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Contestation, Politicization, and the CJEU's Public Relations Toolbox

– Judgments of the Court of Justice of the EU in their Public and Political Context

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Abstract

EU politics has become an increasingly politicized environment in recent decades. This dissertation investigates how the EU's highest court fares in this environment. Just like many other international courts, the CJEU gained power in recent decades. This development makes public and political attention and reactions more likely and bears the potential for contestation and politicization. Despite the importance of CJEU rulings, we have little to no systematic insight into their public salience and controversiality to date. The main aim of this dissertation is to identify under which conditions judicial procedures and decisions trigger reactions in the public and political environment of the CJEU. To address this aim, the dissertation poses several research questions: (1) Under which circumstances are governments mobilized to intervene in CJEU cases?; (2) Under which conditions do media report about CJEU decisions?; (3) How does the CJEU promote judgments through press releases and social media?; (4) Is it successful in doing so? The cumulative dissertation operationalizes and measures core components of contestation and politicization, and delivers empirical analyses of governmental and media attention to CJEU cases in quantitative research designs. It looks at the mobilization of actors in CJEU procedures (papers 1 and 2) and public and media attention to CJEU judgments (papers 3 and 4). Paper 1 reveals under which conditions EU governments intervene in CJEU procedures and delivers evidence that political preferences about legislative acts matter for conflicts in the EU's judicial arena. The mobilization of EU governments and conflict among them also matters for the public communication efforts of the Court, as paper 2 can show. Paper 3 delivers empirical insights into new data on press coverage of more than 4,300 CJEU decisions in eight newspapers. The internet, digitalization, and the rise of online and social media have led to fundamental changes in the configuration of the public sphere. Therefore, paper 4 links data for the CJEU's public communication with data on the public debate about the Court on Twitter. It reveals how the CJEU professionalized its communication strategies and how its messages influence the Twitter debate. Building on a variety of datasets and newly collected data, these findings deliver novel insights into public and political reactions to CJEU cases. They allow us to understand better, how the EU's highest court fares in the deeply integrated and highly politicized setting EU politics has become. In sum, this dissertation shows that politicization matters for the Court and its judgments. Cases' influence on domestic legislation, conflict among EU governments, the role of courts in domestic political systems, and public communication efforts of the Court have the strongest impact on the politicization of the CJEU.

Zusammenfassung

EU-Politik ist in den letzten Jahrzehnten zu einem zunehmend politisierten Umfeld geworden. Diese Dissertation untersucht, wie es dem höchsten Gericht in der Europäischen Union in diesem Umfeld ergeht. Ebenso wie viele andere internationale Gerichtshöfe hat der Gerichtshof der Europäischen Union (EUGH) in den letzten Jahrzehnten einen Machtzuwachs erfahren. Diese Entwicklung macht öffentliche und politische Aufmerksamkeit und Reaktionen wahrscheinlicher und trägt Potenziale für politische Auseinandersetzung und Politisierung in sich. Trotz der wichtigen Rolle von EUGH-Urteilen gibt es bisher wenig bis keine systematischen Einblicke in die öffentliche Salienz und Konflikthaftigkeit dieser Urteile. Die übergreifende Zielsetzung dieser Dissertation ist die Identifikation von Bedingungen unter denen Gerichtsverfahren und -urteile Reaktionen im öffentlichen und politischen Umfeld des EUGH hervorrufen. In diesem Sinne adressiert diese Dissertation mehrere Forschungsfragen: (1) Unter welchen Umständen werden Regierungen aktiv, um in EUGH-Fällen zu intervenieren?; (2) Unter welchen Bedingungen berichten Medien über EUGH-Entscheidungen?; (3) Wie sorgt der EUGH für Aufmerksamkeit für Urteile mithilfe von Pressemitteilungen und sozialen Medien?; (4) Ist er dabei erfolgreich? Die kumulative Dissertation operationalisiert und misst zentrale Komponenten von politischer Auseinandersetzung und Politisierung und liefert empirische Analysen von staatlicher und öffentlicher Aufmerksamkeit für EUGH-Fälle in quantitativen Forschungsdesigns. Sie beleuchtet die Mobilisierung von Akteuren in EUGH-Fällen (Aufsätze 1 und 2) sowie öffentliche und Medienaufmerksamkeit für EUGH-Urteile (Aufsätze 3 und 4). Aufsatz 1 zeigt auf, unter welchen Bedingungen EU-Regierungen in EUGH-Verfahren intervenieren und liefert den Nachweis, dass politische Präferenzen in Bezug auf Rechtsakte für Konflikte in der justiziellen Arena der EU eine Rolle spielen. Mobilisierung von EU-Regierungen und Konflikte unter ihnen sind auch relevant für die öffentliche Kommunikation des EUGH, wie Aufsatz 2 zeigt. Aufsatz 3 liefert empirische Einblicke in neue Daten für Presseberichterstattung über mehr als 4.300 EUGH-Entscheidungen in acht Zeitungen. Das Internet, Digitalisierung und der Aufstieg von Online- und sozialen Medien haben fundamentale Veränderungen in der Konfiguration von Öffentlichkeit bewirkt. Deshalb verknüpft Aufsatz 4 Daten zur öffentlichen Kommunikation des EUGH mit Daten zur öffentlichen Debatte über den EUGH auf Twitter. Er zeigt auf, wie der EUGH seine Kommunikationsstrategie professionalisiert hat und wie seine Mitteilungen die Twitterdebatte beeinflussen. Aufbauend auf eine Reihe von Datensätzen und neu gesammelte Daten liefern diese Ergebnisse neue Einblicke in öffentliche und politische Reaktionen auf EUGH-Fälle. Sie ermöglichen uns ein besseres Verständnis darüber, wie es der EU-Gerichtsbarkeit in der stark integrierten und politisierten Umgebung ergeht, in die sich EU-Politik entwickelt hat. Insgesamt zeigt diese Dissertation, dass Politisierung für den EUGH und seine Urteile bedeutungsvoll ist. Einfluss auf nationale Gesetzgebung, Konflikte unter EU-Mitgliedstaaten, die Rolle von Gerichten in nationalen politischen Systemen, und die öffentliche Kommunikation des Gerichtshofs haben den stärksten Einfluss auf die Politisierung des EUGH.

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Abbreviations

ATT – average treatment effect on each treated unit (GSC estimate)

CJEU – Court of Justice of the European Union

GSC – Generalized Synthetic Control (Method)

IC – international court

IO – international organization

USSC – United States Supreme Court

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1 Introduction

Decisions can become politicized as long as at least a minimum of decision latitude exists. All national and international institutions, which take more or less binding decisions, are subject to this potential. Politicization of decision-making bodies is expected to occur "to the extent that […] institutions are seen as an expression of political authority" (Zürn and Ecker-Ehrhardt 2013, 30, own translation). This authority-politicization link can potentially be claimed for all societal decisions, no matter whether they are of legislative, executive, or judicial character. However, judicial decisions are often considered as insulated from political pressure and public attention. Courts are often perceived as neutral arbiters, sheltered by the law, which serves as a "mask and shield" (Burley and Mattli 1993, 72). However, a considerable number of courts have gained in authority and competences (Hirschl 2004; 2008; 2009; Hönnige 2010; Rothmayr 2001; Stone Sweet 2000). Among them are many international courts (Alter 2014a; 2014b). This development increases the potential for reactions to those courts' decisions from the side of other institutions and societal actors. Just like other institutions, courts are subject to evaluations by actors in their public and political environment that influence the levels of trust, support, and legitimacy they can build on.

