on projects when they are based on legal provisions relating to the environment that are based either on federal law, on state legislation or on directly applicable EU law.
[16] Act on Access to Justice with regard to overlong judical procedures and criminal investigation proceedings (*Gesetz über den Rechtsschutz bei überlangen Gerichtsverfahren und strafrechtlichen Ermittlungsverfahren*) of 24.11.2011, BGBl. I, S. 2302.
[17] Statistisches Bundesamt (Destatis) (2019) Rechtspflege Verwaltungsgerichte 2018. Fachserie 10 Reihe 2.4., p. 23 and p. 26 f., the numbers relate to all cases except for asylum proceedings.
[18] Statistisches Bundesamt (Destatis) (2019) Rechtspflege Verwaltungsgerichte 2018. Fachserie 10 Reihe 2.4. , p. 120 f., the numbers relate to all cases except for asylum proceedings.
[19] Statistical report by the Federal Administrative Court concerning the time period from 1 January 2018 to the 31 December 2018, p. 69.
[20] Court of Justice of the European Union. (2018). Annual Report 2017 Judicial Activity Synopsis of the judicial activity of the Court of Justice and the General Court, pp.121 ff. (123).
[21] Documentation of the process, see Dr. Heiner Geißler. Schlichtung S21 (in German language).
[22] The English website of the Federal Commissioner for Data Protection and Freedom of Information can be retrieved here, an overview of the Commissioners for data protection of the Länder can be found at here. (last accessed 5/05/2020).
[23] Baden-Württemberg: § 50 (1), § 49 (1) Nature Conservation Act Baden-Württemberg (Naturschutzgesetz Baden-Württemberg, NatSchG BW), Brandenburg: § 37 (1), § 36 (2) of the Implementation Act for the Federal Nature Conservation Act (Brandenburgisches Ausführungsgesetz zum Bundesnaturschutzgesetz, NaturschutzBbgNatSchAG), Mecklenburg-Western Pomerania: § 30 (5), § 19 (1), § 23 (4), (5) of the Implementation Act for the Federal Nature Conservation Act (Ausführungsgesetz zum Bundesnaturschutzgesetz Mecklenburg-Vorpommern, NatSchAG MV), North Rhine-Westphalia: § 68, § 66 (1) Nature Conservation Act North Rhine-Westphalia (Landesnaturschutzgesetz Nordrhein-Westfalen, LNatSchG NRW), Thuringia: § 46 Nature Conservation Act Thuringia (Thüringer Naturschutzgesetz, ThürNatSchG).
[24] Helpful information for the recognition request is listed at the UBA website: Umweltbundesamt. (2019, December 30). Hinweise zur Antragstellung.
[25] An up-to-date list of all environmental organisations recognised on the federal level, including links to the competent Länder authorities for recognition on Länder level, is published by UBA, see Umweltbundesamt. (2020, April 15). Vom Bund anerkannte Umwelt- und Naturschutzvereinigungen.
[26] Foreign NGOs enjoy the privilege of § 2 (2) (2) UmwRG which stipulates that the request to register of a foreign NGO is considered as if it was already granted as long as there is no negative decision to their request.
[27] Bayerisches Landesamt für Umwelt. (2017). UmweltWissen – PraxisLabore und Sachverständige im Umweltbereich.
[28] https://www.resymesa.de/ReSyMeSa/Sachverst/ModulStart?modulTyp=ImmissionsschutzSachverst
[29] Bundesverband Deutscher Sachverständiger und Fachgutachter e.V. Der gerichtliche Sachverständige.
[30] IHK. Welcome to the German nationwide register of experts
[31] To decide to which amount the cost were necessary is also at the discretion of the court, the cost rules of the law on the remuneration of experts, interpreters, translators etc. (*Justizvergütungs- und -entschädigungsgesetz, JVEG*) do not apply.
[32] BVerwG, decision of 11 April 2001 - 9 KSt 2.01 u.a. -, NVwZ 2001, 919.
[33] BVerwG, decision of 8 October 2008 - 4 KSt 2000.08.
[34] Bayerisches Landesamt für Umwelt. (2017). UmweltWissen – PraxisLabore und Sachverständige imUmweltbereich
[35] https://www.resymesa.de/ReSyMeSa/Sachverst/ModulStart?modulTyp=ImmissionsschutzSachverst
[36] Bundesverband Deutscher Sachverständiger und Fachgutachter e.V. Der gerichtliche Sachverständige
[37] IHK. nationwide register of experts
