Acces la justiţie pe probleme de mediu

Spania

Pentru mai multe informații naționale privind accesul la justiție pe probleme de mediu, faceți clic pe unul din linkurile de mai jos:

1. Accesul la justiție la nivelul statelor membre

2. Accesul la justiție care nu se încadrează în domeniul de aplicare al EIM [evaluarea impactului asupra mediului), IPPC (prevenirea și controlul integrat al poluării/DEI (Directiva privind emisiile industriale], accesul la informații și DRM (Directiva privind răspunderea pentru mediul înconjurător)

3. Alte norme relevante privind recursurile, căile de atac și accesul la justiție în materie de mediu

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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

Based on the principles of autonomy and territorial decentralization, the State (or General Administration of the State) and the Autonomous Communities or *Comunidad Autónoma* ("CA") hold competences at different levels for different issues. The distribution of competences between the State and the CAs is established by the Constitution. The Constitution also recognizes the autonomy of municipalities, whose competences cannot be usurped by a CA or the State (Article 140 of the Constitution). Municipalities also have regulatory powers. Spanish public administration is therefore composed of:

General administration at the State (central) level.

The CA administration

The Local administrations

The distribution of competences between the CAs and the State is extremely complex in the area of environmental protection. The Spanish Constitution provides that the State is competent to establish basic legislation in the area of environment, consumer protection, mines and energy and health, and has exclusive competence for maritime fisheries, ports and airports of general interest, modes of transport and trains running through more than one CA, and public works of general interest. The State will also have exclusive competence to develop and manage waterways that run through more than one CA. The State retains competences in other general aspects such as food, chemicals (pharmaceuticals, pesticides, biocides) regulation and authorization. The main authority at the State level is the Ministry for Ecological Transition and Demographic Challenge. This does not mean that it is the only one. For example, the Ministries for Industry and for Agriculture and Fisheries also hold competences with an impact on the environment.

A CA will normally be competent to develop basic legislation or to adopt more stringent and complementary rules that will preferentially apply. A CA can also assume exclusive competence in certain areas (e.g. mineral waters, waterways running in their entirety within the territory of one CA). In general, CAs will be competent to issue permits (IPPC but also other permits), EIAs, and more general rules regarding the protection of the environment. CAs are also the competent authorities for implementation and enforcement of environmental legislation, with the exception of waste management, which is handled at the municipal level or by the State administration. Each CA's Statute of Autonomy specifies the areas for which it has assumed competences. Normally, the main authority for environmental protection is the regional ministry in which the environmental protection competence lies.

Local authorities have also many areas of competence, including regulatory competence in the area of environment. Especially important is their role in waste management and certain authorisations and permits (e.g., classified facilities), as well as land-use planning. Many municipalities have environmental attaché.

Article 24 of the Spanish Constitution provides for the fundamental right of access to justice or due process for **all** persons including natural and legal persons [1]. NGOs are legal persons.

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

The 1978 Spanish Constitution included the protection of the environment within Part I on Fundamental Rights of Duties. Article 45, which establishes the right to enjoy a suitable environment, was included in Chapter 3 of that Part, on Principles Governing Economic and Social Policy. That Article also provides for the duty of public authorities to preserve and restore the environment as well as for criminal and administrative sanctions to be imposed on those that impair the enjoyment of a healthy environment[2].

It is important to note that the right to enjoy a suitable environment does not enjoy the same level of protection as fundamental rights such as the right to life, freedom of expression or the right to privacy and intimacy. This is because Article 53.3, included in Chapter 4 on Guarantees of Fundamental Rights provides that recognition, respect and protection of the governing principles of economic and social policies shall inform the legislation, the judicial practice and the actions of the administrations and those principles only shall be invoked in the ordinary courts according to the legislation developing them. Meanwhile, citizens have access to justice through a preferential and summary procedure before the ordinary courts and, where appropriate, through a procedure to protect fundamental rights before the Spanish Constitutional Court when fundamental rights provided in Article 14 as well as Section one of Chapter 2 are violated.

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

The law regulating access to justice in environmental matters is Law 27/2006 of 18 July on the rights to access to information, public participation and access to justice in environmental matters (the Aarhus Law). Title IV of this Law is devoted to access to justice and administrative procedures on environmental matters. The following laws also apply to judicial procedures to defend the environment:

Law 29/1998, of 13 July, on administrative judicial procedure (or administrative courts).

Law 1/2000, of 7 January, on civil judicial procedure.

Royal Decree of 14 September of 1882 approving the Law on Criminal Procedure.

In the administrative jurisdiction, before bringing a case to a court of law, on many occasions it is necessary to file an administrative review (or appeal). The law regulating the administrative review procedure is Law 39/2015, of 1 October, on the common administrative procedure of public administrations.
In Spain, most of the judicial proceedings related to the protection of the environment are brought before the administrative jurisdiction.

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

The Spanish Supreme Court recognized access to justice in environmental matters for environmental NGOs even before Spain ratified the Aarhus Convention. One example is the judgment of 24 December of 2001 in case 347/1999 in which it recognized standing for Greenpeace Spain and Ecologist in Action in a case concerning the authorization of a nuclear waste storage site. Later the Supreme Court has recognized, based on the Aarhus Convention and the Aarhus Law, a wide access to justice in environmental matters for environmental NGOs, specifically in the matter of standing to sue, in a series of judgments such as:
its judgment of 25 June of 2008 (cassation 905/2007) on the standing of the organization GECEN in a case concerning violation of the environmental impact statement for the Airport of Castellón, and
the judgment of 25 May 2010 (cassation 2185/2006) on the standing of the Association for the Defence of Sustainable and Ecological Development concerning the challenge to a Decree of the Madrid regional government on the exploitation of a granite mine.
In its judgment of 7 July 2017, cassation 1783/2015, the Supreme Court stated in the case Fundación Oceana vs. Ministry of Public Works that environmental NGOs also have standing to intervene as a concerned party in an infringement procedure (Judgment). That case concerned an illegal discharge of ballast water by two vessels in Spanish territorial waters, against the provisions of the MARPOL Convention.
In a decision of 13 March 2019, the Spanish Supreme Court stated that plaintiff environmental NGOs do not have to pay the costs of a case if they have been granted legal aid.
The third chamber of the Spanish Supreme Court deals with administrative judicial procedure. This chamber can hear environmental cases at first instance against acts and norms from the Council of Ministers, the Government Delegated Commissions. It also acts in cassation. The first chamber, for civil affairs, and the second, for criminal matters, act in cassation.

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

Parties to an administrative or judicial procedure can rely directly on international agreements once they have been published in the Spanish Official Journal (Boletín Oficial del Estado - BOE), according to Article 96.1 CE, 1.5 Spanish Civil Code and Article 28.2 of Law 25/2014, of 27 November, on International Treaties and Agreements, as they become part of the legal order. International treaties also have primacy over national law except for constitutional norms (Art. 32, Law 25/2014).

1.2. Jurisdiction of the courts

1) Number of levels in the court system

Although Spain is divided into CAs, the judicial power is unitary based on the principle of “jurisdictional unity” (Article 117.5, 149.1.5 CE and Article 3.1 of Organic Law 6/1985, of 1 July, on the Judicial Power (LOPJ)). CAs do not have judicial power and their courts are courts of the State. Justice is administered only by judges and magistrates (Article 117.1 CE and Article 1 LOPC) and the exercise of judicial authority in any kind of action is vested exclusively in the courts and tribunals laid down by the law (Article 117.3 CE and Article 2.1. LOPJ). The judicial system is governed by the General Council of the Judiciary (Consejo General del Poder Judicial, CGPJ). At each judicial level, specialized chambers or juzgados/tribunales[3], the so-called órdenes (branches), deal with specific issues. The branches of the judiciary are:
Civil
Criminal
Administrative
Labour
Military[4]
Spanish territory is divided for jurisdictional purposes into (Article 30 and et seq. LOPJ):
Municipalities
Judicial districts (partidos judiciales)
Provinces (provincias)
Autonomous communities (Comunidades Autónomas/CA)
The different types of courts are (Article 26 LOPJ):
Justices of the peace (juzgados de paz) in the municipalities
First instance courts (for general civil matters) examining courts (to investigate crimes) called Juzgados de Primera Instancia e Instrucción, commercial courts, courts dealing with violence against women, criminal courts (to judge crimes), courts for the judicial review of administrative acts and norms except legislative acts (Juzgados de lo Contencioso-Administrativo), labour courts, juvenile courts and jail surveillance courts (Juzgados de Vigilancia Penitenciaria) at the judicial district level.
Provincial courts (Audiencias Provinciales) at the province level. They have jurisdiction in civil and criminal matters.
Superior courts of justice (Tribunales Superiores de Justicia). Each CA has its High Court of Justice. The superior courts of justice have the following chambers: civil-criminal, administrative and social.
The National Court (Audiencia Nacional). Its chambers are: appeal section, criminal section, administrative and labour.
The Spanish Supreme Court (Tribunal Supremo). Its chambers are: civil, criminal, administrative, labour and military.
The Supreme Court and the National Court, plus the examining central judges, the criminal central judges, the administrative central judges, the jail surveillance central judges and the juvenile central judges have jurisdiction over the whole territory of Spain.
There is no special court in Spain to decide in environmental matters. Environmental matters are dealt with by the administrative judiciary branch when an administration’s decision or a regulation is challenged, and by the criminal judiciary branch when the act or omission is considered a crime against the environment under the Criminal Code (Title XVI of the Criminal Code establishes the crimes related to land and urban planning, the protection of historical heritage and against the environment). The civil judiciary branch has a secondary role in the protection of the environment in Spain because of the collective nature of the environment. It plays a role in cases concerning civil liability for private wrongs (responsabilidad civil extracontractual) and on preventive injunction (acción negatoria).

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)?

Arts. 21 to 25 LOPJ establish detailed rules on the competence of Spanish courts. The Criminal Procedure Law (Ley de Enjuiciamiento Criminal - LECrim) includes very specific rules establishing which judge or court is competent to hear a case based on the punishment of a crime, on who is accused and on the

place where the crime takes place (Articles 8-18 LECrim). The Judicial Review Procedure Law (Ley 29/1998, de 13 de julio, reguladora de la Jurisdicción Contencioso-Administrativa - LJCA) also defines the rules based on the body that issued the challenged administrative and normative acts (Articles 8-13 LJCA) and on the territory of the administrative judge or court. Therefore, forum shopping is not a possibility in Spanish courts for domestic environmental cases.

The LOPJ also elaborates on the procedure for resolving conflicts among different jurisdictional orders as well as conflicts of competences among courts. Conflicts among jurisdictions are resolved by a collegiate body comprising members of the Spanish Supreme Court including its President (Arts. 38-41). Conflicts of competence among courts of different jurisdictional orders are resolved by a special chamber of the Supreme Court (Arts 42-50). The criminal jurisdictional order always takes precedence over the rest. Conflicts of competence among courts of the same jurisdictional order are resolved by the immediately superior judicial body of the courts in conflict (Arts. 51 and 52).

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

We do not have any special environmental tribunals and there are no specialities as regards court rules in the environmental sector.

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

In Spain, the principle of “requested justice” (justicia rogada, Art. 216 LEC) applies in civil and administrative procedure, meaning that the courts decide based on the facts, evidence and petitions from the parties unless the law establishes a different approach for special cases. Thus, a judge cannot act on his own motion. Judgments in civil and administrative cases must be in line with the petitions of the parties in their lawsuits. This principle does not apply to criminal procedures in which there is an obligation for the state to initiate them as well as to submit evidence and look for the truth. Nevertheless, the judgment cannot impose a criminal sanction higher than the requested one (Art. 789 LECr).

1.3. Organisation of justice at administrative and judicial level

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

Administrative procedure is regulated by Law 39/2015, of 1 October, on the Common Administrative Procedure[5] (Title IV, Arts 53-105). It can be initiated of the own motion of the administrations or by application from a concerned or interested party, which may be a natural or legal person.

According to Article 149.1.18 of the Spanish Constitution, the State holds the exclusive competence to regulate the common administrative procedure without prejudice to the peculiarities derived from the separate administrative organization of the Autonomous Communities.

There are many administrations with powers to issue environmental administrative acts at the municipal, autonomous community and state level.

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

After an administrative environmental decision concludes the administrative procedure, the plaintiff has two months to file for a judicial review. This has to be done in writing citing the challenged act or omission.

The average time for a judicial review procedure is around 2 to 2 and a half years. But if the judgment is appealed this may take between 2 and 3 years. Therefore, a final judgment can take 5 years on average.

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

In Spain there are no special environmental courts.

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

Law 39/2015, of 1 October, on the Common Administrative Procedure regulates the administrative review procedure (Arts 112 to 126). An administrative review procedure can be filed against administrative decisions and administrative procedural acts in specific circumstances.

The main categories of administrative review are:

Review by the hierarchical superior (recurso de alzada): this review has to be filed when the challenged act was issued by a public servant having a hierarchical superior. This review is compulsory when the challenged act does not bring to an end the administrative means of redress and must be filed before filing a judicial review. This happens when the administrative decision has been adopted by a body that is not the top organ in the agency and it is compulsory to file this administrative appeal before having recourse to the courts. The administrative appeals must therefore be exhausted.

Review by the same administrative authority that issued the act: this review is optional as it can only be filed against an administrative act concluding the administrative procedure. However, an act concluding the administrative procedure can also be directly challenged through judicial review.

