



Questionnaire for the EUFJE Conference 2012 at the Council of State of the Netherlands *The application of European environmental law by national courts*: Sweden

Answers from Anna-Lena Rosengardten, technical judge of the Land and Environment Court of Appeal in Stockholm, Sweden

Part 1. The interrelation between EU (environmental) law, national law and national environmental courts

1.2 Questions on the interrelation between EU (environmental) law, national law and national environmental courts

1. I consider myself
- a European judge
 - a national judge
 - equally a national and European judge
 - a European judge, first, and then a national judge
 - a national judge, first, and then a European judge.**

-
2. What is your view of EU law in general?
- Very positive
 - Fairly positive
 - No opinion (don't know)**
 - Fairly negative
 - Very negative

Comment: As a technical judge I have no experience of EU law, other than environmental EU law.

.....

3. What is your view of EU environmental law in general?
- Very positive
 - Fairly positive**
 - No opinion (don't know)
 - Fairly negative
 - Very negative

4. Propositions on the your view of the your role as EU court:
- a. I consider my constitution of a higher order than
- i. EU treaties;

Yes/no

- ii. EU secondary law. Yes/no
- b. When judgments of the ECJ and the national supreme court conflict, I will follow the ECJ. Yes/no
- c. The principle of loyal cooperation is a guiding principle for the National court. Yes/~~no~~

Comment: From my practical judging, I have no experience of conflicts that would illuminate the questions 4a or 4b, so I desist answering them.

.....

- 5. Is the relationship between EU environmental law and national law in your country
 - a. codified in your national law? Yes/no
 - b. acknowledged via national case law? Yes/~~no~~

If yes, please indicate how:

In individual cases where there is a scope for interpretation of the national legislation, the Swedish Supreme Court and the Land and Environment Court of Appeal have stated the relationship.

.....

- 6. What do you consider your task(s) with regard to EU law *and* do you consider these task(s) 'workable' or difficult:
 - a. to set aside any national rule that is in conflict with European law (the *Simmenthal*-obligation)? ~~Yes/no~~
 - b. to offer effective legal protection of European law? Yes/No
 - c. to ensure the uniform application of European law? ~~Yes/No~~

Comment: Normally, when judging an individual case, my assumption is that the Swedish legislation agrees with the EU-legislation. In some cases the Swedish legislation is also stricter than the EU-legislation. In general, my first concern is therefore to ensure an appropriate application and development of the national law (the Swedish Environmental Code). If the national law in an individual case should not fully agree with the EU-legislation, or where there is a scope for interpretation of the national legislation, the national law must be set aside or interpreted in accordance with the EU-legislation. I cannot honestly say that I consider it my task to fulfill what is stated under 6b and 6c. It is difficult to have this wide perspective in judging individual cases, when EU-legislation is applied directly in just a number of them. Nevertheless I'm of course aware that it is my judging in these cases, together with the judging of all other judges in the EU that provides the effective legal protection and ensures the uniform application of EU law as a whole.

.....

1.3 Questions on the role of EU law in national environmental cases

- 7. As an estimate, how many cases did your court decide in the period 1 January 2011 - 1 January 2012? Please indicate the total number:

In May 2011 a major reorganization of the environmental courts in Sweden took place. This reorganization also involved the Environmental Court of Appeal, that turned into the Land and Environment Court of Appeal. The Land and Environment Court of Appeal handles cases from all parts of Sweden according to the following legislation:

- legislation on real estate,
- the Planning and Building Act and,
- Environmental legislation – the Environmental Code.

The former Environmental Court of Appeal did not handle any cases according to the Planning and Building Act, and only cases from a part of Sweden when it concerned legislation on real estate. Instead some other kinds of cases were handled, that are not being dealt with in the new organization. Thus, the year 2011 is not a typical year when it concerns statistics of the number and types of cases since the old court was successively terminated and the new one built up.

Anyway, the total number of cases in the Environmental Court of Appeal/the Land and Environment Court of Appeal that were finished during 2011 was 1 039.