[38] Umweltbundesamt (2020, April 15). Vom Bund anerkannte Umwelt- und Naturschutzvereinigungen.
[39] The WWF has sent a communication to the Aarhus Compliance Committee concerning the non-recognition of the NGO in terms of § 3 UmwRG, ACCC/C/2016/137 Germany, asking the ACCC to examine whether the criterium of § 3 UmwRG which demands that any NGO registering must allow every person to become a member of the organisation with full voting rights is in accordance with the Aarhus Convention, inter alia with Article 9 (2). The case is pending since 2016.
[40] Greenpeace has submitted a case to the Administrative Court of Halle (file number 2 A 583/16 HAL) about the question of recognition in terms of § 3 UmwRG. The case has been temporarily suspended with approval of all parties involved with regard to the pending case of the WWF before the ACCC, (see footnote above), see Wegener, Zeitschrift für Umweltrecht (ZUR) 2019, p. 3, section XIII.
[41] I.e., inter alia, about (formal) administrative decisions (*Verwaltungsakte*) permitting projects and public law contracts on projects when they are based on legal provisions relating to the environment that are based either on federal law, on Länder legislation or on directly applicable EU law.
[42] I.e., inter alia, about (formal) administrative decisions (Verwaltungsakte) permitting projects and public law contracts on projects when they are based on legal provisions relating to the environment that are based either on federal law, on state legislation or on directly applicable EU law.
[43] Act on Access to Justice with regard to overlong judical procedures and criminal investigation proceedings (*Gesetz über den Rechtsschutz bei überlangen Gerichtsverfahren und strafrechtlichen Ermittlungsverfahren*) of 24.11.2011, BGBl. I, S. 2302.
[44] Statistisches Bundesamt (Destatis). (2019). Rechtspflege Verwaltungsgerichte 2018. Fachserie 10 Reihe 2.4. p. 26 and p. 121, the numbers relate to all cases except for the cases of chambers deciding on asylum cases.
[45] (2019). Geschäftsbericht des Bundesverwaltungsgerichts für den Zeitraum vom 1. Januar 2018 bis zum 31. Dezember 2018, p. 69.
[46] Suspensive effect does not pertain when an administrative decision is void. Equally, there is no suspensive effect when the time limit for the appeal has expired before the appeal was lodged, as in this case, the administrative decision is already in force and final and cannot be challenged any more.
[47] No. 1.2, and, more specifically also No. 34.4 of the Catalogue of Value in Dispute, see Bundesverwaltungsgericht. Streitwertkatalog 2013 Streitwertkatalog für die Verwaltungsgerichtsbarkeit in der Fassung der am 31.05./01.06.2012 und am 18.07.2013 beschlossenen Änderungen.
[48] In 2008, the OVG Münster (Higher Administrative Court of North Rhine-Westphalia) ruled in its decision OVG Münster Beschl. v. 30.4.2008 – 8 D 20/08 that an application for legal aid launched by an environmental organisation was unfounded because the organisation had missed to build up a financial reserve for legal purposes in the past and it had the option try to raise funds, in particular for the case that was at stake. The court found that the organisation did not lack funds unless it would have had to use all of its present funds to finance the proceedings. Moreover, according to the court, also the personal wealth of the organisation´s members needs to be taken into consideration before considering to grant legal aid. Based on this judgement where the court applied strict standards when deciding whether the association meets the criterion of “lack of resources”, a study on the development of access to justice in environmental matters (Schmidt, A. et al. (2017), Die Umweltverbandsklage in der rechtspolitischen Debatte, p. 217) called into question, whether environmental NGOs will be granted legal aid in practise at all. Up until now there seems to be no further research as to the question if environmental NGOs did apply for and received legal aid.