Judgments issued at first instance by judges or magistrates for judicial review of administrative acts (Juzgados de los contencioso-administrativo) can be appealed before the Administrative Chamber of Autonomous Communities’ Supreme Courts. Those issued at first instance by central judges for judicial review of administrative acts (Juzgados Centrales de lo contencioso-administrativo) can be appealed before the Administrative Chamber of the National Court (Audiencia Nacional). In both cases, if the value of the case is below 30,000 euros, those judgments cannot be appealed. However, judgments declaring those cases inadmissible can be appealed as well as those deciding on an administrative review of a normative act[6].

Judgments in single instance by judges or magistrates for judicial review of administrative acts and those issued in single instance or on appeal by the Administrative Chambers of the National Court and of the Supreme Courts of the Autonomous Communities can be subject to cassation before the Administrative Chamber of the Spanish Supreme Court.

Also subject to cassation may be specific decisions (autos) taken by the Administrative Chambers of the National Court and of the Autonomous Communities Supreme Courts if those decisions:

Declare the case inadmissible or make its continuation impossible.

Finalize an incident of suspension or of an injunction.

Are taken in the proceedings for executing a judgment and resolve issues not decided, directly or indirectly, in that execution, or are contradictory to the judgment being executed.

Are issued in preliminary execution proceedings

The rules for a cassation to be admitted by the Supreme Court are very strict. The judgments and decisions must represent an infringement of the legal order or of jurisprudence and must have an objective “cassational interest”.

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

An extraordinary administrative review can be filed against a final (non-appealable) administrative act before the same body that issued that decision when:

That body erred on the facts when considering the documents included in the administrative file.

New documents appear evidencing errors in the challenged decision which are essential for deciding on the object of the procedure.

The decision was taken based on documents and testimonies declared fraudulent by a final judgment issued before or after the challenged decision.

The decision was issued as a result of abuse of authority, violence, fraud or any other criminal conduct declared as such by a final judgment.

In the civil and criminal jurisdiction there is an extraordinary means of appeal when a procedural infringement has taken place.

Preliminary references to the EU Court of Justice can be requested by any of the parties in a judicial procedure or can be instigated ex-officio by the judges or courts. According to Article 4bis paragraph 2 of Organic Law 6/1985, of 1 July, on the Judicial Power[7], when courts decide to submit a preliminary ruling to the CJEU, this must be done in line with the jurisprudence of the later and issuing an "auto" (auto is one of the kind of decisions taken by courts) after having heard the parties in the case.

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

In the environmental area, there are no mediation mechanism regarding administrative acts and omissions and normative acts.

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

In addition to the administrative review and judicial review procedures, in Spain there are other remedies available in environmental matters. These are: the Ombudsman (*Defensor del Pueblo*) at the national level; also some Autonomous Communities also have their own Ombudsman such as in Aragón -the *Justicia de Aragón*[8].

The public prosecutor (see below for the role environmental public prosecutors play)

The Spanish Ombudsman is a high commissioner of the Parliament and Senate Chambers tasked with defending the fundamental rights and freedoms included in Title I of the Spanish Constitution, which includes Article 45. A claim can be submitted to the Spanish Ombudsman when acts and decisions of public administrations do not serve the general interest, do not comply with the principles of their functioning or do not respect the fundamental rights and freedoms in Title I of the Spanish Constitution. Therefore, an environmental complaint can be lodged before the Spanish Ombudsman. The *Fiscalía General del Estado* (State Prosecutor's Office) has a specialist in environment matters, the *Fiscal de Sala Coordinador de Medio Ambiente y Urbanismo* (Prosecutor of Chamber Coordinating Environmental and Land Planning Matters) with delegated environmental prosecutors in the Autonomous Communities. The public prosecutors may initiate an investigation by themselves or after receiving reports of an environmental crime from citizens or NGOs. The environmental prosecutors generally and mainly intervene before the criminal jurisdiction exercising the public action. Law 29/1998, of 13 July, on the Administrative Judicial Procedure provides that the Public Prosecutor may intervene before this jurisdiction in the processes determined by the Law. For example, Law 26/2007, of 23 October, on Environmental Liability provides for the legal standing of the public prosecutor in any administrative judicial procedures aimed at enforcing this Law.

1.4. How can one bring a case to court?

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

According to Article 19(1)(a) of Law 29/1998, of 13 July, regulating the Administrative Judicial Review Procedure[9], legal and natural persons (individuals) having a **right or legitimate interest** have standing to appear before the administrative judicial courts and judges. This also applies to a challenge to an environmental administrative decision. Nevertheless, some legal benefit must derive from the intended reparation[10]. It has been stated that legitimate interest is something more than the simple interest any citizen may have in enforcing legality (Supreme Court Judgment of 28.12.99). However, the exception to this rule is found in those cases in which Law allows the exercise of *actio popularis* or public action.

Spanish environmental protection laws only recognize a general public action available to any individual to challenge acts or omissions in very limited fields such as urban planning[11], hunting[12], and coastal protection[13] among others.

Associations and groups which may be affected by the challenged administrative act or regulation or are legally entitled to defend collective rights and legitimate interests have legal standing[14]. Thus, legal recognition is required in order to have legal standing.

Law 27/2006, of 18 July regulating the rights on access to information, public participation and access to justice in environmental matters[15] (the "Aarhus Law") established an *actio popularis* in environmental matters[16] to challenge certain acts and omissions in certain areas including air pollution. This *actio popularis* only grants standing to not-for-profit legal persons meeting a set of requirements. These requirements for not-for-profit legal persons provided by Article 23(1) are the following:

Having among their objectives stated in their by-laws the protection of the environment in general or of one of its elements.

Having been legally established at least two years before the initiation of the legal challenge and having been active during that period to accomplish the objectives provided in their by-laws[17].

According to their by-laws, develop their activity within the territorial scope affected by the administrative act or omission.

Therefore, NGOs complying with the Aarhus Law requirements can be a plaintiff in a judicial review of an environmental administrative decision.

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

There are no different rules as explained above.

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

Standing rules are those explained in answer number 1.

To have standing, foreign NGOs have to show a right or legitimate interest, as the conditions for *actio popularis* include a geographical requirement which is difficult to fulfil by foreign NGOs.

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

According to Art 142 of the Law on Civil Judicial Procedure, in all judicial proceedings judges, magistrates, lawyers of the justice administration, and other public servants working for judges and courts shall use Spanish (Castilian), the official language of Spain. However, the official language of any Autonomous Community can be used if the parties in the judicial procedure do not oppose this.

Article 143 of that Law provides for the assistance of interpreters where a person does not understand Spanish or any of the official languages of the Autonomous Communities. It also provides for the appointment of an interpreter in transboundary cases.

Documents in a judicial procedure which are not in Castilian or any official language of the Autonomous Communities must be accompanied by a translation (Art. 144 LEC).

1.5. Evidence and experts in the procedures

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

2) Can one introduce new evidence?

In the administrative judicial procedure, most of the rules on evidence, including evaluation of evidence, are provided in the LEC which is complementary to the Law on the Administrative Judicial Procedure.

The evaluation of evidence must be requested in the lawsuit and the written allegations to the lawsuit by the defendant. The plaintiff can ask for the evaluation of new evidence only if, from allegations by the defendant, new points on the facts arise which may be relevant for the procedure. The plaintiff has a period of five days after he/she is notified of the defendant's allegations.

The evaluation of the evidence shall take place when there are discrepancies in the facts and the judge consider those discrepancies relevant to decide on the case.

The judge or court can request the evaluation of any evidence they might consider relevant to delivering their judgment. Once the period for evaluating the evidence ends which normally takes 30 days, and before the proceedings are concluded to prepare the judgment, the judge or court can examine any new evidence if this is considered necessary.
Evidence based on documents must be submitted with the lawsuit and the written allegations to the lawsuit. If they do not have the documents available, they must point out the files where to find them. This includes documents prepared by experts.

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

Expert opinions can be filed with the lawsuit and the written allegations to the lawsuit. The plaintiff and the defendant have to state that they want to file expert opinions when they cannot obtain the expert opinions within the period granted to submit their reports.
Expert opinions can also be filed if, after the filing of the lawsuit and the allegations by the defendant, the parties consider those opinions are necessary and ask the judge or court to allow them.
The court can appoint a judicial expert when the plaintiff or the defendant requests this in the lawsuit or the statement of allegations respectively. For the appointment of judicial experts there are lists of experts and the judge select them by lot.
The evidence including expert opinions is gathered at the instigation of the parties (the parties request them). When the law so determines in specific cases, a judge or court can request expert opinions of its own motion.
In administrative judicial procedures, the most common procedure is the ordinary one in which hearings are not carried out. Thus, the expert opinion is filed as a written opinion.

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

Judges and courts must evaluate expert opinions based on the principle of the “healthy critic” (*sana crítica*, Art. 348 LEC). This implies that the judge or court is not obliged to follow what the expert reflected in his/her opinion.

3.2) Rules for experts being called upon by the court

See answer to number 3.

3.3) Rules for experts called upon by the parties

See answer to number 3

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

In both cases, expert opinions have to be paid for by the party who filed them or who requested the court to appoint a judicial expert. This does not apply when legal aid has been granted to the party requesting the appointment of a judicial expert.
There are no regulated fees for expert opinions, including for judicially designated experts, as this is contrary to Law 15/2007, of 3 July, on the defence of competition.

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

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

In Spain legal representation before judges and courts of law is generally assigned to the *procuradores* (procurators), a kind of intermediary between the judge or court, and the lawyer. The *procuradores* and the *abogados* (lawyers) must hold a Law degree. Lawyers provide legal assistance to their clients, are free and independent and are subject to the *good faith* principle (Article 542, Organic Law on the Judicial Power). In the administrative judicial procedure when intervening before a judge, representation by a *procurador* is not compulsory because the lawyer can act in both roles (Article 23.1, Law on the Administrative Judicial Procedure). Before courts, parties must be represented by a procurador and. be assisted by a lawyer (Article 23.2 LJCA).
The bar associations has a database of admitted lawyers who must be found through a search engine but in general the database is not structured by area of specialization. The Association of bar associations has a directory of lawyers available here.

1.1 Existence or not of pro bono assistance

There are some lawyers and law firms which offer pro bono assistance.

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

Normally lawyers doing pro bono work in environmental litigation are voluntary lawyers linked to environmental NGOs.
There are two foundations in Spain doing pro bono work:
TrustLaw from the Thomson Reuter Foundation
Probono Foundation
but they are more focused on providing legal advice to NGOs than on litigation. If an NGO needs pro bono assistance, it must contact these foundations first.

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

TrustLaw Spain and Fundación Probono.

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

There are many companies offering expert services which are accessible on the internet. In addition, experts appointed by judges and courts, known as judicial experts, are included in lists sent every year by the professional associations and academic institutions and scientific organizations to judges and courts. One example of those lists is http://www.apajcm.com/listado-de-peritos.html

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

There is no list of NGOs active in the field of environmental litigation.

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

There is no such a list available.

1.7. Guarantees for effective procedures

1.7.1. Procedural time limits

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

The time limit to challenge an administrative decision, i.e. to file an administrative review, is one month. If the administrative decision is taken through administrative silence (tacit decisions), there is no time limit and the challenge has to be filed after the effects of administrative silence take place.

2) Time limit to deliver decision by an administrative organ

The administrative body has three months to decide on the administrative review after it is lodged with the hierarchical superior. When the administrative review is filed before the same authority that took the challenged decision, the time limit to take a decision is one month.

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

This is possible when the first level administrative decision closes or brings to an end the administrative means of redress. This happens in the following cases:

decisions taken in procedures in which a specific law has substituted the hierarchical superior challenge for another procedure
decisions of administrative bodies not having a hierarchical superior
agreements, pacts, conventions or contracts considered as finalizing the procedure
administrative decisions in procedures related to liability of the Administration
decisions in complementary procedures related to infringements
other administrative decisions when a law or a regulation establishes that they end the administrative procedure.
the decision or act was issued by a Minister or a Secretary of State

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

There is a 10-day deadline for issuing the ruling after the proceedings have been declared closed by the court, which usually is not respected. Beyond that provision, there is no legal deadline for the global handling and resolution of judicial proceedings, which can take years.

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

There are time limits in the administrative review procedure and the administrative judicial review procedure which parties always must comply with. This is not the case for the administrative authorities and the judges and courts, which never respect those time limits.

Time limits are:

Filing of an administrative review before a hierarchical superior: one month after notification of the appealed administrative decision.

Announcement of the intention to file an administrative judicial review procedure: two months from the date when the administrative act ending the administrative procedure was taken, published or notified.

The sued administration has 20 days to submit the administrative file after the judicial secretary request.

The plaintiff has 20 days to file his/her lawsuit after receiving the administrative file from the judge or court.

The defendant has 20 days to file his/her allegations to the lawsuit after the judicial secretary notifies the lawsuit to him/her.

The period for evaluating evidence is 30 days if one the parties so requested in their lawsuit or allegations to it.

If the parties ask in their lawsuit or allegation to submit conclusions on the case, the judicial secretary provides a 10 day period to each party consecutively.

The judge or court has to issue its judgment within 10 days after the proceedings are declared concluded.

1.7.2. Interim and precautionary measures, enforcement of judgments

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

Article 117.1 of the Law on the Administrative Procedure provides that the filing of an administrative review does not have a suspensive effect except when a legal provision provides so.