Type of case	Total number of cases	Number of cases where Leave of Appeal is needed
Legislation on Real Estate	131	(no information)
The Planning and Building Act	161	161
The Environmental Code	680	593

8. In how many of these cases:

a. was EU (environmental) law at issue?

0-1%; 1-10%; **10-25%**; 25-50%; 50-75%; 75-90%; 90-100%; 100%

b. was this EU law actually applied (taken into account)?

0-1%; 1-10%; **10-25%**; 25-50%; 50-75%; 75-90%; 90-100%; 100%

c. was this EU law the basis of your court's decisions?

0-1%; 1-10%; 10-25%; 25-50%; 50-75%; 75-90%; 90-100%; 100%

Comment: What I have indicated above is my rough assessment of the approximate proportion of cases according to the Environmental Code where the EU-law was directly at issue etc. (in practical terms: you had to read the directive or other EU-document). The proportion of cases where the EU-law was at issue directly or indirectly is of course much higher. With "indirectly" I mean that the EU-law is implemented in national legislation, and the court only applies the national legislation (in practical terms you only read the national legislation and not the underlying directive)

It is sometimes hard to draw the line whether the EU-law is at issue/applied etc. or not. For example, the Swedish legislation on a demand for a permit for environmentally hazardous activities dates back to 1969, which is long before Sweden was an EU-member state. This early Swedish environmental legislation contained to a great extent regulation that was later established by the IPPC- and the EIA-directives. Later, when Sweden

became a member of the EU, the system was changed in some parts to fully implement the EU-legislation, but in some parts the national system is still stricter than the EU-legislation. Today, when I apply the legislation on permits, I still consider it a national legislation, and it is only when there is room for different interpretations that I turn to the EU-directives. All the same, I use some kinds of EU-documentation even in applying the national legislation, for instance BREF-documents on BAT.

When it concerns parts of the environmental legislation that are more directly based on the EU-law, the national legislation is meant to be as strict (and not stricter) as the EU-law and where the traces of earlier national legislation are not so clear – for instance when it concerns the legislation on Nature 2000 areas – there is a stronger need to seek guidance from EU (ECJ, guidelines from the commission etc.) when applying the national legislation.

The overall conclusion might be that in many cases in the practical judging, there is a mixture of national and EU-legislation, and difficult to say how much of each.

9. Please provide insight in the type of cases in which the EU law was at issue:

- | | |
|--------------------------|---|
| a. Civil cases: | Never , rarely, regularly, mainly, all |
| b. Criminal cases: | Never, rarely, regularly, mainly, all |
| c. Administrative cases: | Never, rarely, regularly, mainly, all |
| i. general cases: | Never, rarely, regularly, mainly, all |
| ii. environmental cases: | Never, rarely , regularly, mainly, all |
| iii. planning law cases: | Never, rarely , regularly, mainly, all |
| d. Differentially: | Never, rarely, regularly, mainly, all |

If differently, please specify

Please indicate your type of court:

- civil court
- criminal court
- administrative court
 - general administrative court
 - environmental court
 - planning law court
- differentially: an environmental court that is a part of a common court.....**

Comment: In the answer to question 7 is shown what cases that are handled by the Land and Environment Court of Appeal. Most of the environmental cases are administrative, but there are also some civil cases. The court does not handle any criminal cases. Thus, it is only question 9a and 9c ii and iii above that can be answered.

10. Please provide insight in the top 5 of the most relevant topics in EU environmental legislation in the cases in which EU law was at issue:

- Access to information/consultation/court**
- Environmental impact assessment (such as EIA)
- Industrial emissions (IPPC/IED)
- Industrial accidents (post Seveso)
- Water**

- Air
- Noise
- Products
- **Chemicals**
- New technologies (Bio-/nanotechnology)
- Nuclear
- **Nature protection**
- **Waste management**
- Climate change
- Renewable energy
- Differentially,

Comment: The above is based on my personal assessment, not on statistics.