[49] Schmidt, A. et al. (2017), Die Umweltverbandsklage in der rechtspolitischen Debatte, pp. 213 et seq., p. 215.
[50]Bundesministerium für Umwelt, Naturschutz und nukleare Sicherheit. (2015, 20 November). Zugang zu Gerichten.
[51] Umweltbundesamt, Bundesministerium für Umwelt, Naturschutz und nukleare Sicherheit. (2018). Beteiligungsrecht im Umweltschutz. Was bringt Ihnen die Aarhus-Konvention? pp. 30 et seq.
[52] General information: Unabhängiges Institut für Umweltfragen – UfU e.V. (2020). Beteiligung in Umweltfragen. More information and links: ibid., http://www.umwelt-beteiligung.de/umweltklagen/weiterfuehrende-informationen-uk/.
[53] Umweltbundesamt. (2017). Die Umweltverbandsklage in der rechtspolitischen Debatte. TEXTE 99/2017 Umweltforschungsplan des Bundesministeriums für Umwelt, Naturschutz, Bau und Reaktorsicherheit. Retrieved from .
[54] There is an exception to this in § 17 (3), § 19 (2) Law on the search for and decision on the location of a high-level radioactive waste repository (Gesetz zur Suche und Auswahl eines Standortes für ein Endlager für hochradioaktive Abfälle, StandAG).
[55] Groß. (2018). In Rehbinder/Schink. Grundzüge des Umweltrechts. (5th ed., 4. Rechtsschutz im Umweltrecht, Rn. 66 ff.).
[56] Groß (2018), in: Rehbinder/Schink, Grundzüge des Umweltrechts (5th ed., 4. Rechtsschutz im Umweltrecht, Rn. 66 ff.).
[57] BVerfG, Decision of 23 October 2018 (Az. 1 BvR 2523/13, 1 BvR 595/14).
[58] BVerfG, Decision of 23 October 2018 (Az. 1 BvR 2523/13, 1 BvR 595/14).
[59] However, for plans and programmes, this is the case according to §§ 1 (1) (4), § 7 (3) UmwRG, see 2.2. and 2.4.
[60] in its judgment of 15 October 2015, Case C-137/14 where the court found some aspect of the prior national procedural rules regarding access to justice in non-compliance with Germany´s obligations under Article 11 of Directive 2011/92/EU and Article 25 of Directive 2010/75/EU.
[61] Act on Access to Justice with regard to overlong judical procedures and criminal investigation proceedings (*Gesetz über den Rechtsschutz bei überlangen Gerichtsverfahren und strafrechtlichen Ermittlungsverfahren*) of 24.11.2011, BGBl. I, S. 2302.
[62] However, for plans and programmes, this is still the case according to §§ 1 (1) (4), § 7 (3) UmwRG, see 2.2. and 2.4.
[63] In its judgment of 15 October 2015, Case C-137/14 where the court found some aspect of the prior national procedural rules regarding access to justice in non-compliance with Germany´s obligations under Article 11 of Directive 2011/92/EU and Article 25 of Directive 2010/75/EU.
[64] Act on Access to Justice with regard to overlong judical procedures and criminal investigation proceedings (*Gesetz über den Rechtsschutz bei überlangen Gerichtsverfahren und strafrechtlichen Ermittlungsverfahren*) of 24.11.2011, BGBl. I, S. 2302.
[65] See also case no. C-529/15.
[66] Landmann/Rohmer UmweltR/Beckmann/Wittmann/ USchadG, Vorb. Rn. 30, 31.
[67] Landmann/Rohmer UmweltR/Beckmann/Wittmann/ USchadG, Vorb. Rn. 25.
[68] Landmann/Rohmer UmweltR/Beckmann/Wittmann/ USchadG, § 11 Rn. 7-10.
[69] Landmann/Rohmer UmweltR/Beckmann/Wittmann/ USchadG § 11 Rn. 7-10.
[70] Groß. (2018). In Rehbinder/Schink. Grundzüge des Umweltrechts. (5th ed., 4. Rechtsschutz im Umweltrecht, Rn. 31.).
[71] Landmann/Rohmer UmweltR/Beckmann/Wittmann/ USchadG, § 11 Rn. 7-10).
[72] Beckmann/Wittmann. (2019). In Landmann/Rohmer. UmweltR/ USchadG. (§ 10 Rn. 3-8).
[73] Beckmann/Wittmann. (2019). In Landmann/Rohmer. UmweltR/ USchadG. (§ 10 Rn. 3-8).
[74] Beckmann/Wittmann. (2019). In Landmann/Rohmer. UmweltR/ USchadG. (§ 10 Rn. 3-8).
[75] Beckmann/Wittmann. (2019). In Landmann/Rohmer. UmweltR/ USchadG. (§ 10 Rn. 1, 2).
[76] Beckmann/Wittmann. (2019). In Landmann/Rohmer. UmweltR/ USchadG. (§ 7 Rn. 3).
[77] Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention).
[78] UNECE Protocol on strategic environmental assessment to the convention on environmental impact assessment in a transboundary context.
[79] Schink/Reidt/Mitschang/Dippel. (2018). UVPG (1st ed., § 56 Rn 10).
[80] Helpful information for the recognition request is listed at the UBA´s website.
[81] Schink/Reidt/Mitschang/Dippel. (2018). UVPG (1st ed., § 57 Rn 1-5).
[82] Schink/Reidt/Mitschang/Dippel. (2018). UVPG (1st ed., § 57 Rn. 1-5).
[83] Schink/Reidt/Mitschang/Dippel. (2018). UVPG (1st ed., § 57 Rn. 1).