In a European context, and as the highest court in the European Union, the Court of Justice of the EU (CJEU)[1] is of particular interest to political science and legal scholars. It is the most powerful international court (IC), with high authority and independence (see Alter 1996; Alter *et al.* 2016; Pollack 2003, 201) and with the highest number of binding rulings delivered among ICs (Alter 2014b: 73, 103-5; $\bar{x}$=1590 for years 2011-2015, see CJEU 2016). To the extent that the CJEU embodies (decision-making) authority, its procedures and decisions can be expected to

[1] The CJEU as an institution is made up of several separate courts: the (European) Court of Justice (ECJ), the General Court, and the Civil Service Tribunal (until 2016), each dealing with particular legal procedures. Many scholars only refer to the Court of Justice (ECJ). In order to not overcomplicate things, this dissertation refers only to the whole institution (CJEU).

become more contested and subject to politicization. Both, increasing judicial authority and the potential politicization of the judiciary, confront political systems with questions regarding the legitimacy and accountability of courts as non-majoritarian institutions. This is even more the case for international courts, which are less embedded in the traditional realm of political rule, the nation state (see Bogdandy and Venzke 2012; Gibson and Caldeira 1995, 484–485; Larsson *et al.* 2017, 882).

In recent decades, EU politics has become the subject of public debates. While in the early history of European integration, a permissive consensus existed about the continued deepening of cooperation in the European Communities (Lindberg and Scheingold 1970, 249–278), EU politics is nowadays a topic that divides entire polities (see e.g., Brexit process). With continuing integration and an ever-stronger penetration of national policies, polities, politics, and national legal systems, new cleavages evolved (Hooghe and Marks 2009; Kriesi *et al.* 2012). EU politics has become salient and visible (Statham and Trenz 2013; de Wilde and Zürn 2012) and divides the beliefs, preferences, and political positions of large parts of the broader public. Amidst this politicization of EU affairs (de Wilde 2011; de Wilde and Zürn 2012), EU institutions have increasingly become the subject of public debate, the target of criticism, and of demands for justification. This is in line with theory that expects politicization to occur as an effect of the transferring of competences and authority to supranational institutions (Zürn *et al.* 2012). The politicization of the Court of Justice of the EU is expected to be one aspect of this development. While empirical research has provided more and more insight into politicization effects for EU institutions (e.g., Rauh 2016), their relevance for the CJEU as the EU's highest court and most powerful IC remains underexplored.

As the most developed regional integration project, the EU rests upon a complex system of binding supranational law that requires adjudication in many cases. While a big share of CJEU cases deals with technical issues that have no distributional consequences and might not receive public attention, several prominent CJEU decisions have led to public outcry and political debate in recent

years. The judgments in Viking and Laval (both 2007),[2] for example, angered trade unions and several governments by favouring market freedoms over the right to strike. The Finnish company Viking ABP changed one of its ships' flags from Finnish to Estonian to save labour costs. The company went to court versus trade unions who mobilized against such opportunistic 'reflagging'. According to the CJEU's ruling, the right to strike in this case infringed businesses' freedom of establishment. In the other case, the Latvian company Laval, who posted workers to a construction site in Sweden, did not apply Swedish legislation concerning working conditions and wages. Collective action taken against this by Swedish trade unions was held as disproportionate by the Court in light of the freedom to provide services. Both judgments led to long-lasting debates and political struggle (see Hall 2012). They also contributed to accusations that the CJEU had not only an integrationist, but also a liberalising bias that disadvantages Social Market Economies in the EU (Höpner and Schäfer 2012; Scharpf 2010, for another turn in this debate see also Larsson and Naurin 2019).

Some court rulings that concerned the issue of so-called 'welfare tourism' were especially well-noticed in the European media landscape[3] (see also Blauberger *et al.* 2018). These rulings affected the extent to which non-national EU citizens are entitled to cash benefits in host countries. In another prominent case, the CJEU decided that the Outright Monetary Transaction programme of the European Central Bank was in line with the EU treaties (C-62/14 Gauweiler)[4]. Finally, the recent case about the question of whether the UK could unilaterally decide to revoke the departure from the EU (C-621/18 Wightman) intensified discussions about the Brexit process. Often, the role of the CJEU during and after this first break-off of a member state in the history of the EU was problematized, too. All these judgments have had a considerable impact on the application of EU law and the allocation of

[2] C-438/05 The International Transport Workers' Federation and The Finnish Seamen's Union v Viking Line ABP and OÜ Viking Line Eesti; C-341/05 Laval Un Partneri Ltd v Svenska Byggnadsarbetareförbundet.
[3] C-333/13 Dano v Jobcenter Leipzig; C-67/14 Jobcenter Berlin Neukölln v Alimanovic; C-299/14 Jobcenter Kreis Recklinghausen v Garcia-Nieto et al.
[4] C-62/14 Gauweiler and Others v Deutscher Bundestag.

resources within this polity. They all received extensive media attention as well as governments' attention. Thus, CJEU rulings are by no means edicts of a far-distant international court that are silently taken for granted. Instead, public and political discussions about the course and ramifications of CJEU cases have become part of everyday EU politics. This dissertation investigates how the EU judiciary fares in the increasingly politicized environment that EU politics has become in recent decades.

1.1 Aims and Objectives

Despite the importance of CJEU rulings, we have little to no systematic insight into their public salience and controversiality to date.[5] Both are core concepts in politicization research (see Dolezal *et al.* 2012). Politicization can occur in various shapes. The main aim of this dissertation is to identify under which conditions judicial procedures and decisions trigger reactions in the public and political environment of the CJEU. To do so, I (a) operationalize and measure core components of contestation and politicization, and (b) deliver an empirical analysis of governmental attention and media attention to CJEU cases. Therefore, the guiding question of this dissertation reads: Under which circumstances do CJEU cases and decisions become contested and/or politicized?

In order to address this topic, the dissertation looks at the mobilization of actors in CJEU procedures (papers 1 and 2) and at the demand side as well as the supply side of public attention to CJEU cases (papers 2-4). On the demand side, newspapers and other media as informants of the public are concerned with the newsworthiness of events and collectively binding decisions. On the supply side of public attention, institutions that take collectively binding decisions engage in careful considerations about which decisions to publicize, which to promote, and how to do so.

[5] There are notable exceptions that pursue qualitative investigations of a few CJEU cases; e.g., Schmidt 2018; Blauberger *et al.* 2018; Werner 2016.

1.2 Theoretical Framework

1.2.1 The origins of court authority

The creation of courts is often linked to the decision of one or several states to delegate competences for solving conflicts to an independent dispute settlement body. Such delegation is described as "a conditional grant of authority from a *principal* to an *agent* in which the latter is empowered on behalf of the former" (Hawkins *et al.* 2006, 7; for an early account see also Hamilton *et al.* 2014 [1788], 402, Federalist Papers No. 82). The study of ICs as authoritative or powerful institutions is inherently linked to research on the authority of international organizations (IOs) such as the EU. An IO's authority builds on the mechanisms of delegation and pooling (Hooghe and Marks 2015) in intergovernmental, supranational, or federal entities. With the increasing importance and authority of IOs in the world, one can also observe a parallel rise of supranational courts (Alter 2014a). In particular regional integration projects with general purpose such as the EU contributed to the occurrence of "powerful courts with broad jurisdiction" (Alter and Hooghe 2016, 547). During this trend, the CJEU emerged as the most powerful IC.

