**Annex B - Key points arising from the CJEU’s judgment in Edwards:**

* The requirement that litigation should not be prohibitively expensive concerns all the costs arising from participation in the judicial proceedings. The prohibitive nature of costs must therefore be assessed as a whole, taking into account all the costs borne by the party concerned (paras 27 and 28).
* The assessment of what must be regarded as prohibitively expensive is not a matter for national law alone (paras 29 and 30).
* The objective of the EU legislature is to give the public concerned ‘wide access to justice’ in order that they may play an active part in protecting and improving the quality of the environment. The requirement that costs should be ‘not prohibitively expensive’ pertains to the observance of the right to an effective remedy enshrined in Article 47 of the Charter of Fundamental Rights of the European Union, and to the principle of effectiveness, in accordance with which detailed procedural rules governing actions for safeguarding an individual’s rights under European Union law must not make it in practice impossible or excessively difficult to exercise rights conferred by European Union law (paras 31-33).
* Although the Aarhus Implementation Guide (2000) is not a binding interpretation of that Convention, it is persuasive (in noting that the cost of bringing a challenge under the Convention or to enforce national environmental law must not be so expensive as to prevent the public from seeking review in appropriate cases) (para 34).
* In accordance with Article 10a of Directive 85/337 and Article 15a of Directive 96/61, the requirement that judicial proceedings should not be prohibitively expensive means that the persons covered by those provisions should not be prevented from seeking, or pursuing a claim for, a review by the courts that falls within the scope of those articles by reason of the financial burden that might arise as a result (para 35).
* The assessment as to what is prohibitively expensive cannot be based exclusively on the estimated financial resources of an ‘average’ applicant, since such information may have little connection with the situation of the person concerned. Equally, it cannot be carried out solely on the basis of the financial situation of the person concerned but must also be based on an objective analysis of the amount of the costs, particularly since members of the public and associations are naturally required to play an active role in defending the environment. To that extent, the cost of proceedings must not appear, in certain cases, to be objectively unreasonable. Thus, the cost of proceedings must neither exceed the financial resources of the person concerned nor appear, in any event, to be objectively unreasonable (paras 40-41).
* In deciding the figure, other factors are relevant, including: (i) the situation of the parties concerned; (ii) whether the claimant has a reasonable prospect of success; (iii) the importance of what is at stake for the claimant and the protection of the environment; (iv) the complexity of the relevant law and procedure; (iv) the potentially frivolous nature of the claim at its various stages; and (v) the existence of a national legal aid scheme or a costs protection regime (paras 42 and 46).
* The fact that the claimant has not been deterred, in practice, from asserting his or her claim is not in itself sufficient to establish that the proceedings are not, as far as that claimant is concerned, prohibitively expensive (para 43).
* The requirement that judicial proceedings should not be prohibitively expensive cannot be assessed differently by a national court depending on whether it is adjudicating at the conclusion of first-instance proceedings, an appeal or a second appeal (para 44 and 45).