11. Please provide insight in the type of legal questions in which this EU (environmental) legislation was at issue in these cases:

- Procedural questions: Never, **rarely**, regularly, mainly, all
 - X access to justice**
 - legal remedies (reparation)
 - differently, namely
- Material norms: Never, **rarely**, regularly, mainly, all
 - X legality of national law**
 - legality of decisions/actions/sanctions imposed by national authorities
 - legality of EU law
- Differently, namely
 - Differently, **Never, rarely, regularly, mainly, all**

Comment: The EU law is used for the interpretation of the national law, and to find support for material assessments in individual cases.

.....

12. Please provide insight how the EU law entered the environmental case law. Was it relied on by:

- individuals never, **rarely**, regularly, mainly, all
- companies never, **rarely**, regularly, mainly, all
- NGOs never, **rarely**, regularly, mainly, all
- the legislature **never, rarely**, regularly, mainly, all
- national public authorities never, **rarely**, regularly, mainly, all
- official third parties to the dispute never, **rarely**, regularly, mainly, all
- differently: **The court itself** never, **rarely**, regularly, mainly, all

.....

Part 2. The use of the ECJ mechanisms of application of EU law

2.1 Introduction of EU legal framework

2.2 Questions on the application of the EU mechanisms to apply EU directives

13. Please estimate how often your court considered an EU environmental directive not or incorrectly implemented, differentiating between the 3 elements of implementation (transposition/application/enforcement) in the cases in which EU law was at issue in the period 1 January 2011-1 January 2012?

- Transposition: **never**, rarely, regularly, mainly, all
- Application: **never**, rarely, regularly, mainly, all
- Enforcement: **never**, rarely, regularly, mainly, all

If possible, please illustrate the judicial practice and reasoning used to verify the implementation of EU law (for example via a sketch of a typical national environmental case)

.....

14. Please indicate as an estimate over the total number of cases of your court where EU law was at issue in the period 1 January 2011-1 January 2012, which of the three mechanisms was/were applied by your court in case of a non or incorrect implementation of (environmental) directives?

- a. Consistent interpretation:
0-1%; 1-10%; 10-25%; 25-50%; 50-75%; 75-90%; 90-100%; 100%
- b. Direct effect (including the 'Kraaijeveld-test'):
0-1%; 1-10%; 10-25%; 25-50%; 50-75%; 75-90%; 90-100%; 100%
- c. State liability:
0-1%; 1-10%; 10-25%; 25-50%; 50-75%; 75-90%; 90-100%; 100%
- d. During the transposition/ transitional periods: the 'Inter-Environnement test'
0-1%; 1-10%; 10-25%; 25-50%; 50-75%; 75-90%; 90-100%; 100%
- e. Differently, namely
0-1%; 1-10%; 10-25%; 25-50%; 50-75%; 75-90%; 90-100%; 100%

Comment: As indicated above, question 13, the court did not find any directives non or incorrectly implemented.

.....

15. In general, do you use one or more of these mechanisms within one case?

- One mechanism, or
- Multiple mechanisms

Please

explain.....

Comment: The question is not relevant since the court has not found any directives non or incorrectly implemented.

16. In general, if any, what is your court's order of preference:

- Consistent interpretation/direct effect
- Direct effect/consistent interpretation
- Consistent interpretation/direct effect/state liability
- Direct effect/consistent interpretation/state liability
- Differently, namely

If possible, please indicate what the particular legal & practical arguments are for your court's order of preference

Comment: The question is not relevant since the court has not found any directives non or incorrectly implemented.

17. Does your court use directives when the transposition period or transitional period in these directives have not yet passed (including when the case concerns 'infringements' of these directives during these periods)?
- a. During the transposition period Yes/**no**
 - b. During other transitional periods (such as extension periods) Yes/**no**

If yes, please explain, if possible, *why* and *how* (by illustrating the line of reasoning used in such cases:

Why:.....*How*:.....

If yes, please also indicate, as an estimate, how often this occurred in the total cases of your court in the period 1 January 2011- 1 January 2012 in which EU law was at issue?