Once an international court has come into existence, its authority will largely depend on the beliefs of states and societies under its jurisdiction. These beliefs are continuously shaped by processes of legitimation that aim at justification or contestation of the institution and its actions (see Tallberg and Zürn 2019). In this conception, the authority of an international institution like the CJEU builds on a combination of political and epistemic authority (Zürn 2018, 45–61). Political authority can be defined as "stipulations, rules, and norms [that] are viewed as 'binding' for a certain collective" (Zürn 2018, 51). Depending on the institution, it can be supplemented with epistemic authority that is based on recognized "interpretations that structure the behavior of others" (Zürn 2018, 52). Depending on the degree or strength of authority that an international institution embodies, it is expected to become politicized (Zürn and Ecker-Ehrhardt 2013, 30; Zürn *et al.* 2012).

The realm of international law is nowadays characterized by "the globalization of judicial politics and the judicialization of international politics" (Alter 2014b, 335; see also Keohane *et al.* 2000). *Judicialization* is a trend through which adjudication plays a more and more prominent role for an increasing number of decisions, and one that empowers judiciaries compared to the other branches of power. It represents "the ever-accelerating reliance on courts and judicial means for addressing core moral predicaments, public policy questions, and political controversies" (Hirschl 2008, 94). Judicialization has been described as particularly strong in the European Union (Hirschl 2009, 122; Kelemen 2013, 295). Thus, the legal arena in the EU has increasingly become the battleground for societal conflicts, with its judiciary contributing to the 'authoritative allocation of values' (Easton). Consequently, various actors' attention should be drawn to the CJEU as an institution and its actions. In light of these trends, the competences and decisions of the Unions' highest Court will not remain unchallenged. To the contrary, institutions that embody political and epistemic authority are expected to become politicized (Zürn *et al.* 2012; Zürn 2018).

1.2.2 Court politicization

> *"Tucked away in the fairyland Duchy of Luxemburg and blessed, until recently, with benign neglect by the powers to be and the mass media, the Court of Justice of the European Communities has fashioned a constitutional framework for a federal-type structure in Europe" (Stein 1981, 1).*

The role of the Court and its influence on European legal integration in its early decades have been described as a "quiet revolution" (Weiler 1994; see also Weiler 1991; Burley and Mattli 1993). Unanticipated by EU governments (Weiler) and without public attention in times of a permissive, pro-integration consensus (Lindberg and Scheingold 1970, 249–278), the CJEU contributed to further integration. A number of its decisions turned out as crucial landmark rulings later on (see Conant 2007). However, in recent decades the EU grew into a more integrated, densely connected, multi-level political system whose institutions gained in competences and authority. This development led to the emergence of new

cleavages, intensified political debates on EU politics, and made supranational powers more predisposed to criticism (Hooghe and Marks 2009; Kriesi *et al.* 2012; Statham and Trenz 2013; de Wilde and Zürn 2012). Both, increasing political power or authority of supra- and international institutions and more vivid public debates, are linked (Zürn *et al.* 2012; Rauh 2016). Zürn et al. suggest that this is also true for judicial authority: "societal actors politicize judicial authority as well, and […] the level of politicization is expected to lie in between that of political authorities and that of purely epistemic authorities" (Zürn *et al.* 2012, 93). Thus, irrespective of how the authority of an international institution like the CJEU is configured in detail, the institution and its actions will be subject to evaluations by numerous actors in its public and political environment. Perhaps, the politicization of judicial authority is indeed "the inevitable flip side of judicialization" (Hirschl 2009, 120).

Politicization can be seen as one of the ways in which democratic societies generally react to the increasing power of decision-making bodies. Concerning courts, this means that the increase in judicial authority is expected to result in increased attention as well as more frequent and diverse reactions to court procedures and decisions. Media attention, diverse opinions, and the involvement of different societal actors are often the starting point of politicization research.

Research on the growing importance of supranational and international institutions shows that to the degree that such institutions gain in authority, their authority leads to reactions that do not only approve of, but also challenge these newly gained powers (Madsen *et al.* 2018; Stiansen and Voeten 2018; Voeten 2019). Such challenges can occur in the form of contestation or politicization. I define contestation as *the degree to which actors or groups of actors stand for different positions that are mobilized to influence the object or decision under consideration*. Thus, the more actors that engage in influencing institutions or decisions and the further apart these actors' positions are, the stronger is contestation.

I follow politicization research in defining *Politicization* as "growing public awareness of international institutions and increased public mobilization of competing political preferences regarding institutions' policies or procedures" (Zürn

et al. 2012, 71). In different words, it can be summarized as "an increase in polarization of opinions, interests or values and the extent to which they are publicly advanced towards the process of policy formulation" (de Wilde 2011, 560). In line with these authors, I also adhere to the conceptualization that "political contestation about European integration needs to be *public* in order to speak of *politicization*" (de Wilde 2011, 569, emphasis JD). It affects the frequency and intensity of display, exposure, or intervention. In that way, contestation and politicization are clearly linked, but politicization is more encompassing and connected to public visibility. In fact, contestation can be considered as one of the three key components of politicization: *(1) Salience* (degree of attention, relevance, or activity), *(2) Involved actors* (amount or types of actors), and *(3) Contestation/Polarization* (difference in positions or statements). I adapt these three components from established politicization research (see Zürn 2016, 169)[6] (Table 1).

Table 1. Components of politicization

Components →	Salience (degree of attention, relevance, or activity)	Involved actors (amount or types of actors)	Contestation/Polarization (difference in positions or statements)
Indicators	– relevance for governments – relevance for public(s) – degree of attention in media – "[o]ften mentioned in media"	– amount or types of involved governments – amount or types of individuals or groups – "[e]xpansion of contributors to the debate"	– government positions for or against something – "[p]olarisation of statements/claims" – "[d]ifferent beliefs about the issue or the institution" – "[m]obilised groups stand for different positions"

Note: Own illustration; cited wording is partly adapted from Zürn (2016, 169, Table 1).

This dissertation does by no means cover an exhaustive empirical analysis of all the indicators listed here. Instead, Table 1 serves to illustrate how contestation

[6] Zürn (2016: 169) provides a comprehensive overview on the key components of politicization and inspired the illustration in Table 1.

and politicization are connected and which components and indicators politicization encompasses. In this dissertation, contestation is more linked to the behaviour of key institutional actors involved in adjudication (governments, legislature, etc.), while politicization is concerned with the display and reception of adjudication in the public and media (in line with, e.g. de Wilde 2011; de Wilde and Zürn 2012; Zürn *et al.* 2012; Rauh 2016).

Politicization research has been successfully applied in different arenas, uncovering new cleavages, and the structure of public debates (Hutter *et al.* 2016; Kriesi *et al.* 2012). Political arenas are "sites of political structuration […that] can be distinguished by the specific set of institutional norms and rules that guide the articulation and the processing of political conflicts" (Helbling *et al.* 2012, 211, emphasis in original). This dissertation extends politicization research to an understudied arena that increasingly contributes to political outcomes: The arena of the judiciary and adjudication.

