

# Judicial cooperation in follow up procedures

Prof. Dr. Lorenzo Squintani

Professor of Energy Law, University of Groningen

Aknowledgments: This presentation and the underlying report have been made possible by the cooperation with Sjoerd Kalisvaart



## Sincere cooperation in 267-procedures?

- Uploading phase:
  - Empirical evidences show poor compliance
- Downloading phase:
  - Empirical evidences show:
    - Country-by-country differences
    - Theme-by-theme differences
    - Case-by-case differences





# Categories of (un)cooperation:

- Bogojević (2017):
  - *interchanged* dialogue,
  - *gapped* dialogue,
  - *interrupted* dialogue and
  - *silenced* dialogue
- Squintani & Rakipi (2018):
  - *full* cooperation,
  - *fragmented* cooperation, and
  - *presumed* cooperation

- Squintani & Annink (2018):
  - *withdrawn* cooperation
- Squintani & Kalisvaart (2020):
  - *suspended* cooperation









64 follow-up judgments in the jurisdictions investigated show:

Cooperation Countries	Cooperative behaviour					Uncooperative behaviour			
	Full	Presumed	Fragmen- -ted	Suspended	Withdrawn	Gapped	Inter- rupted	Silenced	Interchan- ged
<b>SE</b>	-	-	-	-	-	2/9	2/9	2/9	3/9
<b>NL</b>	13/16	-	-	-	1/16	2/16	-	-	-
<b>UK</b>	5/8	2/8	1/8	-	-	-	-	-	-
<b>IT</b>	7/13	2/13	2/13	1/13	-	0/13 <sup>149</sup>	1/13	-	-
<b>BE</b>	16/18	1/18	-	1/18	-	-	-	-	-
<b>Total</b>	41/64	5/64	3/64	2/64	1/64	4/64	3/64	2/64	3/64
<b>Aggr. total</b>	52/64					12/64			



# What does this mean?

- As we would say in Groningen: HET KON MINDER!
- Empirical evidences show:
  - Country-by-country differences
  - Theme-by-theme differences
  - Case-by-case differences



# Besides, extra knowledge needed about:

- 1) Further chartering of judicial cooperation in those member states that have not been studied yet;
- 2) Contextualization of the case law in light of the national judicial cultures; with particular attention to the existence of a specific environmental law tradition different from EU environmental law minimum standards;
- 3) Contextualization of the case law in light of the characteristics and specificities of each case;
- 4) Mapping of the instrument and practices concerning the registration of follow-up judgments; including whether specific databases for retrieving such judgments exist.





**EU FORUM OF JUDGES FOR THE ENVIRONMENT**  
**UE FORUM DES JUGES POUR L'ENVIRONNEMENT**

# **REPORT ON JUDICIAL COOPERATION IN FOLLOW UP JUDGMENTS IN ENVIRONMENTAL MATTERS**

**2021 EU FORUM OF JUDGES FOR THE  
ENVIRONNEMENT ANNUAL CONFERENCE  
17-18 SEPTEMBER 2021 — ONLINE**

**COOPERATION BETWEEN  
CJEU AND NATIONAL JUDGES  
IN ENVIRONMENTAL CASES**



**REPUBLIC OF SLOVENIA  
MINISTRY OF JUSTICE  
JUDICIAL TRAINING CENT**



# Key finding 1:

- The national reports highlight a reasonable level of knowledge about EU law, in general, and Article 267 TFEU, in particular, among high courts
- Room for improving the knowledge among judges at lower courts.
- This finding suggests that ‘knowledge levels’ could influence the behaviour of national courts in follow up judgments at lower courts.
- It also suggests that training courses should be targeted at lower courts in particular.



# Key finding 2:

- The main factor influencing the specialisation of judges in environmental law seems to be related to personal circumstances of individual judges.
- This makes it difficult to apply desk research to appreciate the effects of this variable on the behaviour of national courts in follow up judgments.
- It suggests that training courses could serve as a means to trigger personal ‘curiosity’ and thus specialization in environmental law



# Key finding 3:

- There seems to be a generalised lack of statistical data about preliminary references and related follow-up judgments.
- This makes tracking the behaviour of national courts in follow up judgments very difficult.
- It also suggests the importance to support the creation of systematic databases about follow up judgments.



# Key finding 4:

- It seems that CJEU's rulings in which the national question has been reformulated and/or answered by setting a series of open criteria to be applied by the referring court to solve a case create the most hurdles in national judgments.
- This variable seems thus very important to understand the behaviour of courts in follow up judgments.
- It would be interesting to research whether extra guidance from the CJEU on the relevance of the rephrased question and/or open set of criteria for answering the case at national level, help improving the perception of national courts about the usefulness of the CJEU's ruling in these cases.



Thanks for listening!

Thanks for listening!

Questions: [l.squintani\\_at\\_rug.nl](mailto:l.squintani_at_rug.nl)



# If you want to know more about my work:

- Squintani, L., & van Rijswijk, M. (2016). Improving Legal Certainty and Adaptability in the Programmatic Approach. *Journal of Environmental Law*, 28(3), 443-470. <https://doi.org/10.1093/jel/eqw022>
- Squintani, L., & Plambeck, E. J. H. (2016). Judicial Protection against Plans and Programmes Affecting the Environment: A Backdoor Solution to Get an Answer from Luxembourg. *Journal For European Environmental & Planning Law*, 13(3-4), 294-324. [https://doi.org/\(...\)63/18760104-01303005](https://doi.org/(...)63/18760104-01303005)
- Squintani, L., & Annink, D. (2018). Judicial Cooperation in Environmental Matters: Mapping National Courts' Behaviour in Follow-up Cases. *Journal For European Environmental & Planning Law*, 15(2), 147-170. [https://doi.org/\(...\)63/18760104-01502003](https://doi.org/(...)63/18760104-01502003)
- Squintani, L., & Rakipi, J. (2018). Judicial cooperation in environmental matters: Mapping national courts behaviour in follow-up cases. *Environmental Law Review*, 20(2), 89-108. <https://doi.org/10.1177/1461452918767791>
- Squintani, L., Zijlmans, J. M., Annink, D., Rakipi, J., Hoffman, S., Tasset de Landtsheer, L., ... Senoner, A. (2019). Mitigation and Compensation Measures under the Habitats Directive in Selected Member States. *European Energy and Environmental Law Review*, 28(1), 2-16.
- L. Squintani and S. Kalisvaart, *Environmental Democracy and Judicial Cooperation in Environmental Matters: Mapping National Courts Behaviour in Follow-up Cases* (2020) 5 EP 931