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

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

This category covers those acts, etc. that are regulated by EU law in some way, but do not require an EIA, do not fall under the IED, do not trigger environmental liability, etc.

The CJEU's case C-664/15 ("Protect") is a good example. In plain language: The admitted project in that case was not subject to an EIA, being below the relevant threshold, but still triggered the CJEU to decide that there had to be access to justice and legal standing before a national court, due to fact that the proper application of the Water Framework Directive should be reviewed in a court of law.

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

The question relates to the types of proceedings that are described in the beginning of the chapter. The second questions asks if in practice the case law of the CJEU prevails and if that is followed by the national courts, and also how effective that access to courts is in the national context.

For decisions, acts or omissions concerning specific activities falling within the scope of EU environmental legislation outside the scope of the EIA and IED Directives either § 1 (1) sentence 1 numbers 2a, 2b, 5 or 6 Environmental Appeals Act (*Umwelt-Rechtsbehelfsgesetz, UmwRG*) apply.

a) § 1 (1) sentence 1 numbers 2a and 2b UmwRG comprise a smaller range of explicitly named specific activities, inter alia those related to the Seveso Directive.

In these cases, individuals have standing according to the usual rules.

According to § 2 (1) no. 2 UmwRG, NGOs have standing according to the usual rules, provided that they can assert an infringement of legal provisions that are related to the environment in the meaning of § 1 (4) UmwRG.
The special deadlines of § 2 (3) sentence 1 UmwRG and § 6 UmwRG apply.
b) For all other decisions, acts or omissions of the category 2.1, § 1 (1) sentence 1 no. 5 UmwRG applies.
Individuals have standing in these cases according to the general rules, § 42 Law on Administrative Court Procedure (*Verwaltungsgerichtsordnung, VwGO*), i. e. if they can maintain a possible violation of their own rights. The question is then whether "a law related to the environment" provides for such a right. For more details see 1.4 3).
NGOs have standing according to the usual rules, provided they can assert an infringement of legal provisions that are related to the environment in the meaning of § 1 (4) UmwRG, § 2 (1) sentence 2 UmwRG.
The special deadlines of § 2 (3) sentence 1 UmwRG and § 6 UmwRG apply; the deadline of § 2 (3) sentence 2 UmwRG also applies.
§ 1 (1) sentence 1 no. 5 UmwRG provides for access to justice if the decisions, acts or omissions in question qualify as administrative decisions (*Verwaltungsakte*) or public law contracts (*öffentlich-rechtliche Verträge*). For all other decisions, acts or omissions, there is no standing except if one can maintain a possible violation of one's own rights, § 42 (2) VwGO. This is e.g. the case for statutory orders or merely factual acts (Realakte).[1] However, a statutory order may be challenged indirectly by appealing an administrative decision based on said order. In that case, the lawfulness of the statutory order is a prerequisite to the lawfulness of the administrative decision.
It is noteworthy that there is a pending case before the CJEU[2] on the question "whether" and, if so, "how" access to justice in environmental matters concerning product approvals, for example with regard to vehicles, has to be granted.
2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?
§ 2 (1) sentence 2 Environmental Appeals Act (*Umwelt-Rechtsbehelfsgesetz, UmwRG*) stipulates that the scope of review for appeals by NGOs is restricted to the infringement of legal provisions that are related to the environment in the meaning of § 1 (4) UmwRG. Legal provisions related to the environment can be procedural as well as substantive.
3) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?