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

The competent body to decide on the administrative review can suspend the challenged administrative decision *ex officio* or at the request of the appellant. The competent body has to take into account and weigh in a reasoned manner the damage the execution of the appealed administrative decision could cause to the public interest or a third-party interest against the damage that execution could cause to the claimant. After that, the suspension can take place when any of the following circumstances apply:

the execution might cause damages which cannot be repaired, or their reparation would be very difficult.
the appealed decision is based on a violation of fundamental human rights which makes the act null.

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

As explained above, the appellant can request such a measure. The suspension is normally requested in the writ of appeal which must be filed within a month after the administrative decision was notified to the appellant or was published in an official journal. If the administrative decision was taken through “administrative silence” the writ of appeal can be filed at any moment after the day the effects of that administrative silence takes place.

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

If suspension of the administrative decision is not requested, the administrative decision can be executed at any time, except when:

It is a decision of an infringement procedure which can be subject to an administrative review.
A legal provision establishes otherwise.
The approval or authorisation of a hierarchical superior is required.

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

The administrative decision is not suspended when challenged before a court at the judicial phase.

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

The parties in the procedure can request injunctive relief at any moment in the judicial procedure to guarantee the effectiveness of the future judgement. If the challenged administrative decision is a regulation or ministerial order, that request must be introduced in the notification of the judicial review or in the text of the lawsuit.

When damage of any nature could derive from the injunctive measure, the judge or court can impose adequate measures to avoid or reduce that damage. The judge or court can impose a financial deposit or any other kind of guarantee to response to that damage. The order for injunctive relief is adopted through an “auto”. An auto is a judicial decision by a judge or court deciding on parties’ incidental petitions which arise in the course of the case. If the injunctive relief is ordered by a judge, that auto can be appealed before a superior court. When the injunctive relief is ordered by a court, an appeal before the same court can be filed.

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

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

It is not easy to calculate the costs of the procedure as they depend on the value of the object of the case. Based on Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, legal and other professional fees are liberalized and bar associations and other professional associations cannot impose either minimum or maximum prices for services.

Court fees are regulated by Law 10/2012, of 20 November, regulating fees in the field of the Justice Administration and of the National Institute for Toxicology and Forensic Sciences[18].

Bar associations can send criteria to judges and courts to value a case in application of the “loser pays” principle.

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

The cost of an injunctive relief/interim measure depends on the damage that could be caused and on the value of the object of the case or procedure. A deposit is required if so ordered by the judge or the court.

3) Is there legal aid available for natural persons?

Law 1/1996, of 10 January, on legal aid[19] provides a list of those entitled to the right of legal aid, and among those are Spanish citizens, EU citizens and foreign nationals when they show a lack of sufficient economic resources to litigate.

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

Among the list of those entitled to the right to legal aid are the following legal persons when they can evidence a lack of sufficient resources to litigate:
Public interest associations
Foundations registered in the corresponding public registry
Although not all NGOs are public interest associations or foundations, Article 23.2 of Law 27/2006 (the Aarhus Law) provides that not-for-profit organizations meeting the criteria to exercise *actio popularis* are entitled to the right to legal aid. The criteria are the following:
Their statutes must include as the association's goal the protection of the environment or of any of its elements.
The association must be legally constituted at least 2 years before the date on which the action is initiated; it must be active in achieving its goals.
There must be a geographical connection (established in their statutes) with the area affected by the act or omission.
Those are qualified NGOs. In recent years there has been a series of court decisions (autos) interpreting Article 23.2 as a direct legal recognition of legal aid to qualified NGOs[20]. These decisions have also determined that legal aid is recognized by that Article regardless of the economic resources of the qualified NGO.
A request for legal aid must be filed before the legal advice service of the bar association where the plaintiff has his/her/its domicile. There is a formal application to be submitted[21].
When legal aid is granted, it means that the grantee does not have to pay lawyers and procuradores or cover the cost of the case if the grantee does not win.

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

There are no other financial mechanisms available to provide financial assistance.

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

The "loser party pays" principle applies as follows:
At first or sole instance, the judicial body, when issuing its judgment or when resolving a procedural appeal, shall charge the cost to the party whose entire request is dismissed or rejected unless the case involved serious doubts on the facts and merits.
In appeal costs shall be charged to the appellant if the entire appeal is dismissed unless the judicial body considers and reasons that there were circumstances justifying the contrary.
When the petitions of the parties are partially accepted or rejected each party shall pay its own costs and shall share the common costs. Nevertheless, if the judicial body considers that one of the parties sustained the action or filed the case in bad faith or recklessness and reasons so, that party shall bear the costs.

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

Only when laws allow it can the court grant an exemption. For example, natural persons and legal persons to whom legal aid has been granted, and the public ministry, are exempted from court fees or filing fees according to Article 4.2. of Law 10/2012.

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

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

Title IV of the Aarhus Law, entitled "Access to justice and administrative review on environmental matters", regulates the national rules on environmental access to justice. Article 20 cross-refers to the Law on the Administrative Procedure for administrative review and to the Law on the Administrative Judicial Procedure. All these laws are available in the Spanish official journal (Boletín Oficial del Estado - BOE):

Aarhus Law
Law on the Administrative Procedure
Law on the Administrative Judicial Procedure

The website of the Ministry for Ecological Transition and Demographic Challenge contains a section on the Aarhus Convention with information on applicable laws, although it is not updated.
As part of the Life project on Access to Justice (EARL), the Instituto Internacional de Derecho y Medio Ambiente (IIDMA - International Institute for Law and the Environment) developed a toolkit or guide to access to justice in environmental matters in Spain.

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

This information is provided at the end of the procedure in the administrative decision concluding the procedure.

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

There are no specific sectoral rules applicable. Thus, information on access to justice is provided at the end of the procedure.

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

It is obligatory to provide access to justice information in the administrative decision and in the judgment.
Article 88.3 of the Law on Administrative Procedure requires that the administrative decision (known as the resolution) concluding the procedure shall include the possible ways to appeal it, the identification of the administrative body or judicial body before which to file the appeal as well as the deadline to file it.
According to Article 248.4 of the Law on the Judicial Power, any judicial decision must be notified to the parties and indicate whether or not it is final and, if not, it must include the means of appeal and identify the judicial body before which to file the appeal as well as the deadline to file it. The very same is provided by Article 208.4 of the Law on Civil Judicial Procedure.

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

When a person who is to be questioned, has to intervene in a judicial procedure or must be notified does not know Castilian or any other official language of the Autonomous Community where the case is being heard, the judicial secretary through a decree may call any person who knows the language of the first person as interpreter. The later shall make an oath on his/her commitment to trustworthiness.
In cases of transborder litigation, interpretation services shall be provided for persons who do not know Castilian.

1.8. Special procedural rules

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

Country-specific EIA rules related to access to justice

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

EIA screening decisions[22] are considered by the Spanish Supreme Court as *actos de trámite cualificados* (qualified incidental administrative acts)[23] as they conclude the administrative procedure and therefore can be reviewed by courts (Art. 25 Law on the Administrative Judicial Review Procedure). The Law on Administrative Procedure provides that these acts can be subject to administrative review to a hierarchical superior or subject to a review procedure by the same authority that issued that administrative act. In the latter case, it is not compulsory and therefore, it can be directly subject to a judicial review.

The administrative review to a hierarchical superior must be filed within a month after the screening administrative act was issued. The same deadline applies to a review procedure by the same authority that issued the screening act.
Standing is recognized for parties to the administrative procedure and for environmental NGOs, as *actio popularis* is recognized under the Aarhus Law.

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

In Spain the EIA scoping decisions have a limited role. They are considered as incidental administrative acts, they do not conclude the administrative procedure but are part of it. As a result, EIA scoping decisions alone cannot be reviewed by courts. Therefore, they can only be challenged before courts together with a challenge to the final authorization or decision on the project.
If the final authorization or decision on the project was granted by an authority having a hierarchical superior it has to be subject to administrative review, and the deadline to file this is one month after it was published or notified. If the final authorization or decision on the project was granted by an authority having no hierarchical superior it can be directly challenged before a court of law, and the deadline is of two months after it was published or notified.

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

EIA decisions, called *declaraciones de impacto ambiental* (EI statements) are considered by the courts as part of a substantive procedure to authorize a project. Therefore, they are considered as an incidental administrative act which cannot be directly reviewed by the courts unless the EI statement establishes the impossibility of continuing with the administrative procedure or that it may cause irreversible damage or prejudice to rights or legitimate interests. Therefore, it can only be challenged before the courts together with the challenge to the final authorization or decision on the project. An EIA screening decision not to subject a project to EIA can also be challenged before a judge or court.
If the final authorization or decision on the project was granted by an authority having a hierarchical superior it has to be subject to administrative review, and the deadline to file it is one month after it was published or notified. If the final authorization or decision on the project was granted by an authority having no hierarchical superior it can be directly challenged before a court of law, and the deadline is two months after it was published or notified.

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

The final authorisation of a project subject to EIA can be challenged and it is at this moment that the EI statement can be challenged. Natural and legal persons can be considered interested or concerned parties in the administrative procedure if they meet the conditions under Article 4 of the Administrative Procedure Law:
Those initiating the procedure, as holders of legitimate individual or collective rights and interests. In the EIA procedure it is the developer.
Those who have not initiated the procedure but who might be affected by the administrative decision.
Those whose legitimate individual or collective interests might be affected by the administrative decision and showed their interest before the administrative decision was taken. Associations and organizations representing economic and social interests.
NGOs complying with the Aarhus Law *actio popularis* requirements can also challenge the final authorization. *Actio popularis* can be exercised in administrative review and judicial review procedures.
In judicial review procedures, standing is linked to the right or legitimate interest (see answer in section 1.4. 1).
Foreign NGOs have to show a right or legitimate interest, as the conditions for *actio popularis* include a geographical requirement which is difficult to fulfil by foreign NGOs.

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

First instance judges or courts can review the procedural and substantive legality of EIAs based on the petitions lodged by the plaintiff and the defendant in the lawsuit and the counter arguments to the lawsuit respectively. Judges and courts can only review what the plaintiff and the defendant ask for in their lawsuit and counter arguments (Art. 33 Law on Administrative Judicial Review). However, in administrative judicial reviews, if the judge or court considers that that the issue to be judged was not duly understood by the parties because there appear to be other merits on which to base the case, it can ask the parties to file allegations.
In addition, Spanish judicial bodies are not allowed to adopt any decision which falls within the scope of discretion of the Public Administration, and which may entail a replacement of their activity (based on the principle of separation of judicial, executive and legislative powers).
The Spanish Supreme Court has declared that an environmental impact statement is issued under the exercise of an improper technical discretion which in reality is a regulatory faculty which has to be fully in line with the Law, and is therefore subject to judicial scrutiny[24]. Therefore, the scientific accuracy of an environmental impact statement can be subject to judicial review taking into consideration the evidence supported by expert opinions.

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

Decisions, acts or omissions must be subject to administrative review if they do not put an end to the administrative procedure (see section 1.7.1.3)). Thus, when those decisions or acts are notified, they must be challenged through administrative review. When an administrative decision ends the administrative procedure, it must be directly challenged before a court of law.

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

Before filing a court action, there is a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures if the challenged EIA-related act or omission is performed by an authority having a hierarchical superior.

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

According to the Aarhus Law NGOs meeting certain criteria[25] can exercise *actio popularis.* Thus, these entities are not required to participate in the public consultation phase of the EIA procedure, to make comments or to participate in hearings. In addition, in cases where no *actio popularis* is possible, the rule is that, in order to have legal standing in the administrative judicial procedure, the plaintiff must show an interest. The Constitutional Court's doctrine on standing is more linked to the concept of interest than to the concept of participation in the administrative procedure. For this reason, once the plaintiff shows an interest, it is not necessary to prove participation in the administrative procedure.
It is important to note that if the authorization of the project and the EI Statement were issued by an authority having a hierarchical superior before filing the challenge before the court, it is necessary to file the administrative review first.

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

Article 24 of the Spanish Constitution includes as a human right the right to a fair and equitable trial under the fundamental right to a "tutela judicial efectiva" (right to obtain the effective protection of the Judges and the Courts in the exercise of his or her legitimate rights and interests). This right includes the right to a process with all guarantees and right to a due process with impartial judges.

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

The right to "tutela judicial efectiva" in Article 24 of the Spanish Constitution also implies a right to a process without undue delays and the right to obtain a judgment and its execution within a reasonable time. However, the judicial procedures in environmental matters are often too long, and when a judgment is issued the damage has been done.

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

Under Spanish jurisdiction, there is injunctive relief available for EIA procedures when one challenges the decision on authorization. If the challenge is through administrative review the rules stated in answer to section 1.7.2.2) apply. The judge or court can order the construction of the project to be stopped, and in the final ruling can decide on the illegality of the EIA procedure[26]. An injunction or interim measure (*medidas cautelares* - provided in the Law on Administrative Judicial Review, Articles 129-136) can be requested at any stage of the judicial procedure and no procedural requirement is laid down. There are no special rules applicable to EIA procedures.

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

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

The Spanish transposition of Directive 2010/75/EU on industrial emissions (IED) is Royal Legislative Decree 1/2016, of 16 December, by means of which the consolidated text of the Law on Integrated Pollution Prevention and Control (RDL 1/2016) is approved. This legal instrument regulates the procedure related to the granting of the integrated permit foreseen in the IED, known in Spain as Integrated Environmental Authorizations (Autorizaciones Ambientales Integradas, AAI), as well as the aspects concerning the access to justice on this matter.