The institutional design of courts and their role in the separation of powers system does conventionally inhibit politicization in many facets (Alter 2006). Avenues for actor mobilization can be narrower, and court access can be limited depending on the institutional design and the specific procedure. This highlights the general differences and roles of non-majoritarian institutions vis-à-vis majoritarian ones in exercising power (see Thatcher and Sweet 2011) and illustrates the mandate of courts in particular (see Alter 2006; Alter 2008). Despite these limitations, one can still think of a variety of characteristics of courts as institutions and of different aspects and dimensions of courts' actions, which can potentially become politicized: appointments of judges, court procedures, court decisions (aftermath of a ruling), etc. While governments have always been eager to retain control over the appointment of one judge each, appointments only happen once every couple of years. Similarly, procedural rules are not changed very often. Court decisions, on the other hand, are handed down on a regular basis and amount to thousands of observations in case of the CJEU. It should thus be *court cases, judgments, and their*

aftermath that are the ideal starting point for politicization research with a quantitative focus.

2 Contributions

2.1 Contestation of CJEU procedures

Judicial power (and the increase thereof) will not remain unchallenged. International courts are dependent on the cooperation of the states and societies under their jurisdiction. The CJEU, for example, faces threats of non-compliance with its rulings (Carrubba and Gabel 2015) and of legislative override (Larsson and Naurin 2016) that could render its rulings ineffective. Whether this happens could partly depend on how controversial a CJEU decision is (Martinsen 2015, 233–235).

The mobilization of key actors to partake in court procedures can be considered as a good indicator for how contested judicial procedures or decisions are. Typically, court procedures have clearly defined rules about who can participate in the procedure as either a party to the dispute, a third party ('amicus curiae', see Collins 2008), or as a non-participating observer (e.g., journalists and citizens in public oral hearings). In the EU setting, the range of actors that are granted privileged access to Court procedures is clearly defined and rather narrow, other than, for example, in case of the US Supreme Court (see Zuber *et al.* 2015, 124). To date, we know little about when governments exercise 'Voice' (see Hirschman 1970; Weiler 1991) in the EU's judicial politics arena, and what drives them to do so. One tool for governments is the right to participate as observing or intervening parties (lat. amici curiae, 'friends of the court') (see Carrubba *et al.* 2012; Gleason and Provost 2016; Larsson and Naurin 2016; Provost 2011, 5, 6). This gives EU member states privileged access to CJEU procedures. Filing amicus briefs is a sign of awareness and mobilization.

The preliminary reference procedure at the CJEU has shaped EU integration to a considerable extent and can be considered as the CJEU's "powerbase" (Hornuf

and Voigt 2015). In this procedure, it is only the parties to the dispute, EU member states, and some other institutional actors that are granted the right to submit amicus briefs (so-called 'observations'; for more details, see European Union 2012, 24). Although there is evidence that amicus participation by states affects the decisions of the CJEU (Larsson and Naurin 2016; Carrubba and Gabel 2015), there is to date no research that shows when and why EU member states engage in CJEU procedures, i.e. submit amicus briefs (however, see Granger 2004 for some insights for the years 1995 to 1999). In order to investigate this avenue of mobilization and the contestation of CJEU procedures, paper 1 of this dissertation looks at the determinants of amicus briefs submitted by EU governments in the preliminary reference procedure.

2.1.1 Paper I: Friends of the Court? Why EU governments file observations before the CJEU[7]

This first paper of my dissertation (co-authored with Daniel Naurin) investigates which factors contribute to explaining under which circumstances EU governments are mobilized to participate in CJEU cases as amici curiae. Previously, government observations in CJEU procedures have been shown to be effective in influencing judicial decision-making (Carrubba *et al.* 2012; Larsson and Naurin 2016) and that conflict among the member states matters in this regard (Larsson *et al.* 2017, 895–899). This paper contributes to capture dynamics of contestation of CJEU cases by showing that EU governments intervene in CJEU cases based on the political salience of the laws and issues that are at stake.

We find that member states do not only take into account what is at stake from a legal perspective. Political preferences are clearly at play when EU governments decide to file observation letters to preliminary reference procedures before the CJEU. Furthermore, states are particularly inclined to partake as amici curiae when their own legislation is affected while engaging in cases that stem from courts in other member states is much less likely. Moreover, we find that larger

[7] Co-authored with Daniel Naurin. Published in *European Journal of Political Research* 57(4):867–882.

member states and those with more resources file amicus briefs more often. We conclude that by "keep[ing] both law and politics in mind […] when deciding whether to engage" in CJEU cases (Dederke and Naurin 2018, 879), the behaviour of EU governments is in line with recent work that emphasizes the contentiousness of the judicial-political dialogue in the EU. Conflicts at the CJEU are worth investigating in order to better understand inter-branch relationships in the EU and the contestation of court procedures. This is even the case for actors that are not directly parties to the dispute, but merely amici curiae.

2.1.2 Paper II: CJEU Public Communication Between Compliance and Contestation[8]

Recent scholarship acknowledges what is at stake for member states in CJEU procedures. Research on the CJEU even provides evidence that the Court adapts its jurisprudence based on political signals that it receives from member state governments (Carrubba *et al.* 2012, Larsson and Naurin 2016) and the media (Blauberger *et al.* 2018). The Court and its judges appear as sensitive observers of their political surroundings. The way the institution and its decisions are presented towards the public and the other branches of power is, to some degree, strategically adjusted. This is in line with a broader strand of research that studies courts in their political environment (e.g. Casillas *et al.* 2011; Gibson et al. 1998; Krehbiel 2016; Mishler and Sheehan 1993; Sternberg *et al.* 2015; Vanberg 2001; 2004, 125–126).

The dynamics that are at play between the legislature, executive, and EU judiciary are expected to go beyond the findings by Larsson and Naurin (2016, see above) and Larsson et al. (2017). The paper presupposes that strategic behavior on behalf of the Court means that it does not only "speak law to power" (Larsson *et al.* 2017, 881) by citing influential case law and signaling member states how sound its legal reasoning is (ibid.), but that it *speaks law to the public* in a strategic way, too.

As institutions that "have neither FORCE nor WILL but merely judgment; and must ultimately depend upon the aid of the executive arm [or other actors, JD] for

[8] Co-authored with Olof Larsson. Unpublished manuscript.

the efficacy of [their] judgment" (Hamilton *et al.* 2014 [1788], 379, Federalist Papers No. 78), courts must ensure compliance with their decisions by other means than governments. This challenge might be even more severe for international judiciaries like the CJEU, which has to rely on a great variety of actors, including domestic courts, to uphold its authority. This should affect courts' legitimation practices, i.e. how they reach out to various audiences in order to sustain support and legitimacy in their public and political environment.[9] Public communication is an important instrument for ensuring that decisions of international and supranational institutions are complied with and seen in a positive light.