0-1% ; 1-10% ; 10-25% ; 25-50% ; 50-75% ; 75-90% ; 90-100% ; 100%

18. What concrete legal options (judicial decisions/remedies) does your court have at its disposal when, it concludes, on the basis of the EU mechanisms, that a EU directive was breached, in particular in view of the EU obligation to set aside any national rule that conflicts with EU law? Please select the options available to you and indicate for which EU mechanism they are available.

Your court is allowed to:

- to set aside (not apply) the conflicting national rule **consistent interpretation; direct effect;(EU) state liability**
- to declare that EU law was breached **consistent interpretation; direct effect;(EU) state liability**
- to force the legislature to act **consistent interpretation; direct effect;(EU) state liability**
 - give an order to adopt legislation **consistent interpretation; direct effect;(EU) state liability**
 - give order to act in a specific way **consistent interpretation; direct effect;(EU) state liability**
- to annul decisions **consistent interpretation; direct effect;(EU) state liability**
- to revoke a consent already granted **consistent interpretation; direct effect;(EU) state liability**
- to suspend a consent already granted **consistent interpretation; direct effect;(EU) state liability**

- to award damages
 - monetary compensation **consistent interpretation; direct effect;(EU) state liability**
 - factual reparation **consistent interpretation; direct effect;(EU) state liability**
- to offer interim relief **consistent interpretation; direct effect;(EU) state liability**
- to alter (break through) national exhaustive mandatory assessment systems, for instance by widening an exhaustive number of grounds for refusing permits **consistent interpretation; direct effect/(EU) state liability**
- differently **consistent interpretation; direct effect/(EU) state liability**

If differently,

.....

Comment: I have no experience of how the court would handle a case where the national legislation is stated to breach EU law, so I have no complete answer to the question. My spontaneous answer would however be that the court could set aside the conflicting national rule, could declare in the judgment that EU law is breached, could annul decisions, revoke or suspend consents already granted (by lower instance) and alter national assessment systems.

2.3 Questions on the application of consistent interpretation

19. Proposition: the mechanism of consistent interpretation is an advantageous principle.

I strongly agree, **agree**, neutral, disagree, strongly disagree

20. Does your court also use the mechanism of consistent interpretation *ex officio* (when parties did not request this)? **Yes/no**

21. How often, as an estimate, was the mechanism of consistent interpretation considered non usable by your court in the cases where EU law was at issue in the period 1 January 2011-1 January 2012?

Never, rarely, regularly, mainly, always

When the mechanism of consistent interpretation was considered *non usable* in these cases, this was due to:

- the principle of legal certainty **Never, rarely, regularly, mainly, always**
- other general principles of law **Never, rarely, regularly, mainly, always**
- *contra legem* interpretation **Never, rarely, regularly, mainly, always**
- the parties involved:
 - because the national public authority relied on consistent interpretation of the directive to the detriment of a citizen, where there was no formal third party: **Never, rarely, regularly, mainly, always**
 - because the national public authority relied on consistent interpretation of the directive to the detriment of a citizen, where there was a formal third party: **Never, rarely, regularly, mainly, always**

- in criminal proceedings, when consistent interpretation would have had the effect of determining of aggravating, directly the liability in criminal law:

Never, rarely, regularly, mainly, always

- differentially, namely

If possible, please illustrate the reasons *why* consistent interpretation was *not usable* (the limitations)

.....

22. As an estimate, in how many of the cases of your court where EU law was at issue in the period 1 January 2011-1 January 2012, did your court use interpretations of EU law by other national courts, including those of other Member States?

- Use of interpretation by other courts of your country
0-1% ; 1-10%; 10-25%; 25-50%; 50-75%; 75-90%; 90-100%; 100%
- Use of interpretation by national courts of other Member States
0-1% ; 1-10%; 10-25%; 25-50%; 50-75%; 75-90%; 90-100%; 100%

Please, if possible, illustrate when in particular the *latter* was the case.

.....

Please indicate whether there is a *need for information* on the interpretations of EU law by national courts of other Member States?

Yes/No

.....

2.4 Questions on the application of direct effect

Comment: I have no experience on the application of direct effect, and have difficulties in answering the questions below. I cannot answer the questions 23, 27 or 28 and question 24 only partly.