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

Standing is granted to the same parties considered as concerned parties in the administrative procedure and to environmental NGOs, as *actio popularis* is recognized under the Aarhus Law. Foreign NGOs have to show a right or legitimate interest, as the conditions for *actio popularis* include a geographical requirement which is difficult to fulfil by foreign NGOs.

In the granting procedure for the AAI in Spain, according to Article 3.20 of RDL 1/2016, the public is “any natural or legal person, or associations, organizations or groups thereof, formed in accordance with applicable law”.

a) Article 3.19 of RDL 1/2016 also defines, in line with the Aarhus legislation, the interested persons (public concerned), with regard to the scope of the law and the authorization procedure, as: any person who is in any of the circumstances stipulated in Article 4 of Law 39/2015, of 1 October, on the common administrative procedure of the public administrations.

b) Any not-for-profit legal person:

i). Whose statutory activity, duly evidenced, is to protect the environment in general or any of its elements in particular, provided that such statutory activity may be affected by a decision regarding the granting or review of the integrated environmental permit or its conditions.

ii). Which was incorporated at least two years ago and has been actively undertaking the activities required to perform its statutory activity.

iii). Which, pursuant to its statutes, undertakes its activity in a territory that is affected by the installation for which the integrated environmental permit is being requested.

In relation to the questions raised on the challenge to the decision at early or final stages, the IED decision or authorization (permit) can be subject to administrative review if the authorization was granted by an authority having a hierarchical superior. Otherwise, it has to be directly challenged before a court of law.

Article 25 of RDL 1/2016 has the following wording regarding the challenge to the resolution on integrated environmental authorizations:

The public concerned (as defined in the previous Article 3.19) may object to the main reports issued during the procedure regulated in this law (referred to in Articles 17, 18, 19 and 28) by means of the challenge to the administrative resolution that terminates the granting procedure for the authorization, or via the challenge to the binding main reports mentioned above when these obstruct the granting of such authorization, according to Article 112.1 of Law 39/2015.

When the administrative challenge to the resolution terminating the granting procedure for the authorization affects the conditions established in the binding main reports, the competent authority of the Autonomous Community able to resolve the appeal will transfer it to the competent bodies that issued them, in order for them, where appropriate, to comment within the next 15 days. These comments, if presented in time, are binding in resolving the challenge.

If the contentious administrative challenge that may be submitted against the resolution terminating the administrative review contains claims relative to the binding main reports, the bodies that issued them will have the status of co-plaintiff, according to Law 29/1998, of 13 July, regulating the Contentious Administrative Jurisdiction.

As a general principle, Article 14 of RDL 1/2016 states that the Public Administrations will promote real and effective participation of public concerned and must ensure that this participation takes place at early stages of the procedures for granting, substantial change and review of the authorization, in compliance with Article 24 and Annex IV.

Article 24.2, relating to communication and publicity, declares the public right to access to the resolutions of the authorizations, and their ulterior adaptations and reviews, according to the Spanish Aarhus Law (Law 27/2006).

Annex IV, referring to public participation in decision-making, states the following:

“1. The competent authority of the Autonomous Community shall inform the public regarding the following matters in the early stages of the procedure - and always before a decision is made or, at the latest, as soon as it is reasonably possible to provide such information through electronic media, if available:

The application documents for an integrated environmental permit, for its substantial change, or if appropriate, the documents regarding the review, pursuant to Article 16.

If appropriate, the fact that the decision on such an application is subject to an environmental impact assessment - national or cross-border - or to consultations among Member States, pursuant to Articles 27 and 28.

The identity of the bodies competent to make a decision, of those that could provide relevant information, and of those to whom observations could be sent or questions to be asked , expressly indicating the deadline for doing so.

The legal nature of the decision on the application or, if appropriate, of the draft decision.

If appropriate, details regarding the review of the integrated environmental permit.

The dates and the place or places where the relevant information shall be made available, as well as the media used for this purpose.

The forms of public participation and public consultation, as defined in paragraph 5.

In any case, the granting, substantial change, or review of a permit regarding an installation when the application of Article 7.5 is proposed.

2. The competent bodies of the Autonomous Communities shall ensure that, within a reasonable period of time, the following information is made available to the public concerned:

In accordance with national legislation, the main reports and decisions sent to the competent authority or authorities, at the time when the public concerned must be informed pursuant to paragraph 1.

In accordance with the legislation regulating rights of access to information and public participation in environmental matters, all information other than that mentioned in paragraph 1 which may be relevant to decide on the application, pursuant to Article 8, and which may only be obtained once the period for providing information to public concerned regulated in paragraph 1, has expired.

3. The public concerned shall have the right to express any observations and opinions they consider relevant to the competent authorities, before the application is decided upon.
4. The outcomes of the consultations organized under the present Annex shall be duly taken into account by the competent authority when deciding upon the application.
5. The competent authority of the Autonomous Community for granting integrated environmental permits shall determine the manner in which the public is informed and public concerned is consulted. In any case, reasonable periods of time shall be established for the different stages, providing sufficient time for informing the public and for public concerned to effectively prepare and participate in the environmental decision-making process under the provisions of the present Annex."

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

Same as in answer 1.8.1.1)

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

Same as in answer 1.8.1.2)

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

It is possible to challenge the final decision or permit for a project/installation. If the final decision or AAI was granted by an authority having a hierarchical superior it has to be subject to an administrative review, and the deadline to file it is of one month after it was published or notified. If the final decision or permit of the project was granted by an authority having no hierarchical superior it can be directly challenged before a court of law, and deadline is two months after it was published or notified.

Article 25 of RDL 1/2016 has the following wording regarding a challenge to the resolution on integrated environmental authorizations:

The public concerned (as defined in previous Article 3.19) may object to the main reports issued during the procedure regulated in this law (referred to in Articles 17, 18, 19 and 28) by means of the challenge to the administrative resolution that terminates the granting procedure of the authorization, or via the challenge to the mentioned binding main reports, when these obstruct the granting of such authorization, according to Article 112.1 of Law 39/2015.

When the administrative challenge to the resolution terminating the granting procedure of the authorization relates to the conditions established in the binding main reports, the competent authority of the Autonomous Community to solve the appeal will transfer it to the competent bodies that issued them, in order for them, where appropriate, to comment within the next 15 days. These comments, if presented on time, are binding in resolving the challenge.

If the contentious administrative challenge that may be submitted against the resolution terminating the administrative procedure contains claims relative to the binding main reports, the bodies that issued them will have the consideration of co-plaintiff, according to Law 29/1998, of 13 July, regulating the contentious administrative jurisdiction.

6) Can the public challenge the final authorisation?

The public that can challenge in administrative review a final authorization has to be a concerned public or party (parte interesada). These are persons (legal or natural) meeting the conditions under Article 4 of the Administrative Procedure Law:

"1. a) Those initiating the procedure as holders of legitimate individual or collective rights and interests.
b) Those who have not initiated the procedure but who might be affected by the administrative decision.
c) Those whose legitimate individual or collective interests might be affected by the administrative decision and showed their interest before the administrative decision was taken.
2. Associations and organizations representing economic and social interests."

NGOs complying with the Aarhus Law *actio popularis* requirements can also challenge the final authorization. Actio popularis can be exercised in administrative review and judicial review procedures.

In judicial review procedures, standing is linked to the right or legitimate interest (see answer in section 1.4. 1)).

Article 3.19 of RDL 1/2016 also defines, in line with the Aarhus legislation, the interested persons (public concerned), with regard to the scope of the law and the AAI procedure, as:

a) Any person who is in any of the circumstances stipulated in Article 4 of Law 39/2015, of 1 October, on the common administrative procedure of the public administrations (mentioned in the previous paragraph).
b) Any non-profit legal person meeting the following requirements:
    i). Whose statutory activity, duly evidenced, is to protect the environment in general or any of its elements in particular, provided that such statutory activity may be affected by a decision concerning the granting or review of the integrated environmental permit or its conditions.
    ii). Which was incorporated at least two years ago and has been actively undertaking the activities required to perform its statutory activity.
    iii). Which, pursuant to its statutes, undertakes its activity in a territory that is affected by the installation for which the integrated environmental permit is being requested.

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

First instance judges or courts can review the procedural and substantive legality of the decisions on integrated environmental authorizations based on the petitions lodged by the plaintiff and the defendant in the lawsuit and the counter arguments to the lawsuit respectively. Judges and courts can only review what the plaintiff and the defendant ask for in their lawsuit and counter arguments (Art. 33, Law on Administrative Judicial Review). However, in administrative judicial reviews, if the judge or court considers that the issue to be judged was not duly understood by the parties because there appear to be other merits on which to base the case, it can ask the parties to file allegations.

In addition, Spanish judicial bodies are not allowed to adopt any decision which falls within the scope of discretion of the Public Administration, and which may entail a replacement of their activity (based on the principle of separation of the judicial, executive and legislative powers).

The Spanish Supreme Court has declared that an environmental impact statement is issued under the exercise of an improper technical discretion which in reality is a regulatory faculty which has to be fully in line with the Law, and is therefore subject to judicial scrutiny[27]. This can be extended to the decisions on integrated environmental authorizations (AAI). Therefore, the scientific accuracy of these permits can be subject to judicial review taking into consideration the evidence supported by expert opinions.

According to the wording of Article 25 of RDL 1/2016 mentioned above, decisions on integrated environmental authorizations, as well as the binding main reports to be issued during the procedure (related to issues on urban planification, water, municipality and EIA), can be challenged.

8) At what stage are these challengeable?

The decision/permit is challengeable at the final stage. If the final decision or authorization of the project was granted by an authority having a hierarchical superior it has to be subject to an administrative review, and the deadline to file it is one month after it was published or notified. If the final decision or permit of the project was granted by an authority having no hierarchical superior it can be directly challenged before a court of law, and the deadline is two months after it was published or notified.

Article 25 of RDL 1/2016 has the following wording regarding the challenge to the resolution on integrated environmental authorizations:
The public concerned (as defined in the previous Article 3.19) may object to the main reports issued during the procedure regulated in this law (referred to in Articles 17, 18, 19 and 28) by means of the challenge to the administrative resolution that terminates the granting procedure for the authorization, or via the challenge to the binding main reports mentioned above, when these obstruct the granting of such authorization, according to Article 112.1 of Law 39/2015.
When the administrative challenge to the resolution terminating the granting procedure for the authorization affects the conditions established in the binding main reports, the competent authority of the Autonomous Community able to resolve the appeal will transfer it to the competent bodies that issued them, in order for them, where appropriate, to comment within the next 15 days. These comments, if presented in time, are binding in resolving the challenge.
If the contentious administrative challenge that may be submitted against the resolution terminating the administrative review contains claims relative to the binding main reports, the bodies that issued them will have the status of co-plaintiff, according to Law 29/1998, of 13 July, regulating the Contentious Administrative Jurisdiction.

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

See previous answer.
If the final authorization or decision on the project was granted by an authority having a hierarchical superior it has to be subject to administrative review, and the deadline to file it is one month after it was published or notified. If the final authorization or decision on the project was granted by an authority having no hierarchical superior it can be directly challenged before a court of law, and the deadline is two months after it was published or notified.

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

According to the Aarhus Law, NGOs meeting certain criteria[28] can exercise *actio Popularis*. Thus, these entities are not required to participate in the public consultation phase of the administrative procedure, or to make comments or participate in hearings. In addition, in cases where no *actio popularis* is possible, the rule is that, in order to have legal standing in the administrative judicial procedure, the plaintiff must show an interest. The Constitutional Court's doctrine on standing is more linked to the concept of interest than to the concept of participation in the administrative procedure. For this reason, once the plaintiff shows an interest, it is not necessary to prove participation in the administrative procedure.

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

Article 24 of the Spanish Constitution includes as a human right the right to a fair and equitable trial under the fundamental right to a "tutela judicial efectiva" (right to obtain the effective protection of the Judges and the Courts in the exercise of his or her legitimate rights and interests). This right involves the right to a process with all guarantees and right to a due process with impartial judges.

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

The right to "tutela judicial efectiva" in Article 24 of the Spanish Constitution also implies a right to a process without undue delays and the right to obtain a judgment and its execution within a reasonable time. However, the judicial procedures in environmental matters are often too long and when a judgment is issued the damage has been done.

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

Under Spanish jurisdiction, there is injunctive relief available in all administrative and judicial review procedures which is applicable to decisions on the AAI .
If the challenge is through administrative review the rules stated in answer to section 1.7.2.2) apply. The judge or court can order the construction of the project to be stopped and in the final ruling can decide on the illegality of the permit. An injunction or interim measure (*medidas cautelares*- provided in Law on Administrative Judicial Review Articles 129-136) can be requested at any stage of the judicial procedure and no procedural requirement is laid down.
Concerning the third question on special rules applicable to this sector, Article 30 of the RDL 1/2016, relating to control, inspection and sanction, establishes that the Autonomous Communities will be competent to adopt injunctive relief and control and inspection measures, and to impose penalties and guarantee compliance with the aims of this law, without prejudice to the State competence in this matter with respect to the water discharges managed by the State General Administration

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

Information on access to justice is provided to the public in an accessible manner. Title IV of Aarhus Law, entitled "Access to justice and administrative review on environmental matters", regulates the national rules on environmental access to justice. Article 20 cross-refers to the Law on the Administrative Procedure for administrative review and to the Law on the Administrative Judicial Procedure. All these laws are available in the Spanish official journal (Boletín Oficial del Estado - BOE):

Aarhus Law
Law on the Administrative Procedure
Law on the Administrative Judicial Procedure

The website of the Ministry for Ecological Transition and Demographic Challenge contains a section on the Aarhus Convention with information on applicable laws although it is not updated.
The information is not provided in a structured manner for the public in general.