Previous research has stressed that courts in general and the CJEU, in particular, are concerned with non-compliance and therefore require a favorable image in the public that serves as an "indirect enforcement mechanism of courts" (Carrubba 2009, 65). We argue that non-compliance with its decisions is by far not the only concern of the CJEU. Instead, we expect that the CJEU (or, in fact, any other court in a deeply integrated IO setting) is concerned with politicization and contestation in a much more general sense. Consequently, it is unlikely that public communication of the CJEU would not also be strategic and responsive to the public and political signals it receives. Therefore, together with Olof Larsson, we investigate in this second paper how signals about political conflict and disagreement among the major institutional actors in the EU affect the CJEU's public communication activities. We test this by investigating variation in whether the CJEU issues press releases. We find that the probability of the CJEU issuing a press release is higher when more member states participate in Court procedures. This relationship is much stronger when the governments' positions on the case differ. Moreover, conflict between the Court and the Commission increases the probability of press releases. By contrast, we do not find a significant effect of the decision direction of the Court in favor of or against deeper integration.

[9] Legitimation strategies can be defined as "goal-oriented activities employed to establish and maintain a reliable basis of diffuse support" (Gronau and Schmidtke 2016, 540).

2.2 Politicization of CJEU decisions

The CJEU might face a trade-off between necessary legitimation efforts vis-à-vis outward audiences on the one hand, and increasing, potentially harmful politicization on the other hand. In fact, reaching out to the public might create feedback loops in the sense that increasing public display might trigger even more intense demands for justification and legitimation. From this point of view, the efforts of the judiciary to actively communicate their output is both, a valuable tool and a risk. While influential judicial decisions without accountability or public attention can be problematic, the politicization of the judiciary and judicial decisions can be problematic as well.

Paper 1 and 2 shed light on the role of member state positions and conflict among governments and other institutional actors for the contestation of court procedures and decisions. However, the *contestation* of decision-making processes by elites or governments is just one side of the coin. *Politicization,* on the other hand, in its dominating definition and conceptualization, is mostly associated with the *public* image and *public* discussion within a polity or public sphere (see de Wilde 2011; Zürn *et al.* 2012; Zürn 2018, 139-42). Member state governments are just one of the manifold audiences of courts (see Baum 2009) and of international institutions. The broader public is an important audience in particular in EU politicization research.

I defined contestation as *the degree to which actors or groups of actors stand for different positions that are mobilized to influence the object or decision under consideration* and emphasized that "political contestation about European integration needs to be *public* in order to speak of politicization" (de Wilde 2011, 569, emphasis JD). In that way, contestation and politicization are clearly linked. The second part of this dissertation (papers 3 and 4) engages with politicization by focussing on media attention and the public display of CJEU cases.

2.2.1 Paper III: CJEU Judgments in the News – Capturing the Public Salience of International Court Decisions[10]

Newspapers have been the dominating media until the beginning of the 21st century. Therefore, newspaper coverage allows a long-term perspective for investigating salience in the news and the public sphere. The third paper of this dissertation introduces a newly collected dataset that captures the public salience of more than 4,300 CJEU decisions on the day after the judgment. In line with politicization research, this paper focuses on salience as the first primary component of politicization and investigates under which conditions newspapers report about CJEU decisions. The paper transfers the concept of (public) case salience from scholarship on the US Supreme Court (USSC) to the EU context. While in political science research on the USSC case salience data are prominent, there have not been similar data for European or international courts so far. The paper links theoretical considerations about the public salience of court decisions with empirical data on the public salience of CJEU cases. I show that the salience of CJEU decisions varies depending on the role of courts in national political systems, case characteristics, conflict among EU institutions, and the Court's own public communication efforts. Besides variations across newspapers and the role of the standing of courts in the national political systems, a notable finding of this paper is the strong correlation between press releases by the CJEU and the public salience of its decisions. Since the objectives of this paper are not primarily to establish causal links, this paper does not go beyond the logic of correlations. Instead, it delivers a broad overview of correlates of public salience for a large number of CJEU cases and newspapers.

2.2.2 Paper IV: Upgrading the CJEU's Public Relations Toolbox – The effects of CJEU judgments on the Twitter debate[11]

Newspaper reports are by no means an exhaustive representation of the public debate. This applies even more in the 21st century when digitalization has transformed public debates. In recent years the internet and the rise of online and

[10] Single-authored manuscript. Currently in a revise and resubmit-status (15.12.2019).
[11] Single-authored, unpublished manuscript.

social media at the expense of print media have brought fundamental shifts in the configuration of the public sphere (see Varnelis 2008). Therefore, analyzing the prominence of political events in the news and the public for recent years requires us to take into account online news and so-called social media. These dynamics have also changed the way international institutions communicate to the public. However, how the CJEU communicates on social media and whether it is effective in doing so has not been investigated in a systematic manner so far. In this paper, I investigate how the CJEU has professionalized its communication strategies. In order to do so, I use press release data, twitter data, and interviews with CJEU communications staff. While paper 2 of this dissertation only looks at press releases that have served the Court as a primary public communication tool for a long time, paper 4 shows how the CJEU has extended its public relations toolbox recently. In doing so, it also opens the Court as a 'black box' and considers in more detail the work of the communications department and press officers at the CJEU. In that sense, it adds further nuance and more detailed insights into the supply side of public attention for the CJEU and its judgments.

The core research question of this paper is if the Court is able to influence the public debate on Twitter by using press releases and tweets. The paper adds to paper 3 and uses a causal inference design that allows distinguishing between the effects of CJEU judgments on the one hand and the effects of public communication, on the other hand. In a generalized synthetic control design (Xu 2017), I use several hundred CJEU judgments, press releases, and CJEU tweets as treatments that influence the public debate on twitter. In that way, I can provide causal evidence for how strongly various messages by the Court influence the public debate on Twitter. I show, first, that judgments of the CJEU become politicized. Second, judgments that are communicated with press releases or tweets have a stronger impact on the Twitter debate about the CJEU. A robustness test shows that this finding is not dependent on the importance of court cases. I provide empirical evidence that 'louder' messages have a stronger impact on public attention for CJEU judgments. This is in line with theoretical expectations about the potential of public communication by international institutions (see Tallberg and Zürn 2019) and can

be considered as a crucial precondition for such institutions to legitimate their work and decisions.

2.3 Methodology

From a methodological point of view, the first three papers of this dissertation follow recent political science literature on the CJEU that appeared in i.a. *American Political Science Review, International Organization*, and *Comparative Political Studies* (see Stone Sweet and Brunell 2012; Carrubba *et al.* 2008; 2012; Larsson and Naurin 2016; Larsson *et al.* 2017). This literature builds on regression designs and makes use of quantitative datasets of CJEU cases for advanced inferential statistics. In that sense, papers 1-3 of this dissertation do neither primarily aim at causal inference, nor are they primarily designed to capture causal relationships. The fourth paper, on the other hand, explicitly opts for a causal inference design (generalized synthetic control method, Xu 2017) in order to further explore the role of public communication tools of the CJEU. This serves the purpose of getting closer to causal claims about the effects of CJEU public communication.