Launching administrative proceedings without success is a prerequisite to the admissibility of judicial proceedings before the court, unless determined otherwise by federal or state law, see § 68 (1) sentences 1 and 2 VwGO, see 1.3 2).
4) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc.?
In the cases described under 2.1, standing does not require participation in the public consultation phase of the administrative procedure.[3]
5) Are there some grounds/arguments precluded from the judicial review phase?
§ 2 (1) sentence 2 UmwRG stipulates that the scope of review for appeals by NGOs is restricted to the infringement of legal provisions that are environment-related according to § 1 (4) UmwRG.
6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
The national jurisdiction uses the framework given by the principles of an effective procedure as guaranteed in Article 19 (4) Basic Law (*Grundgesetz, GG*) to provide for a fair and equitable procedure as required by Article 9 (4) of the Aarhus Convention.
7) How is the notion of "timely" implemented by the national legislation?
The notion of timely is an essential component of the constitutional guarantee for an effective remedy enshrined in Article 19 (4) Basic Law (*Grundgesetz, GG*). There are no fixed deadlines for the courts to deliver a judgement. After Germany was criticised by the European Court of Human Rights in November 2011, new legislation was enacted which enables the parties to a court case to warn a court when the procedures are on the verge of taking excessive time, and to claim special damages if the procedure takes too long.[4] The main provisions can be found in §§ 198 et seq. of the Courts Constitution Act (*Gerichtsverfassungsgesetz – GVG*).
8) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?
Injunctive relief is available according to the general rules, see 1.7.2 6).
9) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive, and do these include express statutory reference to a requirement that costs should not be prohibitive?
The general rules on costs apply, see 1.7.3.

1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[5]

Please describe only the national SEA procedures and the adjacent administrative or judicial review procedures. Plans and programs that are specifically required by the EU legislation to be prepared will be detailed under subchapter 2.4. If you wish, you can write a more general description here and then add only the specificities under subchapter 2.4.

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?
§ 1 (1) sentence 1 no. 4 Environmental Appeals Act (*Umwelt-Rechtsbehelfsgesetz, UmwRG*) applies to decisions, acts or omissions that potentially require a SEA procedure (a requirement originating in the Strategic Environmental Assessment (SEA) Directive 2001/42/EC). According to § 1 (1) sentence 1 no. 4 clause 2, standing is excluded for plans and programmes adopted by a legislative body.
Individuals have legal standing if they can assert a possible violation of their personal rights, § 42 (2) VwGO, see above, 1.1.3) and 1.4.3). In the case of most plans and programmes it is difficult to demonstrate the infringement of personal rights, which limits the scope of standing for individuals with regard to plans and programmes. Plans and programmes might be challenged indirectly, however, if their lawfulness is a prerequisite to the lawfulness of an appealable administrative decision. However, for air quality plans, following the CJEU's judgment in the Janecek case, C-237/07, individuals are considered to be affected in their personal rights by courts if no, or no sufficient air quality plan has been established by the authority.[6]
NGOs have standing according to the usual rules, provided they can assert an infringement of legal provisions that are related to the environment in the meaning of § 1 (4) UmwRG, § 2 (1) sentence 2 UmwRG.
The special deadlines in § 2 (3) sentence 1 UmwRG and § 6 UmwRG apply. § 7 (2) sentence 1 UmwRG stipulates that the Higher Administrative Courts are competent in first instance.
2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?