1.8.3. Environmental liability[29]

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

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

They have to fall within the definition of a concerned or interested party. These are parties considered as such by Article 4 of the Law on the Administrative Procedure, NGOs which comply with the requirements to exercise *actio popularis*, title holders of the land in which prevention, avoidance or reparation of environmental damages have to be undertaken and those who might have such a status under Autonomous Community legislation.
In addition to the general definition of interested party under the Law on Administrative Procedure, and as concerns the procedure for integrated environmental permits, Article 3.19 of RDL 1/2016 also defines, in line with the Aarhus legislation, the interested persons (public concerned), as:
a) Any person who is in any of the circumstances stipulated in Article 4 of Law 39/2015, of 1 October, on the common administrative procedure of the public administrations (mentioned in the previous paragraph).
b) Any non-profit legal person meeting the following requirements:

i). Whose statutory activity, duly evidenced, is to protect the environment in general or any of its elements in particular, provided that such statutory activity may be affected by a decision concerning the granting or review of the integrated environmental permit or its conditions .
ii). Which was incorporated at least two years ago and has been actively undertaking the activities required to perform its statutory activity.
iii. Which, pursuant to its statutes, undertakes its activity in a territory that is affected by the installation for which the integrated environmental permit is being requested.

2) In what deadline does one need to introduce appeals?
The deadline is two months after the decision taken on environmental remediation was published or notified. It is important to note that if that decision was issued by an authority having a hierarchical superior it has to be subject to previous administrative review before going to a court of law for its review.
3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?
According to Article 41.2. of Ley 26/2007, de 23 de octubre, de Responsabilidad Medioambiental[30] (Law 26/2007, of 23 October, on Environmental Liability) which transposes the Environmental Liability Directive into Spanish Law, when the request for action on environmental liability is impelled by a concerned person different from the operator, the request must be in writing and it must identify the damage(s) or threat of damage according to that Law. In addition, as far as possible, it has to include the following elements:
The action or omission by the person presumed liable.
The identity of the person presumed liable.
The date when the action or omission took place.
The place where the damage or threat of damage was produced.
The causal relationship between the action or omission of the person presumed liable and the damage or threat of damage.
Although substantiating the causal relationship might require scientific underpinning or data, this is not compulsory and only has to be provided as far as possible.
4) Are there specific requirements regarding 'plausibility' for showing that environmental damage occurred, and if yes, which ones?
There are no specific requirements regarding 'plausibility' for showing that environmental damage occurred. See answer above.
5) Is a certain manner required and/or time limits set, and if yes, which ones, as regards the notification of the decision by the competent authority to the entitled natural or legal persons (including the entitled environmental NGOs)?
Article 45 of Law 26/2007 on Environmental Liability requires the competent authority to justify its decision in writing, either holding the operator environmentally liable or declaring that there is no such liability.
However, environmental liability requests which are unfounded or abusive may be rejected in a reasoned manner.
The decision must contain at least the following:
Description of the threat of damage or the environmental damage to be eliminated.
Assessment of the threat of damage or of the environmental damage.
Where applicable, definition of the prevention or avoidance of new damage, and measures to be taken, accompanied where applicable by appropriate instructions on correct execution.
Where applicable, definition of the reparation measures to be adopted, accompanied where applicable by appropriate instructions on correct execution.
Identification of the person who has to adopt the measures.
Deadline for executing the measures.
When the competent authority has adopted and executed measures, the amount and date of payment for those measures.
Identification of the actions that the public administration must carry out if necessary.
The competent authority has to take a decision within six months after the request was filed. This can be extended for another three months if the case is scientifically and technically complex. This extension has to be notified to the parties concerned. If the competent authority does not issue any decision within that deadline the request is considered to be rejected.
6) Does the MS apply an extension of the entitlement to request action by competent authority from damage to the environment in cases of imminent threat of such damage?
Article 41.2 of Law on Environmental Liability allows complainants to request action not only in cases of environmental damage but also in cases of imminent threat of such damage. As mentioned above, concerned parties or public are entitled to file such a request.
7) Which are the competent authorities designated by the MS?
The competent authorities are the regional or autonomous community departments in charge of environmental protection. However, when the damage is caused to water bodies or groundwater bodies which belong to an intercommunity river basin, the competent authority is the Ministry for Ecological Transition and the Demographic Challenge. This Ministry is also competent when the environmental liability procedure is triggered by works of a public interest nature under the competence of the State.
8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?
If the decision on the environmental liability request is taken by an authority having a hierarchical superior then the administrative review procedure has to be exhausted prior to recourse to judicial proceedings.
1.8.4. Cross-border rules of procedures in environmental cases
1) Rules on involving other countries? At which stage of the procedure is there a possibility to challenge environmental decisions?
There are no specific rules for cross-border procedures in the Spanish legal order. Therefore, national procedural laws on access to justice apply. See answers under 1.8.1.3) and 6) and at 1.8.2.5) and 8).
2) Notion of public concerned?
The notion of public concerned for administrative review is provided by Article 4 of the Law on Administrative Procedure. See answers in section 1.8.1.4)
3) Do NGOs of the affected country have standing? When and to what court should they submit their appeals? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?
NGOs of the affected country showing a right or legitimate interest do have standing. National rules on timelines and court jurisdiction apply (see answers in section 1.2.). The national rules on legal aid and pro bono apply (see answers in section 1.6). The request for injunctive relief and interim measures are as provided in Articles 129 to 136 of the Law on Administrative Judicial Review (see answer in section 1.8.1. 11))
4) Do individuals of the affected country have standing? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?
Same as above.
5) At what stage is the information provided to the public concerned (including the above parties)?
According to Article 49 of Law 21/2013 on Environmental Assessment, when a State might be affected by a plan, programme or project, it has to be informed by the Spanish Ministry for Foreign Affairs. If the notified State decides to participate in the environmental assessment procedure, the Spanish authorities together with the authorities of the notified State have to agree on a calendar for transboundary consultations which includes participation by the concerned public and concerned public authorities of the notified State. Therefore, there is no specific timeframe provided, as this has to be agreed. The only reference to a timeframe related to the duration of preliminary consultations which cannot last more than three months.
6) What are the timeframes for public involvement including access to justice?

The timeframes for public involvement are those agreed between the Spanish authorities and the authorities of the potentially affected country. However, for the final decision taken, the access to justice timeframes are those provided by the Spanish Laws on the Administrative Procedure and on the Administrative Judicial Procedure. (See answer 1.8.1. 5) and 8)).

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

Nothing is provided in our legal framework on this. Therefore, it might be subject to agreement among the Spanish authorities and those of the potentially affected country.

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

According to Article 49 of Law 21/2013 on Environmental Assessment, the agreement between the Spanish authorities and those of the potentially affected country has to include an identification of the documents which have to be translated.

9) Any other relevant rules?

There are no other relevant rules.

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[1]1.Every person has the right to obtain the effective protection from the Judges and the Courts in the exercise of his or her legitimate rights and interests, and in no case may he go undefended.

2. Likewise, all persons have the right of access to the ordinary judge predetermined by law; to the defence and assistance of a lawyer; to be informed of the charges brought against them; to a public trial without undue delays and with full guarantees; to the use of evidence appropriate to their defence; to not make self-incriminating statements; to not declare themselves guilty; and to be presumed innocent.

The law shall determine the cases in which, for reasons of family relationship or professional secrecy, it shall not be compulsory to make statements regarding alleged criminal offences

[2]1. Everyone has the right to enjoy an environment suitable for personal development, as well as the duty to preserve it.

2. The public authorities shall safeguard rational use of natural resources with a view to protecting and improving the quality of life and preserving and restoring the environment, by relying on essential collective solidarity.

3. Criminal or, where applicable, administrative sanctions, as well as the obligation to make restore the damage, shall be imposed, under the terms established by law, against those who violate the provisions contained in the previous paragraph.

[3] When the law talks about *Juzgado* it means a single organ and when talks about *Tribunal* it is referring to a collegiate organ.

[4] This branch only administrates justice within the scope of the military corps.

[5] BOE (Boletín Oficial del Estado-Spanish Official Journal) num.236, of 02.10.2015.

[6] Art 81, Law 29/1998, of 13 July, on Administrative Judicial Review.

[7] BOE num. 157, of 02.07.1985.

[8] This role was established at the end of the XIIth century as mediator and facilitator in disputes and differences between the King and the aristocracy of those times.

[9] Law 29/1998 of 13 July regulating administrative courts (BOE No 167 of 14.07.1998).

[10] Spanish Supreme Court Judgment 52/2007, of 12 March 2007: "*a material and unique relationship between the subject and the object of the action (the challenged act or regulation) in such a manner that its annulment automatically produces a positive effect (benefit) or the end of a negative effect (prejudice) in the present or in the future but certain. That relationship must be understood as referred to a personal interest, qualified, specific, actual and real. Not potential or hypothetical. It is the potential title of the plaintiff to an advantage or legal usefulness, not necessary of monetary content, which shall be materialized in case he/she wins. Legitimate interest is any advantage or legal usefulness derived from the intended reparation*" (author's translation of the Spanish version: "una relación material unívoca entre el sujeto y el objeto de la pretensión (acto o disposición impugnados), de tal forma que su anulación produzca automáticamente un efecto positivo (beneficio) o la cesación de un efecto negativo (perjuicio) actual o futuro pero cierto, debiendo entenderse tal relación referida a un interés en sentido propio, cualificado y específico, actual y real (no potencial o hipotético). Se trata de la titularidad potencial de una ventaja o de una utilidad jurídica, no necesariamente de contenido patrimonial, por parte de quien ejercita la pretensión, que se materializaría de prosperar ésta. O, lo que es lo mismo, el interés legítimo es cualquier ventaja o utilidad jurídica derivada de la reparación pretendida").

[11] Article 62, Royal Legislative Decree 7/2015, of 30 October, approving the Consolidated Text of Law on Land and Urban Rehabilitation, (BOE N. 261, 31.10.2015).

[12] Article 47, Law 1/1970 of 4 April on Hunting, (BOE N. 82, 06.04.1970).

[13] Article 109 (1), Law 22/1998 of 28 July on Coastal Protection, (BOE N. 181, 29.07.1998).

[14] Article 19 (1)(b), Law 29/1998.

[15] Law 27/2006 of 18 July regulating the rights of access to information, public participation and access to justice in environmental matters (BOE No 171 of 19.07.2006).

[16] Article 22 of this Law provides that:"*Acts and omissions of public authorities violating environmental protection rules listed in Article 18 (1) can be challenged by any legal non-for-profit person meeting the requirements provided in Article 23 through the administrative review procedure provided in Law on the Administrative Procedure as well as through the administrative judicial review procedure provided by Law 29/1998*". Article 18 (1) lists norms on air pollution, among others. Therefore, this *actio popularis* covers clean air litigation.

[17] This requires legal registration in the specific registry of non-for-profit organizations: the associations registries or the foundations registries.

[18] Law 10/2012 of 20 November, regulating certain fees in the field of the Justice Administration and the National Institute of Toxicology and Forensic Sciences.

[19] Law 1/1996, of 10 January, regarding the legal aid.

[20] Auto of the Spanish Supreme Court of 16 January 2018. Auto of the Supreme Court of Extremadura of 22 April 2013 and Autos of the Supreme Court of Madrid of 3 June 2013, of 9 June 2014, of 6 February 2015 and of 28 of October 2015.

[21] In this website it is the application form to request legal aid in the territory of Madrid Autonomous Community. Each Autonomous Community has its own application form but these are available online.

[22] Case-by-case consultation is a procedure to determine whether or not a particular plan, programme or project should be subject to an environmental assessment procedure, be it an environmental impact assessment or a strategic environmental assessment. This is called the screening phase in the environmental assessment.

[23] Supreme Court Ruling of 8 April 2011(STS 2092/2011)

[24] Supreme Court Judgment of 2 February 2016, Administrative Chamber, Section 5. 7th Legal Ground.

[25] These criteria are:

Their statutes include as the association's goal the protection of the environment or of any of its elements.
The association must be legally constituted at least 2 years before the date in which the actions is initiated; it must be active in achieving its goals.
A geographical connection (established in their statutes) with the area affected by the act or omission.
[26] Ruling of the Supreme Court of 24.05.2011
[27] Supreme Court Judgement of 2 February 2016, Administrative Chamber, Section 5.
[28] These criteria are:
Their statutes include as the association's goal the protection of the environment or of any of its elements.
The association must be legally constituted at least 2 years before the date in which the actions is initiated; it must be active in achieving its goals.
A geographical connection (established in their statutes) with the area affected by the act or omission.
[29] See also case C-529/15.
[30] BOE núm. 255, of 25.10.2007
Last update: 06/08/2021

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

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

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

The main law regulating access to justice in environmental matters is Law 27/2006 of 18 July on the rights to access to information, public participation and access to justice in environmental matters (the Aarhus Law). Title IV of this Law is devoted to access to justice and administrative procedures on environmental matters. The following laws also apply to judicial procedures to defend the environment:
Law 29/1998, of 13 July, on administrative judicial procedure.
Law 1/2000, of 7 January, on civil judicial procedure.
Royal Decree of 14 September of 1882 approving the Law on Criminal Judicial Procedure.
In the administrative jurisdiction before bringing a case to a court of law on many occasions it is necessary to instigate an administrative review. The law regulating the administrative review procedure is Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations.
For administrative review the condition is to be an interested or concerned party as provided in Article 4 of the Law on the Common Administrative Procedure and the Aarhus Law. The time-limit is one month after the administrative act or decision was notified or published or the omission took place. When the administrative procedure was initiated by a concerned party and the administration does not issue a decision within the deadline, "administrative silence" comes into play, and then there is no time-limit for filing an administrative review (Art. 122, Law on the Common Administrative Procedure).
For judicial review the time-limit is two months after the challenged administrative decision or act was notified or published. If the administration did not issue a decision, the deadline is six months after the date the act should have been issued.
After the ratification by Spain of the Aarhus Convention and the adoption of the Aarhus Law, the right on access to justice in environmental matters become very effective. The only remaining problem is the lack of a general *actio popularis* for natural persons. The existing *actio popularis* only applies to those NGOs complying with specific criteria. In light of the Spanish legal framework, the doctrine on legal standing for environmental protection from the CJEU is not very relevant any longer.