23. Propositions:

- The mechanism of direct effect is an advantageous principle.

I strongly agree, agree, neutral, disagree, strongly disagree.

- The criteria to establish whether or not a provision has direct effect are workable?

I strongly agree, agree, neutral, disagree, strongly disagree.

24. Please estimate how often your court establish the direct effect of provisions in a directive on the case law of other courts, in the case law where EU law was at issue in the period 1 January 2011-1 January 2012,

- Use of case law of other courts of your country
Never, rarely, regularly, mainly, always
- Use of case law of national courts of other Member States

Never, rarely, regularly, mainly, always

Please, if possible, illustrate when in particular *the latter* is the case.

.....

Please indicate whether there is a *need for information* on the use of direct effect of EU environmental law by national courts of other Member States?

Yes/no

.....

25. How often, as an estimate, did your court apply the mechanism of the *Kraaijeveld*-test (to examine whether the national public authorities stayed within the margin of discretion of provisions of directives) in the cases where EU law was at issue in the period 1 January 2011-1 January 2012?

Never, rarely, regularly, mainly, always

26. How often, as an estimate, was the mechanism of direct effect considered non usable by your court in the cases where EU law was at issue in the period 1 January 2011-1 January 2012?

Never, rarely, regularly, mainly, always

If the mechanism of consistent interpretation was considered non usable in these cases, please indicate the reasons *why*:

- Reason of legal certainty: **never, rarely, regularly, mainly, always**
- Prohibition of inverse direct effect (national public authority *versus* individual (incl. company/NGO)): **never, rarely, regularly, mainly, always**
- Prohibition of horizontal direct effect (individual *versus* individual): **never, rarely, regularly, mainly, always**
- Adverse horizontal side-effects of direct effect (*Wells*): **never, rarely, regularly, mainly, always**
- Differentially, namely

If possible, please illustrate these reasons (the limitations) , in particular of restrictions related to triangular situations (*e.g.* where the plaintiff (an individual) appeals, relying on EU law, against a decision of a national public authority granting a permit to another individual (the (in-) formal third party)

.....

27. Would you limit the use of the mechanism of direct effect by a national public authority in a case between this authority and a company, regarding the refusal of this authority to grant an environmental permit to this company, based -ex officio- directly on a provision in a directive, when there are potentially, but not formally third parties, involved? **Yes/no**

28. Would your court ex officio apply a provision of a directive that has direct effect (is sufficiently clear and precise) in a case where there are potentially third parties (such as NGOs protecting general interest of the

environment) but none of these parties is formally party to the case?

Yes/no

2.5 Questions on the application of State liability

Comment: I have no experience on the application of State liability, and have difficulties in answering the questions below. I cannot answer the questions 29 or 33.

29. Proposition: the mechanism of EU state liability is an advantageous mechanism.

I strongly agree, agree, neutral, disagree, strongly disagree

.....

30. Is there also a national instrument of state liability for violations of EU law?

Yes/no

If yes, how often, as an estimate, was the national instrument of state liability used by your court in the cases where EU law was at issue in the period 1 January 2011- 1 January 2012?

0-1%; 1-10%; 10-25%; 25-50%; 50-75%; 75-90%; 90-100%; 100%

If yes, please respond to the following proposition: I prefer the national instrument of state liability over the EU mechanism.

I strongly agree, agree, neutral, disagree, strongly disagree.

Please indicate why:

- Less stringent criteria
- More stringent criteria
- More clarity criteria
- Experience
- Request parties
- Differentially,

Please explain:

.....

31. In general, has the EU mechanism (or national instrument) of state liability ever been used for infringements of EU law by national courts for their judicial decisions (*Köbler*) in your country?

Yes/no

If yes,

- did these judicial decisions concern environmental cases?
- did they ever concern your court's judicial decisions?

Yes/no

Yes/no

If possible, please illustrate.....

32. Has an action based on the EU mechanism of state liability for an infringement of EU law ever been successful in the environmental case law of your court?

Yes/no

If no,

- has an action based on the *national* instrument of state liability for an infringement of EU law ever been successful in the environmental case law of *your court*?