2.4 Data

We still lack comprehensive datasets on the entirety of the CJEU's caseload. The most ambitious project in this regard has started compiling detailed information on all CJEU cases in the entire history of the CJEU (Brekke *et al.* 2019) but has not yet been fully available for this dissertation. Therefore, and in order to make use of important hand-coded variables, this dissertation builds on some of those datasets on thousands of CJEU cases that have so far been available. It exploits the variety of variables available for preliminary reference procedures (Naurin *et al.* 2013; see papers 1 and 2) or combines several available datasets in order to maximize the range of CJEU cases included in the analysis (Adam *et al.* 2015; Stone Sweet and Brunell 2007; Naurin *et al.* 2013; see paper 3). Finally, paper 4 builds on the entirety of all CJEU cases decided in a recent 9-year period (2010-10 to 2019-09), mainly

based on own data collection efforts, and partly in combination with data from Brekke et al. (2019).

While paper 1 builds solely on available data, papers 2-4 all include original, newly-collected data that was combined with the available datasets mentioned above. In that way, this thesis will make three original contributions to the availability of newly collected data for CJEU cases:[12]

1. Data on press releases for all CJEU judgments 1997 to 2019 (used in papers 2, 3, and 4),
2. Data on newspaper coverage or public case salience for more than 4,300 CJEU decisions (paper 3), and
3. Data on all institutional tweets by the CJEU from 2013-04 to 2019-10 (used in paper 4) and Twitter data capturing the debate about the CJEU from 2010-10 to 2019-09 (used in paper 4).

All of these data will provide additional resources for future research on the highest Court of the European Union, especially for scholars that aim to better understand the CJEU in its public and political context.

[12] More details on the data collection are provided in the respective papers or their appendices.

3 Paper I. Friends of the Court? Why EU governments file observations before the Court of Justice

Julian Dederke

and

Daniel Naurin[13]

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Abstract

The preliminary reference procedure, under which the Court of Justice of the European Union (CJEU) responds to questions from national courts regarding the interpretation of EU law, is a key mechanism in many accounts of the development of European integration and law. While the significance of the procedure has been broadly acknowledged, one aspect has been largely omitted: The opportunity of member state governments to submit their views ('observations') to the Court in on-going cases. Previous research has shown that these observations matter for the Court's decisions, and thus that they are likely to have a significant impact on the course of European integration. Still, we know little about when and why member states decide to engage in the preliminary reference procedure by submitting observations. In this article, we show that there is significant variation, both between cases and between member states, in the number of observations filed. We develop a theoretical argument regarding how to explain this variation. Most importantly, we distinguish between legal and political reasons for governments to get involved in the preliminary reference cases, and argue that both types of factors should be relevant. By matching empirical data from inter-governmental negotiations on legislative acts in the Council of the EU, with member states' subsequent participation in the Court procedures, we are able to develop a research design to test these arguments. We find that the decision to submit observations can be tied both to concerns with the doctrinal development of EU law and to more immediate political preferences. We conclude that the legal (the CJEU) and political (the Council) arenas of the EU system are more interconnected than some of the previous literature would lead us to believe.

Keywords: judicial politics; courts; European Union; preliminary references; amicus briefs

Introduction

The preliminary reference procedure plays an almost mythical role in theories of European legal integration. According to the neofunctionalist narrative, it was through this procedure that the Court of Justice (CJEU) was able to forge its ingenious alliance with lower-level national courts, which allowed the latter to enhance their status vis-à-vis domestic high courts, and the former to develop a *de facto* process of supranational judicial review of national law beyond the intentions of the EU member states (Weiler 1991; Burley and Mattli 1993; Alter 1998; Stone Sweet 2004; Hornuf and Voigt 2015). The thrust of the procedure is the following; a national court that is deciding on a case, which potentially involves European law, may request that the Luxembourg Court makes a ruling on the interpretation of the relevant European legal acts. The national court subsequently decides the case, with the help of the new guidance given by the CJEU. The legal purpose of the procedure is to ensure a uniform application of EU law in the various member states. In practice, the preliminary reference procedure has given an opportunity to individuals, social groups and companies all over Europe to challenge national law in their own national courts on the basis of European law, hoping that the national judges will ask their colleagues in Luxemburg for guidance and that the latter will find that EU law invalidates the unwanted national rules and regulations.

Most previous accounts of the preliminary reference procedure and its role in the development of European integration have treated it as a purely judicial affair. It has been seen to involve judges consulting with other judges about legal matters. An important part of the neofunctionalist story of legal integration is the idea of law as "mask and shield" (Burley and Mattli 1993, 72). The legal institutions have been protected from political interference by, on the one hand, the impenetrable nature of the language of law. The "'technical' legal garb" has hidden the potentially salient implications of the Court's decisions, as these, "often require a lawyer's eye to discern" (Ibid). The strong norm of the rule of law in European democracies, on the other hand, has left little room for member state governments with regard to objecting to the decisions of their own national courts, following expansive

interpretations of the CJEU (Alter 1998). As a consequence, European integration has occurred "within a domain shielded from the interplay of direct political interests" (Burley and Mattli 1993, 57).

Less acknowledged in the previous literature is the fact that the preliminary reference procedure also contains an opening for the member state governments to make their voices heard. Along with the parties to the case, and the European Commission, the member states have the right – within two months of the notification of the request from the national court – to submit a written observation stating their views with respect to the case at hand.[14] While the significance of these observations for the outcomes of the procedures has been questioned by some scholars (Stein 1981; Stone Sweet and Brunell 2012), others have taken them more seriously (Mortelmans 1979; Granger 2004; Davies 2012; Carrubba and Gabel 2015; Larsson and Naurin 2016). For example, according to Carrubba and Gabel, the observations may be interpreted as implicit threats of non-compliance on behalf of the submitting member states, to which the Court is likely to respond by moderation in its decision-making (Carrubba and Gabel 2015). Furthermore, Larsson and Naurin conceive of the observations as informative signals to the Court regarding the likelihood that a legislative override may reverse the Court's decision should it take an activist stance (Larsson and Naurin 2016). Both these studies show evidence of a strong correlation between the direction of the observations and the decisions of the Court, also when controlling for other relevant factors. Besides these large-N studies, Davies has shown evidence of strong political awareness for (and support for) the Court's early ground-breaking decisions, and the perceived significance of the written observations, in his historical analysis of Germany's stand vis-à-vis European legal integration (Davies 2012). Furthermore, Rytter and Wind explain how in the case of Denmark, both the courts and the government have been reluctant to make use of the preliminary reference procedure, "primarily because referring a case to

[14] The Member States' right to submit observations is granted through article 23 of the Court's statute, which is annexed to the Treaties, Protocol (No 3) on the Statute of the Court of Justice of the European Union.

the ECJ may result in the setting aside of important national legislation" (Rytter and Wind 2011, 472). As a consequence, they argue, Denmark has put itself in the position of being a passive and powerless consumer—rather than a co-producer—of European law (ibid., 470).

The significance of the preliminary reference procedure has led scholars to study the propensity of national courts to file requests for preliminary rulings from the CJEU (Golub 1996; Wind *et al.* 2009; Wind 2010; Hübner 2015; Hübner 2016). However, despite the importance of the procedure, and the more recent questioning of its non-political nature, there is to date little systematic research on when and why member state governments decide to submit written observations to the CJEU. This is especially puzzling since there is substantial variation to be explained here. As we will show in the next section, the number of observations submitted vary strongly both between cases and between member states.