§ 2 (1) sentence 2 Environmental Appeals Act (*Umwelt-Rechtsbehelfsgesetz, UmwRG*) stipulates that the scope of review is restricted to the infringement of legal provisions that are related to the environment in the meaning of § 1 (4) UmwRG. Legal provisions related to the environment can be procedural as well as substantive.

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

Launching administrative proceedings without success is a prerequisite for the admissibility of judicial proceedings before the court, unless determined otherwise by federal or state law, see § 68 (1) sentences 1 and 2 VwGO, see 1.3. 2).

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

For plans and programmes, this is the case according to § 1 (1) sentence 1 no. 4, § 2 (1) sentence 1 no. 3 b), § 7 (3) sentence 1 Environmental Appeals Act (*Umwelt-Rechtsbehelfsgesetz, UmwRG*), except for land-use plans, § 7 (3) sentence 2 UmwRG. Any points that were not put forward during the public consultation when there was the possibility to raise concerns are precluded from the subsequent court procedure.

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

Injunctive relief is available according to the general rules, see 1.7.2 6).

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

The general rules on costs apply, see 1.7.3.

1.3. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with the 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[7]

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

Individuals do not have standing for cases in this category, except if they can assert a possible violation of their own rights, § 42 (2) Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung, VwGO*), see above, 1.1.3) and 1.4.3).

Environmental organisations also have, de lege lata, no standing for the cases described in this category, as they have access to justice exclusively with regard to the subject matters listed in § (1) sentence 1 no. 1 Environmental Appeals Act (*Umwelt-Rechtsbehelfsgesetz, UmwRG*), and the cases of this category do not fall into the scope of § 1 (1) sentence 1 no. 4 UmwRG or other cases of § (1) sentence 1 no. 1 UmwRG.

This means, that there is no access to justice with regard to e.g. the designation of conservation areas by legislative decrees and not requiring a SEA.[8]

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

Not applicable, see above.

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

Not applicable, see above.

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

Not applicable, see above.

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

Not applicable, see above.

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

Not applicable, see above.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[9]

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

National law does not differentiate between plans and programmes required to be prepared under EU environmental legislation. The plans and programmes in question are subject to national implementing legislation for the SEA Directive, the provisions listed above at 2.2 apply.

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

The question is about whether there are different locus standi conditions if the plan or program is adopted by legislation, by an individual resolution of a legislative body, or a single act of an administrative body, etc.

According to § 1 (1) sentence 1 no. 4 clause 2, standing is excluded for plans and programmes adopted by a legislative body.

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

The provisions listed above at 2.2 apply.

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

The provisions listed above at 2.2 apply.

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

The provisions listed above at 2.2 apply.

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

§ 2 (1) sentence 2 UmwRG stipulates that the scope of review for appeals by NGOs is restricted to the infringement of legal provisions that are related to the environment in the meaning of § 1 (4) UmwRG.

For plans and programmes, in order to be able to initiate judicial proceedings, it is a requirement to participate in the public consultation phase of the administrative procedure– i.e. to make comments, participate at the hearing, etc., see § 1 (1) sentence 1 no. 4, § 2 (1) sentence 1 no. 3 b), § 7 (3) sentence 1) UmwRG. Any points not put forward during the public consultation when there was the possibility to raise concerns are excluded from the subsequent court procedure.

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

The national jurisdiction uses the framework given by the principles of an effective procedure as guaranteed in Article 19 (4) Basic Law (*Grundgesetz, GG*) to provide for a fair and equitable procedure as required in Article 9 (4) of the Aarhus Convention.

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

The notion of timely is an essential component of the general guarantee for an effective remedy enshrined in Article 19 (4) Basic Law (*Grundgesetz, GG*). There are no fixed deadlines for the courts to deliver a judgement. After Germany was criticised by the European Court of Human Rights in November 2011, new legislation was enacted which enables the parties to a court case to warn a court when the procedures are on the verge of taking excessive time, and to claim special damages if the procedure takes too long[10]. The main provisions can be found in §§ 198 et seq. of the Courts Constitution Act (*Gerichtsverfassungsgesetz – GVG*).