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

The scope of administrative review includes procedural and substantive questions and it can cover not only the issues alleged by the concerned parties but also those issues raised by the administrative reviewer of its own motion. The administrative review decision has to be consistent with the appellant's requests (Art.119.3 Law on the Administrative Procedure).
First instance judges or courts can review the procedural and substantive legality of environmental decisions based on the petitions lodged by the plaintiff and the defendant in the lawsuit and the counter arguments to the lawsuit respectively. Judges and courts can only review what the plaintiff and the defendant ask for in their lawsuit and counter arguments (Art. 33, Law on Administrative Judicial Review. However, in administrative judicial reviews if the judge or court considers that that the issue to be judged was not duly understood by the parties because there appear to be other merits on which to base the case, it can ask the parties to file allegations.
In addition, Spanish judicial bodies are not allowed to adopt any decision which falls within the scope of discretion of the Public Administration, and which may entail a replacement of their activity (based on the principle of separation of judicial, executive and legislative powers).

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

There is a requirement to exhaust administrative review procedures when the first level administrative decision, act or omission does not bring to an end the administrative means of redress. Administrative decisions, acts or omissions bringing to an end the administrative remedies are:
Decisions taken in procedures in which a specific law has substituted the hierarchical superior challenge for another procedure
Decisions of administrative bodies not having a hierarchical superior (for instance, ministers in the national or governments of the Autonomous Communities)
Agreements, pacts, conventions or contracts considered as finalizing the procedure
Administrative decisions in procedures related to liability of the Administration
Decisions in complementary procedures related to infringements
Other administrative decisions when a law or a regulation establishes that they end the administrative procedure.

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

According to the Aarhus Law, NGOs meeting certain criteria[2] can exercise *actio popularis*. Thus, these entities are not required to participate in the public consultation phase of the administrative procedure, nor to make comments or participate in hearings. In addition, in cases where no *actio popularis* is possible, the rule is that, in order to have legal standing in the administrative judicial procedure, the plaintiff must show an interest. The Constitutional Court's doctrine on standing is more linked to the concept of interest than to the concept of participation in the administrative procedure. For this reason, once the plaintiff shows an interest, it is not necessary to prove participation in the administrative procedure.

5) Are there some grounds/arguments precluded from the judicial review phase?
There are no grounds/arguments precluded from the judicial review phase. It is even possible to bring new grounds/arguments that were not used during the administrative review phase.
6) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?
Article 24 of the Spanish Constitution includes as a human right the right to a fair and equitable trial under the fundamental right to a “tutela judicial efectiva” (right to obtain the effective protection of the Judges and the Courts in the exercise of his or her legitimate rights and interests). This right involves the right to a process with all guarantees and right to a due process with impartial judges.
7) How is the notion of “timely” implemented by the national legislation?
The right to “tutela judicial efectiva” in Article 24 of the Spanish Constitution also implies the right to a process without undue delays and to the right to obtain a judgment and its execution within a reasonable time. However, the judicial procedures in environmental matters are often too long and when a judgment is issued the damage has been done.
8) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to each sector apart from the general national provisions?
Under Spanish jurisdiction, there is injunctive relief available for environmental procedures. If the challenge is through administrative review the competent body to decide on that review can suspend ex officio or at the request by the appellant the challenged administrative decision. The competent body has to take into account and weight in a reasoned manner the damage the execution of the appealed administrative decision could cause to the public interest or a third-party interest against the damage that execution could cause to the claimant. After that, the suspension can take place when any of the following circumstances happen:
execution might cause damage which cannot be repaired, or their reparation would be very difficult.
the appealed decision is based on a violation of fundamental human rights which makes the act null.
In judicial reviews the judge or court can order to stop the implementation of the challenged environmental decision. An injunction or interim measure (*medidas cautelares* - provided for in the Law on Administrative Judicial Review Articles 129-136) can be requested at any stage of the judicial procedure and no procedural requirement to be eligible for it is provided.
There are no special rules applicable to each sector apart from the general national provisions.
9) What are the cost rules to bring a challenge on access to justice in these areas? What are the possible consequences if one loses a case before court? What are the safeguards against the costs being prohibitive, and do these include express statutory reference to a requirement that costs should not be prohibitive?
Based on Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, legal and other professional fees are liberalized and bar associations and other professional associations cannot impose either minimum or maximum prices for services. There is no rule on the costs.
In Spain the “loser party pays” principle applies (see answer in section 1.7.3.6)). The consequence in that case is that the party will have to pay the amount imposed by the court after a procedure instigated by the judicial secretary to fix the costs of lawyers and experts as well as the court fees. This procedure is provided by Law 1/2000, of 7 January, on Civil Judicial Procedure (Arts. 241-246).
The word “prohibitive” is very subjective, as it depends on the economic situation of the loser. There are no safeguards against the cost being prohibitive for this reason, and the best alternative for NGOs that can exercise *actio popularis* is to request legal aid as it is a right provided by the Aarhus Law. There is no express statutory reference to a requirement that costs should not be prohibitive.

1.2. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with national implementing legislation for the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[3]

1) What are the applicable national statutory rules on standing for both individuals and NGOs wishing to obtain a) an administrative review and b) a legal challenge before a national court in respect of the procedures for adopting the decision, act or omission (in particular, the conditions to be fulfilled and any time limits that apply to the submission of a challenge)? How effective is the level of access to national courts in light of the CJEU case law and any related national case law?
The main law regulating access to justice in environmental matters is Law 27/2006 of 18 July on the rights to access to information, public participation and access to justice in environmental matters (the Aarhus Law). Title IV of this Law is devoted to access to justice and administrative procedures on environmental matters. The following laws also apply to judicial procedures to defend the environment:
Law 29/1998, of 13 July, on administrative judicial procedure
Law 1/2000, of 7 January, on civil judicial procedure
Royal Decree of 14 September of 1882 approving the Law on Criminal Judicial Procedure.
In the administrative jurisdiction, before bringing a case to a court of law on many occasions it is necessary to instigate an administrative review. The law regulating the administrative review procedure is Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations.
To file an administrative review the condition is to be an interested or concerned party as provided in Article 4 of the Law on the Common Administrative Procedure and the Aarhus Law. The time-limit is one month after the administrative act or decision was notified or published, or the omission took place.
When the administrative procedure was initiated by a concerned party and the administration does not issue a decision within the deadline, “administrative silence” comes into play. and then there is no time-limit for filing an administrative review (Art. 122, Law on the Common Administrative Procedure).
For judicial review the time-limit is two months after the challenged administrative decision or act was notified or published. If the administration did not issue a decision, the deadline is six months after the date the act should have been issued.
After the ratification by Spain of the Aarhus Convention and the adoption of the Aarhus Law the right on access to justice in environmental matters become very effective. The only remaining problem is the lack of a general *actio popularis* for natural persons. The existing *actio popularis* only applies to those NGOs complying with specific criteria. In light of the Spanish legal framework, the doctrine on legal standing for environmental protection from the CJEU is not very relevant any longer.
2) What is the scope of the administrative review (if applicable) and the judicial review (if applicable)? Does it cover both procedural and substantive legality?
The scope of administrative review includes procedural and substantive questions and it can cover not only the issues alleged by the concerned parties but also those issues raised by the administrative reviewer of its own motion. The administrative review decision has to be consistent with the appellant’s requests (Art.119.3 Law on the Administrative Procedure).
First instance judges or courts can review the procedural and substantive legality of SEA decisions based on the petitions lodged by the plaintiff and the defendant in the lawsuit and the counter arguments to the lawsuit respectively. Judges and courts can only review what the plaintiff and the defendant ask for

in their lawsuit and counter arguments (Art. 33, Law on Administrative Judicial Review. However, in administrative judicial reviews if the judge or court considers that that the issue to be judged was not duly understood by the parties because in there appear to be other merits on which to base the case, it can ask the parties to file allegations.
In addition, Spanish judicial bodies are not allowed to adopt any decision which falls within the scope of discretion of the Public Administration, and which may entail a replacement of their activity (based on the principle of separation of judicial, executive and legislative powers).

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

There is a requirement to exhaust administrative review procedures when the first level administrative decision, act or omission does not bring to an end the administrative means of redress. Administrative decisions, acts or omissions bringing to an end the administrative remedies are:
decisions taken in procedures in which a specific law has substituted the hierarchical superior challenge for another procedure
Decisions of administrative bodies not having a hierarchical superior
Agreements, pacts, conventions or contracts considered as finalizing the procedure
Administrative decisions in procedures related to liability of the Administration
Decisions in complementary procedures related to infringements
Other administrative decisions when a law or a regulation establishes that they end the administrative procedure.

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

According to the Aarhus Law, NGOs meeting certain criteria[4] can exercise *actio popularis*. Thus, these entities are not required to participate in the public consultation phase of the SEA procedure, nor to make comments or participate in hearings. According to Law on Environmental Assessment there are two opportunities for the public to make comments in a SEA procedure. In the first, the concerned public can submit comments on the scoping document for the environmental report within a period of 45 days. The second opportunity to submit comments is open to the public in general and also the concerned public and takes place once the promoter has prepared the draft environmental report, then the substantive body opens this consultation for a period of 45 days.
In addition, in cases where no *actio popularis* is possible, the rule is that, in order to have legal standing in the administrative judicial procedure, the plaintiff must show an interest. The Constitutional Court's doctrine on standing is more linked to the concept of interest than to the concept of participation in the administrative procedure. For this reason, once the plaintiff shows an interest, it is not necessary to prove participation in the administrative procedure.

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

There are no special rules applicable to SEA procedures apart from the general national provisions.
Under Spanish jurisdiction, there is injunctive relief available for environmental procedures including environmental plan procedures. If the challenge is through administrative review the competent body able to decide on that review can suspend the challenged plan or programme ex officio or at the request by the appellant. The competent body has to take into account and weight in a reasoned manner the damage the execution of the appealed plan could cause to the public interest or a third-party interest against the damage that execution could cause to the claimant. After that, the suspension can take place when any of the following circumstances happens:
the execution might cause damage which cannot be repaired, or their reparation would be very difficult
the appealed plan is based on a violation of fundamental human rights which turns the act null.
In judicial reviews the judge or court can order the implementation of the challenged plan to be stopped. An injunction or interim measure (*medidas cautelares* - provided in the Law on Administrative Judicial Review Articles 129-136) can be requested at any stage of the judicial procedure and no procedural requirement to be eligible for it is provided.

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

Based on Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, legal and other professional fees are liberalized and bar associations and other professional associations cannot impose either minimum or maximum prices for services. There is no rule on the costs.
In Spain the "loser party pays" principle applies (see answer in section 1.7.3.6)). The consequence in that case is that the party will have to pay the amount imposed by the court after a procedure instigated by the judicial secretary to fix the costs of lawyers and experts as well as the court fees. This procedure is provided by Law 1/2000, of 7 January, on Civil Judicial Procedure (Arts. 241-246).
The word. "prohibitive" is very subjective, as it depends on the economic situation of the loser. There are no safeguards against the cost being prohibitive for this reason, and the best alternative for NGOs that can exercise *actio popularis* is to request legal aid as it is a right provided by the Aarhus Law. There is no express statutory reference to a requirement that costs should not be prohibitive.

1.3. Decisions, acts or omissions concerning the administrative procedures to be followed to comply with the public participation requirements of Article 7 of the Aarhus Convention in respect of plans and programmes not submitted to the procedures set out in the Strategic Environmental Assessment (SEA) Directive 2001/42/EC[5]

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

Article 17 of the Aarhus Law requires that public participation procedures are undertaken for plans and programmes on waste, batteries, air quality, packaging and packaging waste, among other things. Thus, when those procedures are not carried out or are carried out in violation of the requirements of the procedures provided by the Aarhus Law, the decisions, acts or omissions in that regard can be challenged.
The main law regulating access to justice in environmental matters is the Aarhus Law. Title IV of this Law is devoted to access to justice and administrative procedures on environmental matters. This title applies to those plans or programmes. The following laws also apply to judicial procedures to defend the environment which also apply to those plans:
Law 29/1998, of 13 July, on administrative judicial procedure.
Law 1/2000, of 7 January, on civil judicial procedure.
Royal Decree of 14 September of 1882 approving the Law on Criminal Judicial Procedure.
In the administrative jurisdiction before bringing a case to a court of law on many occasions it is necessary to instigate an administrative review. The law regulating the administrative review procedure is Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations.

