



***EELF Workshop Meeting European  
Commission and Academia***

# The interplay between national judges and the CJEU

Prof. Dr. Luc Lavrysen  
Ghent University  
Belgian Constitutional Court  
President EU Forum of Judges for the Environment



## Context

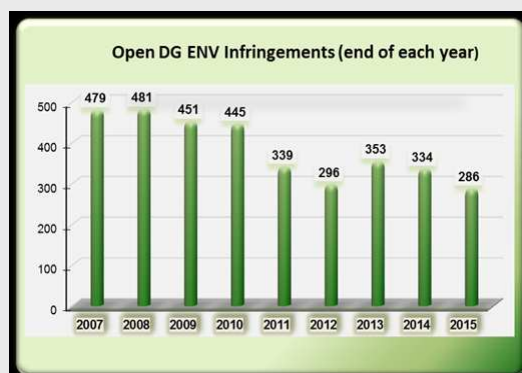
- Domestic Environmental Law is strongly driven by International & European Environmental Law
- National Judges are (often) the first EU judges (very limited direct access to CJEU)
- Primacy of EU Law (according the CJEU)
- Duty of consistent Interpretation (id.)



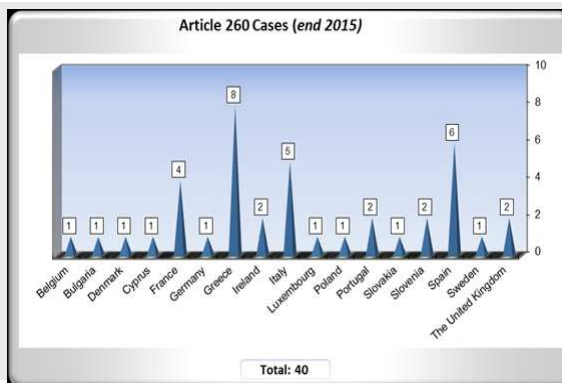
## Context

- The application of EU Environmental Law by National Judges is not more complicated than that of domestic law in the **ideal situation**:
  - that domestic law is perfectly consistent with EU secondary law & is not violating primary EU law
  - but: this seems not to be a reality in the majority of member states; implementation of EU environmental law has many flaws in most of the EU MS
    - **Communication on Improving the delivery of benefits from EU environment measures: building confidence through better knowledge and responsiveness (7 March 2012 )**
    - **Infringement procedures:**  
[http://ec.europa.eu/environment/legal/law/press\\_en.htm](http://ec.europa.eu/environment/legal/law/press_en.htm)

## Context



## Context



Prof. Dr. L. LAVRYSEN  
Centrum voor Milieu- en Energierecht

pag. 5

## Context

- **EU Monitoring the application of Union law 2014 Annual Report**
  - New Complaints: Environment 508/3714 (13,7 %)
  - New EU Pilot Files: Environment 207/1208 (17,1%)
  - New Infringement Procedures: Environment 174/893 (19,4 %)
  - Open Infringement Cases: Environment 322/1347 (24 %)
  - New Late Transposition Infringement Cases: Environment 127/575 (22 %)
- **CJEU, ANNUAL REPORT 2015 JUDICIAL ACTIVITY**
  - Terminated "Environmental cases" 2011-2015 (not REACH, internal market...) 35/27/35/30/27 (4,8 à 6,4 %)

Prof. Dr. L. LAVRYSEN  
Centrum voor Milieu- en Energierecht

pag. 6

## CJEU

- Binding interpretations of EU primary & secondary law, including international treaties to which the EU is a party (*Aarhus Convention – 51 judgements and orders of CJEU & GCEU – 16 Judgements on preliminary rulings*)
  - National Judges may refer such questions to the CJEU
  - Last instance judges shall refer such questions, except (CILFIT criteria)
    - *Acte clair*
    - *Acte éclairé*

## CJEU

- Monopoly to declare void EU secondary law
  - Case 314/86 *Foto-Frost*
- Interim measures concerning national implementing measures
  - Joined cases C-143/88 and C-93/89 *Zuckerfabrik*