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

Injunctive relief is available according to the general rules, see 1.7.2 6).

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

The general rules on costs apply, see 1.7.3.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[11]

These are legislative acts that are supposed to transpose and implement EU environmental laws (to the extent possible, indeed, when talking about Regulations). Other EU regulatory acts are also relevant here if they have implementing national rules. Please focus on the national legislative processes and the related review procedures. When talking about courts, these can be regular courts, the Supreme Court or the Constitutional Court (as appropriate). Otherwise, the questions are mostly the same as in the previous subchapters.

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

In principle, neither individuals nor NGOs have standing to challenge national regulatory acts, except when requesting a "preventive declaratory judgment" to stop an upcoming criminal sanction or where an "incident review" might offer the possibility to challenge the validity of the underlying regulatory act, which is no option if the regulatory act does not require further implementing acts.

Citizens have the option to apply to the Federal Constitutional Court to ascertain whether their constitutional rights have been violated (so-called Verfassungsbeschwerde, i.e. constitutional complaint). However, the jurisdiction of the Constitutional Court is restricted to matters directly touching questions of the constitution. This option is not a regular remedy.

One such extraordinary exception may be the application of the new Admissions Act Preparation Act (*Maßnahmengesetzvorbereitungsgesetz, MgvG*) Though it has not been used yet, the MgvG provides the legal foundation for adopting a limited and specified number of infrastructure projects (namely 28 road, waterway and railway projects) by way of legislation instead of an administrative act. Legislative approval decisions could later only be challenged in the Federal Constitutional Court within the scope of its jurisdiction. In this regard, if the Act were to be applied, judicial review would be limited when compared to the standard laid out by the UmwRG. While e.g. some constitutional rights can thus far not be invoked by NGOs (such as the right to health), the case for a broader application remains pending. [12]

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

Not applicable, see above.

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

Not applicable, see above.

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

Not applicable, see above.

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

Not applicable, see above.

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

Not applicable, see above.

7) Is it possible to bring a legal challenge before a national court concerning any related EU regulatory act with a view to a validity reference under Article 267 TFEU, and if so how?[13]

In general, when a court is uncertain as to the interpretation or validity of an act adopted by the European Union it will stay the proceedings by analogy with § 94 Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung, VwGO*), and refer the matter to the CJEU to request a preliminary ruling according to Article 267 TFEU. After the decision of the CJEU on the interpretation or the validity of the provisions in question, the national court will continue its own proceedings. Individuals or NGOs cannot initiate a preliminary procedure but they can recommend it.

Nevertheless, individuals or NGOs, in principle, have no standing with regard to executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts, see above.

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[1] Schink/Reidt/Mitschang/Franzius. (2018). UmwRG. (1st ed., § 1 Rn.8, §1 Rn. 25 ff.).

[2] C-873/19.

[3] However, for plans and programmes, this is the case according to §§ 1 (1) sentence 4, § 7 (3) UmwRG, see 2.2. and 2.4.
[4] Act on Access to Justice with regard to overlong judical procedures and criminal investigation proceedings (*Gesetz über den Rechtsschutz bei überlangen Gerichtsverfahren und strafrechtlichen Ermittlungsverfahren*) of 24.11.2011, BGBl. I, S. 2302.
[5] The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.
[6] Federal Administrative Court (*BVerwG*), Order of 27 September 2007, case no.: 7 C 36.07.
[7] See findings under ACCC/C/2010/54 for an example of a plan not submitted to SEA but subject to the public participation requirements of Article 7 of the Aarhus Convention.
[8] Access to justice with regard to the designation of conservation areas might be judged differently depending on the outcome of the following case: the Federal Administrative Court requested a preliminary ruling of the CJEU pursuant to Article 267 TFEU in its currently running case (*BVerwG* 4 CN 4.18) as to the question whether EU law requires a SEA, or at least a decision by the Member State on the need for such an assessment, prior to the adoption of a regulation establishing an area of outstanding natural beauty, C-300/20.
This constellation should also be reflected in the light of the CJEU´s decision in the Protect case, C-664/15.
[9] 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.
[10] Act on Access to Justice with regard to overlong judical procedures and criminal investigation proceedings (*Gesetz über den Rechtsschutz bei überlangen Gerichtsverfahren und strafrechtlichen Ermittlungsverfahren*) of 24.11.2011, BGBl. I, S. 2302.
[11] 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.
[12] Whether an NGO has standing before the federal constitutional court challenging the omission of appropriate legal norms and measures against climate change is to be considered by the BVerfG in the ongoing case 1 BvR 2656/18 which was initiated by individuals and, inter alia BUND (Bund für Umwelt und Naturschutz Deutschland e.V.
[13] For an example of such a preliminary reference see Case C-281/16, Vereniging Hoekschewaards Landschap, ECLI:EU:C:2017:774.
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Other relevant rules on appeals, remedies and access to justice in environmental matters