To file an administrative review, the condition is to be an interested or concerned party as provided in Article 4 of the Law on the Common Administrative Procedure and the Aarhus Law. The time-limit is one month after the administrative act or decision was notified or published or the omission took place. When the administrative procedure was initiated by a concerned party and the administration does not issue a decision within the deadline, “administrative silence” comes into play, and then there is no time-limit to file an administrative review (Art. 122, Law on the Common Administrative Procedure).
For judicial review the time-limit is two months after the challenged administrative decision or act was notified or published. If the administration did not issue a decision, the deadline is six months after the date the act should have been issued.
After the ratification by Spain of the Aarhus Convention and the adoption of the Aarhus Law, the right on access to justice in environmental matters become very effective. The only remaining problem is the lack of a general *actio popularis* for natural persons. The existing *actio popularis* only applies to those NGOs complying with specific criteria. In light of the Spanish legal framework, the doctrine on legal standing for environmental protection from the CJEU is not very relevant any longer.

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

The scope of administrative review in the case of those plans includes procedural and substantive questions and it can cover not only the issues alleged by the concerned parties but also those issues raised by the administrative reviewer of its own motion. The administrative review decision has to be consistent with the appellant’s requests (Art.119.3 Law on the Administrative Procedure).
First instance judges or courts can review the procedural and substantive legality of decisions on plans based on the petitions lodged by the plaintiff and the defendant in the lawsuit and the counter arguments to the lawsuit respectively. Judges and courts can only review what the plaintiff and the defendant ask for in their lawsuit and counter arguments (Art. 33, Law on Administrative Judicial Review). However, in administrative judicial reviews if the judge or court considers that that the issue to be judged was not duly understood by the parties because there appear to be other merits on which to base the case, it can ask the parties to file allegations.
In addition, Spanish judicial bodies are not allowed to adopt any decision which falls within the scope of discretion of the Public Administration, and which may entail a replacement of their activity (based on the principle of separation of judicial, executive and legislative powers).

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

There is a requirement to exhaust administrative review procedures when the first level administrative decision, act or omission does not bring to an end the administrative means of redress. Administrative decision, act or omission bringing to an end the administrative remedies are:
Decisions taken in procedures in which a specific law has substituted the hierarchical superior challenge for another procedure
Decisions of administrative bodies not having a hierarchical superior
Agreements, pacts, conventions or contracts considered as finalizing the procedure
Administrative decisions in procedures related to liability of the Administration
Decisions in complementary procedures related to infringements
Other administrative decisions when a law or a regulation establishes that they end the administrative procedure.

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

According to the Aarhus Law, NGOs meeting certain criteria[6] can exercise *actio popularis*. Thus, these entities are not required to participate in the public consultation phase of said plans or programmes, or to make comments or participate in hearings.
In addition, in cases where no *actio popularis* is possible, the rule is that, in order to have legal standing in the administrative judicial procedure, the plaintiff must show an interest. The Constitutional Court’s doctrine on standing is more linked to the concept of interest than to the concept of participation in the administrative procedure. For this reason, once the plaintiff shows an interest, it is not necessary to prove participation in the administrative procedure.

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

There are no special rules applicable to environmental plans apart from the general national provisions.
Under Spanish jurisdiction, there is injunctive relief available for environmental procedures including said plans and programmes. If the challenge is through administrative review, the competent body able to decide on that review can suspend the challenged plan or programme *ex officio* or at the request by the appellant. The competent body has to take into account and weight in a reasoned manner the damage the execution of the appealed plan could cause to the public interest or to a third-party interest against the damage that execution could cause to the claimant. After that, the suspension can take place when any of the following circumstances happens:
the execution might cause damages which cannot be repaired, or their reparation would be very difficult
the appealed plan is based on a violation of fundamental human rights which turns the act null.
In judicial reviews the judge or court can order to stop the implementation of the challenged plan. An injunction or interim measure (*medidas cautelares* - provided for in the Law on Administrative Judicial Review Articles 129-136) can be requested at any stage of the judicial procedure and no procedural requirement to be eligible for it is provided.

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

Based on Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, legal and other professional fees are liberalized and bar associations and other professional associations cannot impose either minimum or maximum prices for services. There is no rule on the costs.
In Spain the “loser party pays” principle applies (see answer in section 1.7.3.6)). The consequence in that case is that the party will have to pay the amount imposed by the court after a procedure instigated by the judicial secretary to fix the costs of lawyers and experts as well as the court fees. This procedure is provided by Law 1/2000, of 7 January, on Civil Judicial Procedure (arts. 241-246).
The word. “prohibitive” is very subjective, as it depends on the economic situation of the loser. There are no safeguards against the cost being prohibitive for this reason, and the best alternative for NGOs that can exercise *actio popularis* is to request legal aid as it is a right provided by the Aarhus Law. There is no express statutory reference to a requirement that costs should not be prohibitive.

1.4. Decisions, acts or omissions also concerning plans and programmes required to be prepared under EU environmental legislation[7]

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

The main law regulating access to justice in environmental matters is Law 27/2006 of 18 July on the rights to access to information, public participation and access to justice in environmental matters (the Aarhus Law). Title IV of this Law is devoted to access to justice and administrative procedures on

environmental matters. This title applies to plans such as those on waste, batteries, air quality, packaging and packaging waste, among other things. The following laws also apply to judicial procedures to defend the environment which also apply to those plans:
Law 29/1998, of 13 July, on administrative judicial procedure
Law 1/2000, of 7 January, on civil judicial procedure
Royal Decree of 14 September of 1882 approving the Law on Criminal Judicial Procedure.
In the administrative jurisdiction before bringing a case to a court of law on many occasions it is necessary to instigate an administrative review. The law regulating the administrative review procedure is Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations.
To file an administrative review the condition is to be an interested or concerned party as provided in Article 4 of the Law on the Common Administrative Procedure and the Aarhus Law. The time-limit is one month after the administrative act or decision was notified or published or the omission took place.
When the administrative procedure was initiated by a concerned party and the administration does not issue a decision within the deadline, “administrative silence” comes into play, and then there is no time-limit to file an administrative review (Art. 122, Law on the Common Administrative Procedure).
For judicial review the time-limit is two months after the challenged administrative decision or act was notified or published. If the administration did not issue a decision, the deadline is six months after the date the act should have been issued.
After the ratification by Spain of the Aarhus Convention and the adoption of the Aarhus Law the right on access to justice in environmental matters become very effective. The only remaining problem is the lack of a general *actio popularis* for natural persons. The existing *actio popularis* only applies to those NGOs complying with specific criteria. In light of the Spanish legal framework, the doctrine on legal standing for environmental protection from the CJEU is not very relevant any longer.

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

The form in which the plan or programme is adopted makes a difference in terms of legal standing.
Administrative review (Article 112.1, Law on the Common Administrative Procedure) and judicial review (Article 1, Law on Administrative Judicial Review) can be filed by concerned parties in the terms of Article 4 of Law on the Common Administrative Procedure and by NGOs that can exercise *actio popularis* when the plan has been adopted by an administrative act. If the plan or programme has been adopted by a regulatory act -a Royal Decree when it is the State level or a Decree at the Autonomous Community level or an ordinance at the municipal level - it can only be challenged through judicial review (Article 112.3, Law on the Common Administrative Procedure and Article 1, Law on Administrative Judicial Procedure) by those having an interest.
If the plan or programme has been adopted by a legislative act – i.e. Law or Legislative Decree - it has to be challenged through an unconstitutionality review before the Spanish Constitutional Court. This challenge has to be based on a violation of constitutional provisions. Standing for this review is limited to (Article 32, Organic Law 2/1979, of 3 October, on the Constitutional Court[8]):
The Head of Government
The Ombudsman
50 Members of the Spanish Parliament
50 Senators.
If the plan or programme adopted by Law could affect the scope of an Autonomous Community, standing is extended to the collegiate bodies of the Autonomous Community (executive power) and to its Assemblies or Parliamentary bodies if there is an agreement to challenge it.
The same applies to plans or programmes adopted through Autonomous Community laws.
In addition, judges and courts can file by own motion or at the request of a party in a judicial review a “question of unconstitutionality” against a plan or programme approved by a legislative act when the judge or court considers that this Law applies to the case and it may be contrary to the Spanish Constitution (Article 37, Law on the Constitutional Court).

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

The scope of administrative review in the case of these plans or programmes includes procedural and substantive questions and it can cover not only the issues alleged by the concerned parties but also those issues raised by the administrative reviewer of its own motion. The administrative review decision has to be consistent with the appellant’s requests (Art.119.3 Law on the Administrative Procedure).
First instance judges or courts can review the procedural and substantive legality of decisions on plans based on the petitions lodged by the plaintiff and the defendant in the lawsuit and the counter arguments to the lawsuit respectively. Judges and courts can only review what the plaintiff and the defendant ask for in their lawsuit and counter arguments (Art. 33, Law on Administrative Judicial Review). However, in administrative judicial reviews if the judge or court considers that that the issue to be judged was not duly understood by the parties because there appear to be other merits on which to base the case, it can ask the parties to file allegations.
In addition, Spanish judicial bodies are not allowed to adopt any decision which falls within the scope of discretion of the Public Administration, and which may entail a replacement of their activity (based on the principle of separation of judicial, executive and legislative powers).

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

There is a requirement to exhaust administrative review procedures when the first level administrative decision, act or omission related to those plans or programmes does not bring to an end the administrative means of redress. Administrative decisions, acts or omissions bringing to an end the administrative remedies are:
Decisions taken in procedures in which a specific law has substituted the hierarchical superior challenge for another procedure
Decisions of administrative bodies not having a hierarchical superior
Agreements, pacts, conventions or contracts considered as finalizing the procedure
Administrative decisions in procedures related to liability of the Administration
Decisions in complementary procedures related to infringements
Other administrative decisions when a law or a regulation establishes that they end the administrative procedure.

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

According to the Aarhus Law, NGOs meeting certain criteria[9] can exercise *actio popularis*. Thus, these entities are not required to participate in the public consultation phase of said plans or programmes, or to make comments nor to participate in hearings.
In addition, in cases where no *actio popularis* is possible, the rule is that to have legal standing in the administrative judicial procedure, the plaintiff must show an interest. The Constitutional Court’s doctrine on standing is more linked to the concept of interest than to the concept of participation in the administrative procedure. For this reason, once the plaintiff shows an interest, it is not necessary to prove participation in the administrative procedure.

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

There are no grounds/arguments precluded from the judicial review phase. It is even possible to bring new grounds/arguments that were not used during the administrative review phase.

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

Article 24 of the Spanish Constitution recognizes the right to a fair and equitable trial as a human right integrated within the fundamental right to a “tutela judicial efectiva” (right to obtain the effective protection of the Judges and the Courts in the exercise of his or her legitimate rights and interests). This right involves the right to a process with all guarantees and right to a due process with impartial judges.

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

The right to “tutela judicial efectiva” in Article 24 of the Spanish Constitution also implies a right to a process without undue delays and the right to obtain a judgment and its execution within a reasonable time. However, the judicial procedures in environmental matters as it is for said plans and programmes are often too long and when a judgment is issued the damage has been done.

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

Under Spanish jurisdiction, there is injunctive relief available for environmental procedures such as those related to said plans and programmes. If the challenge is through administrative review the competent body able to decide on that review can suspend *ex officio* or after the request by the appellant the challenged administrative decision. The competent body has to take into account and weight in a reasoned manner the damage the execution of the appealed administrative decision could cause to the public interest or a third-party interest against the damage that execution could cause to the claimant. After that, the suspension can take place when any of the following circumstances happen:

the execution might cause damages which cannot be repaired, or their reparation would be very difficult.

the appealed decision is based on a violation of fundamental human rights which makes the act null.

In judicial reviews the judge or court can order to stop the implementation of the challenged environmental decision. An injunction or interim measure (*medidas cautelares* - provided in the Law on Administrative Judicial Review Articles 129-136) can be requested at any stage of the judicial procedure and no procedural requirement to be eligible for it is provided.

There are no special rules applicable to each sector apart from the general national provisions.

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

Based on Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, legal and other professional fees are liberalized and bar associations and other professional associations cannot impose either minimum or maximum prices for services. There is no rule on the costs.

In Spain the “loser party pays” principle applies (see answer in section 1.7.3.6)). The consequence in that case is that the party will have to pay the amount imposed by the court after a procedure instigated by the judicial secretary to fix the costs of lawyers and experts as well as the court fees. This procedure is provided by Law 1/2000, of 7 January, on Civil Judicial Procedure (arts. 241-246).

The Spanish legislation do not contain any mention of the requirement that costs should not be prohibitive. However, as this is contained in the Aarhus Convention and this Convention is part of the Spanish legal order, this requirement has to be respected.

1.5. Executive regulations and/or generally applicable legally binding normative instruments used to implement EU environmental legislation and related EU regulatory acts[10]

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

The main law regulating access to justice in environmental matters, including legislative and regulatory acts to protect the environment which transpose EU environmental legislation, is Law 27/2006 of 18 July on the rights on access to information, public participation and access to justice in environmental matters (the Aarhus Law). Title IV of this Law is devoted to access to justice and administrative procedures on environmental matters. This title applies to some normative acts of a regulatory nature transposing EU environmental legislation, but does not apply to legislative acts. The following laws apply to judicial review procedures to challenge normative acts of a regulatory nature transposing EU environmental legislation:

Law 29/1998, of 13 July, on administrative judicial procedure.

Law 1/2000, of 7 January, on civil judicial procedure.