## Belgian Constitutional Court

- Reputation to be very open to international and EU Law
- No requirement of “direct effect”
- Active engagement in judicial dialogue
- References for preliminary rulings (both on interpretation and validity)
  - 26 cases referred to CJEU
  - Comp. : Austria: 5; Italy 2; Germany: 1; Spain: 1; France: 1; Lithuania: 1; Luxembourg: 1;

## Belgian Constitutional Court

### Number of references to EU Law in judgments

Aarhus Treaty (25), EIA Directive (21), Habitats Directive (11), Renewable Energy Directive (10), Waste Framework Directive (8), SEA Directive (7), Birds Directive (6), Fuel Quality Directive (5), ETS (3), Packaging Directive (3), Waste Incineration Directive (2), ELD (2), Toxic Waste Directive (1), Batteries Directive (1), Nitrates Directive (1), Water Framework Directive (1), Noise Directive (1), Airport Noise Directive (1), Biofuels Directive(1)

## Belgian Constitutional Court

### Number of referrals for preliminary ruling

- Case C-480/03, *H. Clerens* (Bird Directive – Captivity)
- Case C-182/10, *Marie-Noëlle Solvay and Others* (EIA – Ratification by Parliament – Aarhus – Habitat)
- Case C-567/10, *Inter-Environnement Bruxelles and Others* (SEA - total or partial repeal of a land use plan)
- Case C-26/11, *Belgische Petroleum Unie and Others* (biofuels)
- Case C-195/12, *Industrie du bois de Vielsalm & Cie* (renewable energy/green certificates)

**- 5 % of cases with reference to EU law/CJEU jurisprudence**

## Preliminary rulings

- CJEU doctrines that foster the enforcement of EU Law mainly established by way of preliminary rulings
  - Case 6/64 *Costa v ENEL* (supremacy of European Union law over MS law)
  - Case 106/77 *Simmenthal* (even over later MS law)
  - Case 33/76 *Rewe Zentralfinanz* (national procedural law while implementing EU law must be effective and at least equivalent)
  - Case 41/74 *Van Duyn* (direct effect of directives)
  - Case C-106/89 *Marleasing* (consistent interpretation) etc., etc..

## Preliminary rulings

- **Leading Environmental Cases also mainly by way of preliminary rulings**
  - Case C-72/95 *Kraaijeveld and Others* (own motion examination if boundaries of discretionary powers are respected)
  - Case C-129/96 *Inter-Environnement Wallonie v Région wallonne* (standstill during transposition period)
  - Case C-C-127/02 - *Waddenvereniging and Vogelbeschermingvereniging* (discretion do not exclude direct effect)
  - Case C-201/02 *Wells* (horizontal indirect effects of environmental directives)

## Preliminary rulings

- Case C-237/07 *Janecek* (persons directly concerned must be in a position to require the competent national authorities to draw up an action plan in view of respecting air quality standards)
- Case C-263/08 *Djurgården-Lilla Värtans Miljöskyddsförening* (access to justice of smaller ENGO's, preclusion)
- Case C-240/09 *Lesoochranárske* (national law must be interpreted in the light of art. 9 Aarhus Convention)
- Case C-128/09 *Boxus and Others* (right to judicial review of project adopted by specific legislatif act)
- Case C-41/11 *Inter-Environnement Wallonnie/Terre Wallonne* (national judge may exceptionally postpone for a short time the annulment of an act violating EU law when substance in line with EU environmental law) etc.

## But...

- Application of CJEU doctrines is uneven trough MS
  - See: J.H. JANS, R. MACRORY & A.M. MORENO MOLINA, *National Courts and EU Environmental Law*, Groningen, Europa Law Publishing, 2013.
- Training of judges in EU Environmental Law still needed
  - EUFJE [www.eufje.org](http://www.eufje.org)
  - Cooperation with judges  
[http://ec.europa.eu/environment/legal/law/training\\_package.htm](http://ec.europa.eu/environment/legal/law/training_package.htm)