We develop a theoretical argument, and an empirical test, to address the question of when and why EU governments engage in the preliminary reference procedure by submitting written observations. We suggest that both legal and political considerations are likely to contribute to this decision. Clearly, the member state governments are fundamentally political actors, whose choices will be influenced by the national and party-political interests that they perceive to be at stake. We doubt that the technical language of law is able to mask in a systematic way how the Court's actions affect these interests, not least since the activist profile of the CJEU has been well known and debated for many years.

In our empirical analysis we find evidence that the EU governments take legal doctrine into account when submitting observations. At the same time, we also demonstrate that political preferences that were expressed during Council negotiations of the legislative acts that subsequently became the objects of the Court's interpretations, surface again in the member states decisions to submit observations to the CJEU. One implication of this study therefore is that the distinction between legal and political arenas and processes in the EU system should be treated as less sharp than much previous research would lead us to believe. EU

governments are indeed able to keep two thoughts – law and politics – in mind at the same time. Importantly, the practice of submitting observations under the preliminary reference procedure contributes to the coherence of the legislative and judicial phases of the European integration process.

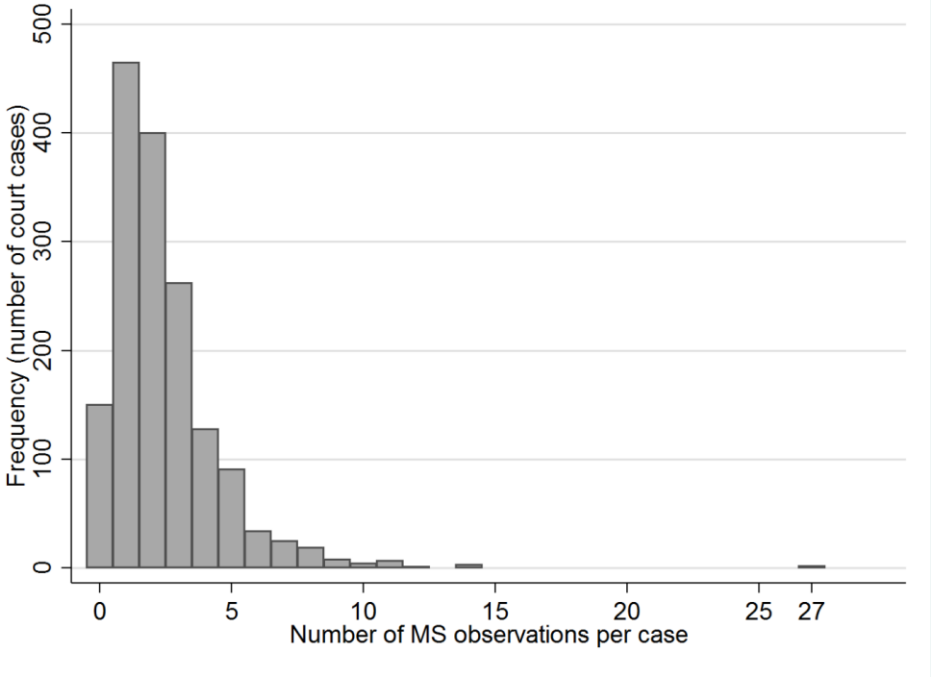
Observations in the preliminary reference procedure

'Observations' is EU jargon for what is often known in other contexts as *amicus curiae* briefs, i.e. a submission from a 'friend of the court' who is not a party to the case, but still offers the Court information or advice regarding questions of law or fact. In the US system, scholars have since long observed how *amicus curiae* briefs were transformed "from neutral friendship to positive advocacy and partisanship" (Krislov 1963, 697; see also Collins 2008, 37–41). Although not formally parties to the case, the *amici* often have a clear interest in the outcome (Gleason and Provost 2016, 251). The literature on the scope and effects of amicus participation in the US is large (see, for example, Caldeira and Wright 1990; Songer and Sheehan 1993; Spriggs and Wahlbeck 1997; Collins 2008; Collins *et al.* 2015). Unsurprisingly, scholars have found that not all *amici* receive equal consideration by the US Supreme Court. Most successful are governmental actors, in particular the federal solicitor general and state attorneys general, i.e. the representatives of individual US states (Gleason and Provost 2016, 248). As a similar European literature is largely lacking, we will take some inspiration from the American literature when developing our theoretical argument and empirical analysis.

While the US Supreme Court is open to *amicus curiae* briefs from a wide range of societal groups, in the EU this opportunity is restricted (with a few exceptions) to the parties to the dispute, the European Commission and the member states. While the Commission makes full use of this privilege, and submits observations in all cases, the member states' records are much more varied. Usually, as seen in Figure 1, in the period we study here from 1997 until 2008, one to five

member states submitted observations in the preliminary reference procedure.[15] The average number of observations per case for the 1599 cases that we analyse is 3.6. In a substantial number of cases (467, or 29%) only one member state – normally the state of the national court that requested the ruling – submitted an observation. However, in the high-profile case of *Laval* (C-341/05), for example, no less than 14 member states submitted observations.

Figure 1. Number of member state observations per court case (1997-2008)

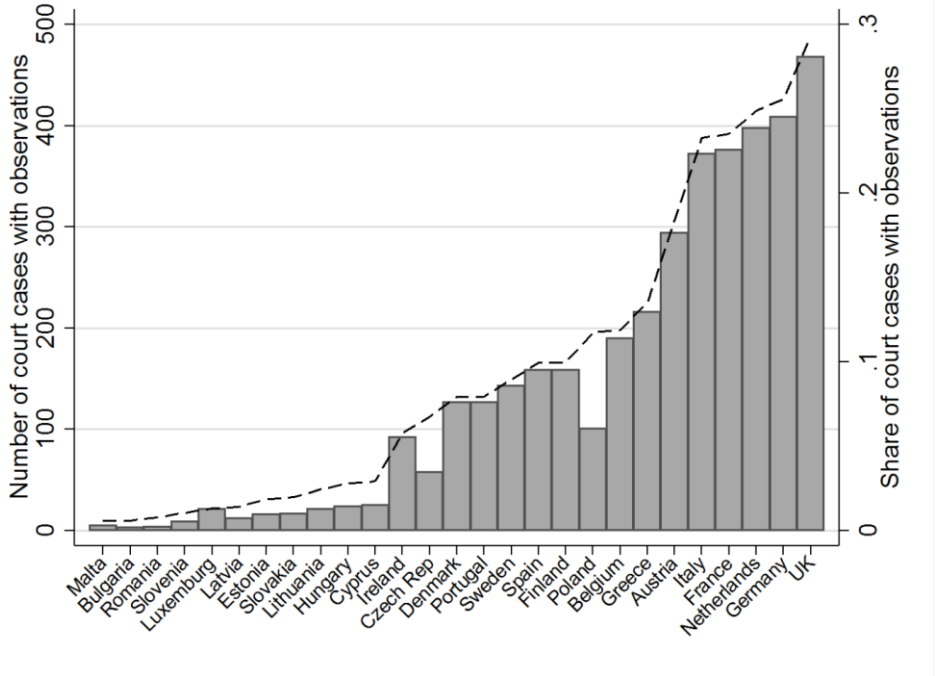


Furthermore, as seen in Figure 2, there is also substantial variation between member states. The bars indicate the total number of cases in which a member state submitted observations (measured on the left hand side). The line in the figure takes into account the fact that some member states became members of the EU only in 2004 or 2007. It shows the share of cases including an observation from a member

[15] The data that we use is described in more detail in the research design section.

state, relative to the number of cases raised by national courts during that member state's time as a member of the EU (measured on the right hand side).