Royal Decree of 14 September of 1882 approving the Law on Criminal Judicial Procedure.

In the administrative jurisdiction before bringing a case to a court of law on many occasions it is necessary to instigate an administrative review. The law regulating the administrative review procedure is Law 39/2015, of 1 October, on the Common Administrative Procedure of Public Administrations.

Most of EU environmental legislation is transposed in Spain by:

Acts of a legal or legislative nature: Laws adopted by the Spanish Parliament, Legislative Decrees and Legislative Royal Decrees adopted by the Council of Ministers. At the Autonomous Community level, EU legislation may be transposed by Laws adopted by the regional assemblies or parliaments, or by Legislative Decrees adopted by the regional government.

Acts of a regulatory nature: Royal Decrees adopted by the Council of Ministers or Ministerial Orders adopted by the competent minister. At the Autonomous Community level, EU legislation may be also transposed by Decrees adopted by the President of the Autonomous Community, or by orders or resolutions of the competent regional minister. At the municipal level this is done by a municipal ordinance adopted by the municipal chamber comprised by the mayor and counsellors.

Laws cannot be directly challenged or appealed before a court of law by natural or legal persons. Laws can only be challenged through the unconstitutionality review before the Spanish Constitutional Court. This challenge has to be based on a violation of constitutional provisions. Standing for this review is limited to (Article 32, Organic Law 2/1979, of 3 October, on the Constitutional Court[11]):

The Head of Government.

The Ombudsman.

50 Members of the Spanish Parliament.

50 Senators.

If State laws could affect the scope of competence of an Autonomous Community, standing is extended to the collegiate bodies of the Autonomous Community (executive power) and to their Assemblies or Parliamentary bodies if there is an agreement to challenge it. The same applies to Laws adopted by Autonomous Community Parliaments.

The deadline to challenge a Law or act of a legislative nature before the Constitutional Court is 3 months after its publication in the official journal. However, when the unconstitutionality review is filed by the President of the Government or the executive or by presidential bodies of the Autonomous Communities this deadline may be 9 months under certain conditions.
In addition, in the course of a procedure against an administrative act in which a Law that transposes EU environmental legislation is under question, judges and courts can file of their own motion or at the request of a party in that judicial review a "question of unconstitutionality" when the judge or court considers that that Law applies to the case and it may be contrary to the Spanish Constitution (Article 37, Law on the Constitutional Court).
Act of a regulatory nature transposing EU environmental legislation can only be challenged through judicial review (Articles 112.3, Law on the Common Administrative Procedure and Article 1, Law on Administrative Judicial Procedure) by the concerned public, i.e. those with an interest in the terms of the administrative judicial review. The deadline to file it is of two months after publication of the challenged regulatory act in the corresponding official journal.
After the ratification by Spain of the Aarhus Convention and the adoption of the Aarhus Law, the right of access to justice in environmental matters become very effective. The only remaining problem is the lack of a general *actio popularis* for natural persons. The existing *actio popularis* only applies to those NGOs complying with specific criteria. In light of the Spanish legal framework, the doctrine on legal standing for environmental protection from the CJEU is not very relevant any longer.

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

First instance judges or courts can review the procedural and substantive legality of acts of a regulatory nature based on the petitions lodged by the plaintiff and the defendant in the lawsuit and the counter arguments to the lawsuit respectively. Judges and courts can only review what the plaintiff and the defendant ask for in their lawsuit and counter arguments (Art. 33, Law on Administrative Judicial Review). However, in administrative judicial reviews if the judge or court considers that that the issue to be judged was not duly understood by the parties because there appear to be other merits on which to base the case, it can ask the parties to file allegations.
The judge or court can rule the regulatory act contrary to Law and it can annul in its totality or partially the challenged regulatory act and can order to modify it.
In the case of challenges to legislative nature, if the Constitutional Court declares the act unconstitutional, it also has to declare that act null as well as those acts to which it has to be extended because there are connections, or which are consequential on it. The Constitutional Court can base the unconstitutionality in the infringement of any constitutional provision, even those not alleged in the procedure.

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

When challenging acts of a legislative and a regulatory nature, judicial review is the only means of redress. Therefore, there is no requirement to exhaust administrative review procedures.

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

In order to challenge acts of a legislative or regulatory nature transposing EU environmental legislation, there is no requirement to have participated in the public consultation before the adoption of those acts in order to file a judicial review against it.

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

Under Spanish jurisdiction, there is injunctive relief available for environmental procedures against acts of a regulatory nature which transpose EU environmental legislation. It is in the writ of appeal or in the lawsuit against that regulatory act to be filed before a judge or court that the injunction or interim measure has to be requested.
In judicial reviews the judge or court can order the implementation of regulatory acts to be stopped. In such cases, the judicial Secretary has to order the publication of such a decision.
There are no special rules applicable when requesting injunctions or interim measures in the course of a judicial review against an act of a regulatory nature transposing EU environmental legislation. Thus, Articles 129-136 providing the procedure for interim measures of the Law on the Administrative Judicial Review apply.
The admission of an unconstitutionality review does not lead to suspension of the implementation of the challenged legal provisions. It can only be suspended by the Constitutional Court when the President of the Government submits a Law or an act of a legal nature from an Autonomous Community and expressly requests in the lawsuit such a suspension of the entry into force and implementation of the challenged legal act (Article 30 Organic Law of the Constitutional Court). However, the Constitutional Court has to ratify or cancel the suspension within a period of five months.

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

The procedures before the Constitutional Court are free, including the unconstitutionality review (Article 95., Organic Law on the Constitutional Court). However, the Court can impose the costs of a procedure on the party or parties that make ungrounded allegations or when it considers there was bad faith in the procedure or abuse of the law. In those cases the Constitutional Court can also impose a fine ranging from 600 to 3,000 euros.
For cases against acts of a regulatory nature transposing EU environmental legislation, there are no rules on the costs. Based on Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, legal and other professional fees are liberalized and bar associations and other professional associations cannot impose either minimum or maximum prices for services.
In Spain the "loser party pays" principle applies (see answer in section 1.7.3.6)). The consequence in that case is that the losing party will have to pay the amount imposed by the court after a procedure instigated by the judicial secretary to fix the costs of lawyers and experts as well as the court fees. This procedure is provided by Law 1/2000, of 7 January, on Civil Judicial Procedure (Arts. 241-246).
Spanish legislation does not contain any mention to the requirement that costs should not be prohibitive. However, as this is contained in the Aarhus Convention and this Convention is part of the Spanish legal order, this requirement has to be respected.

7) Is it possible to bring a legal challenge before a national court concerning any related EU regulatory act with a view to a validity reference under Article 267 TFEU, and if so how[12]?

It is important to note at the outset that, in Spain, the decision to file a preliminary ruling before the CJEU is a decision that exclusively belongs to the judge or court but that the parties in a procedure can request the judge or court to file it.
A legal challenge against an EU regulatory act can be brought within the course of a judicial review against an administrative act or regulatory act which is an act implementing the EU regulatory act. Then, the parties can request the judge or court to file it although, as mentioned earlier, it is for the judge to decide whether or not to do it. Normally, the parties can make such a request in their lawsuit or allegations in a part of the process called "otrosí". When the judge or court has doubts on the validity of the EU regulatory act has to file the preliminary ruling.

[1] This category of case reflects recent case-law of the CJEU such as *Protect C-664/15, the Slovak brown bear case C-240/09, see as described under the Commission Notice C/2017/2616 on access to justice in environmental matters*
[2] These criteria are:
Their statutes include as the association's goal the protection of the environment or of any of its elements.
The association must be legally constituted at least 2 years before the date in which the actions is initiated; it must be active in achieving its goals.
A geographical connection (established in their statutes) with the area affected by the act or omission.
[3] The SEA Directive relates to plans and programmes. These are also covered by Article 7 and Article 9(3) of the Aarhus Convention.
[4] These criteria are:
Their statutes include as the association's goal the protection of the environment or of any of its elements.
The association must be legally constituted at least 2 years before the date in which the actions is initiated; it must be active in achieving its goals.
A geographical connection (established in their statutes) with the area affected by the act or omission.
[5] See findings under ACCC/C/2010/54 for an example of a plan not submitted to SEA but subject to the public participation requirements of Article 7 of the Aarhus Convention.
[6] These criteria are:
Their statutes include as the association's goal the protection of the environment or of any of its elements.
The association must be legally constituted at least 2 years before the date in which the actions is initiated; it must be active in achieving its goals.
A geographical connection (established in their statutes) with the area affected by the act or omission.
[7] These fall within the scope of both Article 7 and Article 9(3) of the Aarhus Convention. See also relevant case-law of the Court of Justice of the European Union such as Case C-237/97, Janecek and cases such as Boxus and Solvay C-128/09-C-131/09 and C-182/10, as referred to under the Commission Notice C/2017/2616 on access to justice in environmental matters.
[8] Organic Law 2/1979 of 3 October on the Constitutional Court (BOE num. 239, of 05.10.1979).
[9] These criteria are:
Their statutes include as the association's goal the protection of the environment or of any of its elements.
The association must be legally constituted at least 2 years before the date in which the actions is initiated; it must be active in achieving its goals.
A geographical connection (established in their statutes) with the area affected by the act or omission.
[10] Such acts come within the scope of Article 8 and Article 9(3) of the Aarhus Convention. An example of such an act concerns the decision of the national administration that featured in Case C-281/16, *Vereniging Hoekschewaards Landschap*,ECLI:EU:C:2017:774.
[11] Organic Law 2/1979 of 3 October on the Constitutional Court (BOE num. 239, of 05.10.1979).
[12] For an example of such a preliminary reference see Case C-281/16, *Vereniging Hoekschewaards Landschap*,ECLI:EU:C:2017:774
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Other relevant rules on appeals, remedies and access to justice in environmental matters

Remedies against the silence of the administration

The Administration is obliged to decide on a written resolution and notify it in all administrative procedures (Article 21.1. Law on the Common Administrative Procedure).
However, on many occasions the administration does not take a decision within the applicable deadlines. In these cases, so called "administrative silence" or inaction enters into play. There are to kind of administrative silence under Spanish. Law:
Positive silence, which implies that the administration approves the request or application filed by a natural or legal person. In this case, the administrative silence is considered as an administrative act which concludes the administrative procedure. In addition, given the obligation of the administration to take a decision, if it takes it later it has to confirm the positive response.
Negative silence (which implies an implicit refusal of the application), whose effect is to allow the concerned public or party to file the correspondent administrative review. In light of the obligation of the administration to decide, if it takes it later it does not have to be attached to the negative silence.
Presumed acts (tacit decisions) produced by administrative silence can be challenged through administrative review and/or judicial review.
The administrative review is of two types:
Review by the hierarchical superior (recurso de alzada): this review has to be filed when the administrative silence is produced by a presumed act issued by a public servant having a hierarchical superior. This review is compulsory when the challenged presumed act does not close the administrative means of redress and must be filed before filing a judicial review.
Review by the same administrative authority that issued the presumed act: this review is voluntary as it can only be filed against a presumed administrative act bringing to an end the administrative means of redress. However, an act bringing to an end the administrative means of redress can be directly challenged through judicial review.
This is possible when the first level administrative decision closes or brings to an end the administrative means of redress. This happens in the following cases:
Decisions taken in procedures in which a specific law has substituted the hierarchical superior challenge for another procedure
Decisions of administrative bodies not having a hierarchical superior
Agreements, pacts, conventions or contracts considered as finalizing the procedure
Administrative decisions in procedures related to liability of the Administration
Decisions in complementary procedures related to infringements
Other administrative decisions when a law or a regulation establishes that they end the administrative procedure.
The decision or act was issued by a Minister or a Secretary of State
Once the administrative means of redress have been closed, the presumed act by administrative silence can be subject to judicial review.
With respect to the AAI procedure established in RDL 1/2016, concerning integrated pollution prevention and control, and in line with the condition that the IPPC permit has to be a written permit, Article 21.2 states that once the deadline of nine months given to issue the authorization has elapsed without an explicit resolution, it shall be considered to be rejected.

Penalties that the judiciary or any other independent and impartial body (information commissioner, ombudsman, prosecutor, etc.) can impose on the public administration for failing to provide effective access to justice.

Under Spanish law there is no possibility for the concerned public to request the judiciary or any other independent or impartial body to impose penalties on the public administration for failing to provide effective access to justice or for any other violation of legal provisions. When a judicial body rules that an administration has not complied with provisions on access to justice on environmental matters it can impose the costs of the judicial procedure.

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

Once a judge's or a court's ruling becomes firm (because it has to been appealed or it cannot be appealed), the judicial secretary notifies this to the administrative body whose act, or decision was challenged, for it to comply with the orders in the ruling. If the orders are not complied with within two months, the concerned public can request "compulsory execution". In these cases, the judicial secretary has to call upon the non-compliant administration to file allegations, and if the lack of compliance with the ruling is proved, the judge or court may:

Impose penalties from 150 to 1.500 euros per day on the authorities, public servants or agents who do not respect the orders of the judge as well as reiterate those penalties until complete execution of the ruling, without prejudice to other financial responsibilities.

Compile the corresponding testimonials by the concerned public to claim criminal liability.

Need of specialized courts or trained judges

Given the complexity of environmental protection cases, one of the main challenges in Spain regarding access to justice in environmental matters is to have specialized courts or trained judges. This would guarantee that the cases are heard and ruled on based on appropriate knowledge and understanding and with the necessary resources.

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