Yes/no/don't know

Comment: There is no such national instrument

- by your knowledge, has an action based on the *EU* mechanism of state liability ever been successful in the environmental case law of *your country*?

Yes/**no**/don't know

- by your knowledge, has as an action based on the *national* instrument of state liability for infringements of *national law* in environmental case law ever been successful in *your country*?

Yes/no/don't know

Comment: There is no such national instrument

33. Does your court require from individuals (incl. companies/NGO's) that they minimize the damages they claim via a state liability action, meaning that they first should have relied on directly effective provisions of EU law in for instance an administrative procedure (make use of the legal remedies available)?

Yes/no

Part. 3. The (non)use of the preliminary procedure

3.1 Introduction of EU legal framework

3.2 Questions on the application of the preliminary procedure

34. Proposition: the preliminary procedure is a very useful.

I strongly agree, agree, **neutral**, disagree, strongly disagree

.....

35. How many references for preliminary rulings were made in environmental cases in your country in the period 1 January 2008-1 January 2012?

How many of these references where made by your court?

Comment: As a whole, there have been four references for preliminary rulings in environmental cases in Sweden. The cases are as follows.

<i>Case</i>	<i>Date of the ECJ judgment</i>	<i>Swedish court</i>	<i>What the questions concern</i>
<i>Gävle Kraftvärme AB</i>	<i>11 September 2008</i>	<i>The Supreme Court</i>	<i>The interpretation of the directive 2000/76/EC on the incineration of waste. What is a plant, and when should it be considered to be an incineration or a co-incineration plant respectively?</i>
<i>Nordiska Dental</i>	<i>14 June 2009</i>	<i>The Environmental</i>	<i>The application of the directive 93/42/EEC concerning medical devices. Could national</i>

<i>AB</i>		<i>Court of Appeal</i>	<i>legislation forbid the export of dental amalgam?</i>
<i>Djurgården-Lilla Värtans Miljöskyddsförening</i>	<i>15 October 2009</i>	<i>The Supreme Court</i>	<i>The right of an NGO to appeal. Could this right be limited to only NGO:s with 2000 members or more?</i>
-	<i>(no judgment as yet)</i>	<i>The Supreme Court</i>	<i>The application of the directive 2003/87/EC establishing a scheme for greenhouse gas emission allowance trading within the Community. Can there be exceptions from fines if a company by mistake omits to deliver allowances?</i>

36. What type(s) of preliminary questions were referred by your court?

Questions on:

- the interrelation between procedural law (procedural autonomy) and EU law**
- the use of the EU mechanisms of application of EU law
- material (environmental) EU law (for instance on interpretation, the interrelation between EU legal provisions)**
- differently namely, (see above, question 35)**

.....

37. Please estimate in how many of the cases of your court where EU law was at issue in the period 1 January 2011-1 January 2012, did the parties ask your court to request a preliminary question?

0-1%; **1-10%**; 10-25%; 25-50%; 50-75%; 75-90%; 90-100%; 100%

When these requests are turned down, are the reasons always stated in the ruling (for instance in a separate court decision)? **Yes/no**

.....

38. Has your court ever withdrawn preliminary references in environmental cases in the period 1 January 2008-1 January 2012? **Yes/no**

In this period have your court's preliminary questions been:

- left unanswered by the ECJ? **Yes/no (see question 35)**
- rephrased your court's preliminary questions in such a way that they were no longer relevant for the referring case? **Yes/no**

If yes, please indicate the number of cases where this occurred, and, if possible, illustrate

.....

39. Does your court wait for the 'perfect' case to refer a (number of) specific preliminary question, although the legal questions concerning EU law are already raised in other (earlier) national cases?

Yes/no

If possible, please explain,

.....

40. When a question requiring preliminary ruling is raised in a certain case does your court stay the proceedings:

- In that certain case: Yes/no
- In all other cases pending, where this question is relevant: Yes/no (no experience)

Does your court stay the proceedings in a case when there are—for that case relevant- preliminary questions referred:

- by other courts of your country: Yes/no
- by courts of other countries: Yes/no

.....