If an authority does not respond to a request to take action within 3 months, the requesting party might take the case to court without having to wait for an administrative decision, § 75 of the Code of Administrative Court Procedure (*Verwaltungsgerichtsordnung, VwGO*). If an administrative decision lacks the necessary information on legal remedies (*Revchtsbehelfsbelehrung*, see above, 1.7.4 2) and 3) or if this information is incorrect, the deadline to appeal the decision is extended from 1 month to 1 year, § 58 (2) VwGO (see above, 1.7.1. 1). Apart from those “procedural sanctions”, there are no penalties imposed.
According to § 167 (1) VwGO, the rules for non-compliance of the public administration with a judgment of an administrative court follow the special rules in § 172 VwGO instead of the general rules for enforcement of the Code of Civil Procedure (*Zivilprozessordnung, ZPO*).
According to § 172 VwGO, a financial penalty of up to EUR 10,000 can be imposed if an authority fails to comply with the obligation imposed on it in a judgment or interim order. The financial penalty might be ordered repeatedly, until the relevant authority complies.
Within the scope of the Code of Civil Procedure, however, in cases when the debtor fails to carry out an act, the maximum penalty is EUR 25,000, but also coercive detention is possible, § 888 (1) and (2) of the ZPO.
As can be seen from the preliminary ruling in the CJEU’s air quality case (C752/18), the referring court, the Higher Administrative Court of Bavaria, was in doubt whether it could interpret the national law in a way giving effect to its ruling and make use of the option of coercive detention in a situation where the only other instrument provided by the law, the penalty, had failed several times and representatives of Bavaria, even the Minister-President, declared publicly that they would not comply with court ordered measures for the improvement of air quality.
A recent decision of the Stuttgart Administrative Court 17 K 5255/19 shows that regarding the penalty the higher fine provided by civil law can be made use of by means of interpretation. Further, the court can demand that the fine is to be paid to a public-interest organisation. There are also suggestions that fines could also be made more effective by imposing them for every day of non-compliance.[1]
In another recent decision the Higher Administrative Court of Baden-Württemberg (the *“VGH Mannheim”*) decided[2] that when a concrete case is at stake where the public administration already demonstrated that subtle pressure was not enough to ensure compliance, not § 172 VwGO but § 167 (1) sentence 1 VwGO, § 888 ZPO, i.e. again the general rules for enforcement, should be the basis for enforcing compliance with the judgment.
Furthermore, the court decided that in cases where the state, here the *Land Baden-Württemberg*, has to pay a fine, it cannot be the recipient as well. Instead a non-governmental public interest organisation has to be chosen as the recipient, which the court is empowered to under § 167 (1) sentence 1 VwGO, § 888 ZPO and, secondarily, § 153a (1) sentence 2 of the German Code of Criminal Procedure (*Strafprozessordnung, StPO*).[3]

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[1] Kaerkes, comment on VG Stuttgart, decision of 21 January 2020 – 17 K 5255/19, Zeitschrift für Umweltrecht (ZUR) 2020, p. 242 seq. (245).
[2] VGH Mannheim, decision of 14 May 2020 – 10 S 461/20, Neue Zeitschrift für Verwaltungsrecht (NVwZ) 2020, p. 972.
[3] VGH Mannheim, decision of 14 May 2020 – 10 S 461/20, Neue Zeitschrift für Verwaltungsrecht (NVwZ) 2020, p. 972.
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