41. Can the national (environmental) court always use the preliminary ruling in the referring case?

Yes/no

42. Does your court use are the preliminary rulings beyond the referring cases?

Yes/no

43. Does your court use the preliminary rulings based on referrals by other courts, including those of other Member States?

Yes/no

44. Did you ever in hindsight incorrectly decide not to refer a preliminary question to the ECJ because you considered the Union law was irrelevant for the case or the relevant Union law was and *acte clair* and/or *acte éclairé*?

Yes/no

If yes, did it give rise to an (EU) action of state liability (*Köbler*-claim)?

Yes/no

Would you be able, according to national (procedural) law to repair such a court decision?

Yes/no

#If possible, please explain,

.....

Part 4. The interrelation between national procedural autonomy and EU (environmental) law

4.1 Introduction of the EU legal framework

4.2 Questions on the application of EU restrictions of the procedural autonomy

45. Please estimate in how many of the cases of your court in the period 1 January 2011-1 January 2012 where EU law was at issue, did the EU restrictions of the national procedural autonomy play a role:

0-1%; 1-10%; 10-25%; 25-50%; 50-75%; 75-90%; 90-100%; 100%

46. Please estimate in how many of the cases of your court in the period 1 January 2011-1 January 2012 where EU law was at issue did you consider any national procedural rule **not** to be 'EU-proof'

0-1%; 1-10%; 10-25%; 25-50%; 50-75%; 75-90%; 90-100%; 100%

If possible, please specify which of following restrictions played a role in this case law:

- The *principle of equivalence*
- The principle of effectiveness*
- The principle of effective legal protection*
- Aarhus (including the Aarhus-case law by the ECJ)
- Secondary legislation:
 - Directive 2003/4 (Access to info)
 - Directive 2003/35 (Public participation)
 - Eco-liability directive 2004/35
 - Eco-crime directive 2008/99
- European Convention on Human Rights
- Differently,

Please illustrate the relevant generally used legal considerations in your case law:

.....

47. As an estimate in how many of the cases referred to in question 57 did you find a justification for the use of the procedural rule?

Comment: I guess that the question refers to the cases in question 46. Then this question is not relevant for me, since there were no such cases.

0-1%; 1-10%; 10-25%; 25-50%; 50-75%; 75-90%; 90-100%; 100%

Please specify the justification you found (use)?

- the *procedural rule of reason (general principles of law)*
 - legal certainty*
 - rights of defense*
- differently,

.....

48. What is your knowledge of *current* national (procedural) law that is/could be infringing the EU restrictions, with regard to:

a. access to justice:

Yes/no/maybe

- standing requirements:
- time limits:
- court fees,
- length of proceedings:
- ex officio application of EU law

- the intensity of judicial review and **Yes/no/maybe**
- burden of proof **Yes/no/maybe**
- legal remedies: **Yes/no/maybe**
 - types of judicial review (legal review or claims solely based on breach of Union law)
 - the judicial competences (the types of judgments/decision national courts may deliver (sanctioning/legal redress) & aim of judicial review: for instance dispute settlement ?
- differently,

Comment: The Swedish legislation concerning which NGO:s that can appeal an environmental judgment have been changed since the case of the Djurgården-Lilla Värtans Miljöskyddförening that was presented in question 35. It has not been tried by the ECJ whether the new legislation is consistent with EU law.

To your knowledge is there any *future* national (procedural) law that could infringe the EU restrictions?
Yes/no

If yes, please explain

49. According to the ECJ case law on the national procedural law a *national competence = an European obligation*. In your view what has the impact been of this case law on your court's environmental case law?
None/little/moderate/fairly big/very big

If possible, please illustrate.....

If judges from different courts from the same member state are participating each of them can fill in the questionnaire as his or here court is concerned

Please send your answers to the general rapporteur Ms. Liselotte Smorenburg-van Middelkoop as soon as possible and **on September 10th at the latest** (answers received after that date cannot be incorporated in het general report): L.vanMiddelkoop@uva.nl