Figure 2. Frequency of case observations by member state (1997-2008)



The UK was the most active member state during this period, with observations recorded in almost every third case. Germany, the Netherlands, France and Italy follow after the UK as more active participants in the procedure. Smaller and more recent member states, such as Malta, Bulgaria, Slovenia and Luxemburg, are found at the other end of the scale. These countries submit observations only in a fraction of the preliminary reference cases handled by the CJEU. Thus, size is clearly a factor that explains some of the variation between member states. This is likely to be an effect of larger states having more resources to allocate to legal staff in the ministries engaging in European affairs (Granger 2004, 23f). It is also an effect of the fact that more cases are raised in larger member states, and therefore more questions are referred by national courts from these countries. However, size is only one part of the story here, as seen from the differences between the relatively active mid-sized countries the Netherlands and Austria (filing observations in 25% and

18% of the cases respectively) and the relatively passive Portugal and Sweden (where observations were recorded in 8% and 9% of the cases respectively).

What motivates member states to submit – or refrain from submitting – observations? Carrubba and Gabel interpret the observations as implicit threats of non-compliance (Carrubba and Gabel 2015) should the Court choose to decide against the wishes of the submitting member state, while Larsson and Naurin view them as signals of support (or resistance) of a possible legislative override (Larsson and Naurin 2016). However, neither of these scholars discuss why the member states would be inclined to send those signals in some cases but not in others, although implicitly political interests seem to be assumed. Alter has a somewhat more elaborated view of the member states' participation. According to her account of the legal integration process the member states have been lured by a time inconsistency problem, where they have focussed short-sightedly on the immediate material-political effects of the Court's decisions while at the same time missing to take the longer-term doctrinal impact of these decisions into account. By making decisions containing, on the one hand, far-reaching doctrinal implications, and, on the other hand, acceptable immediate material effects in the views of the member states, the Court was able to incrementally strengthen the integrative power of EU law without provoking backlash from the member states (Alter 1998).

Looking at the American literature on amicus briefs, key to whether one decides to file a brief is the salience of the case. "When asked why they join amici briefs […], state [attorney generals] ranked the importance of the issue ahead of everything else, even the probability of winning the case" (Provost 2011, 8, referring to Waltenburg and Swinford 1999). 'Case importance', 'political salience' and 'case salience' are used as predictors for amicus participation in these studies (Provost 2011; Zuber, Sommer and Parent 2015; Gleason and Provost 2016). In our view, the fact that salience is connected to action is common sense. More interesting is the question what it is that makes a case salient in the views of the *amici*. Again, in the literature on American states' amicus participation, it is assumed that the state representatives "have strong policy preferences and often seek to shape case law in

line with their preferences" (Gleason and Provost 2016, 248. See also Waltenburg and Swinford 1999; Lemos and Quinn 2015). Thus, rather than concern about the coherence of legal doctrine, political policy preferences are expected to drive participation on behalf of the US states.

It is reasonable to assume that policy preferences are central also to the behaviour of EU governments, even though the preliminary reference procedure in the EU system formally is a legal affair concerning the coherence of EU law. Are EU governments also likely to respond to legal salience, i.e. the development of a coherent precedent and legal doctrine? The idea of law as "mask and shield" (Burley and Mattli 1993), and the notion of member states as short-sighted policy defenders (Alter 1998), cast doubts that this is the case. However, we believe that an image of member states as ignorant and/or non-interested in legal affairs would underestimate both the political leadership and legal affairs units in most EU governments. The neofunctionalist writings in the 1990s referred mainly to developments in the 1960s and 70s. Since then, European legal integration has developed far enough for most observers, whether political or legal actors, to realise the potentially profound implications of CJEU case law for public policy. Due to the massive increase in preliminary references over the last decades, the interactions between the Court and governments as amici have also become much more frequent. Furthermore, some EU governments have specific units monitoring cases that are handled by the CJEU (Van Stralen 2015). These offices are staffed with legal experts, with university degrees in EU law, who monitor the development of the CJEU's case law on behalf of their governments (Larsson *et al.* 2017).

In sum, despite the acknowledged significance of the preliminary reference procedure EU governments respond unevenly, with large variation in participation rates both between cases and between member states. Part of this variation is likely due to costs of monitoring and responding to complex legal issues, where in particular smaller member states need to prioritise their resources. But more importantly, the member state's participation in the preliminary reference procedure raises questions concerning the role of legal opinions and political

preferences as predictors of behaviour, and regarding the distinction between legal and political arenas in the EU system. We expect that EU governments have a long-term interest in the development of EU law, and that their participation in the preliminary reference procedure may partly be explained by the legal significance of the cases raised. Many cases that reach the CJEU through the preliminary reference procedure are not of a high interest to EU lawyers. But, *(H1) in those cases that have legal importance we expect to see more EU governments submitting observations*. Moreover, given the formal right of member states to file observations, we find it unlikely that the preliminary reference procedure is a domain shielded from political interests. We do expect, therefore, to see *(H2) a connection between policy preferences of governments and the decision to submit observations*. A challenge when addressing these research questions is how to define and operationalize the distinction between legal importance and political salience of a case. In the next section we will describe our research design in this respect, and the data we use to test our expectations.

Research design

How can we distinguish whether EU governments participate in the preliminary reference procedure mainly to promote their immediate policy preferences, and/or to respond to questions potentially affecting the broader development of European law? A case that is perceived as 'important', whether in the US or the EU system, normally has both a political and a legal dimension (Cook 1993). As Bailey and Maltzman point out, "statistically, [the] muddle of policy preferences and law creates an identification problem" (Bailey and Maltzman 2008, 1). Furthermore, most if not all of the alternative ways in which scholars have tried to measure case salience relies on data that were not available to the potential *amici* at the time. This is the case, for example, with respect to the most used case salience measure in the research on the US Supreme Court, which is based on media attention of the cases measured after the case was decided (Epstein and Segal 2000. See also Collins and Cooper 2016). Indices of legal salience are based on the content of the Court decision, such as whether the Court "either struck a law down as unconstitutional, or overturned or altered precedent" (Bailey *et al.* 2015, 79. See also Collins 2008, 157). Another alternative that exists in the literature is using amicus briefs as a proxy for salience (Vining and Wilhelm 2011, 562), which is obviously less useful when the research question concerns the submission of those briefs.

In the EU literature scholars have used chamber size – the number of judges allocated to the case – as a proxy for salience (Carrubba *et al.* 2008; Larsson and Naurin 2016; Larsson *et al.* 2017). In the CJEU, more important cases are decided in larger chambers. The Grand Chamber (normally consisting of 13 judges) is used for particularly significant or difficult cases, while other cases are delegated to chambers of (mostly) three and five judges. While this is a reasonable measure of salience in the eyes of the Court, it is less suitable in this context as the Court decides on the chamber only after it has received the observations from the member states. Chamber size therefore does not distinguish well between legal and political salience as perceived by the judges.

We have no perfect and final solution to the problem of measuring legal salience, and distinguishing it from political salience. In order to minimise the risk that our results are dependent on the choice of measure we apply two different indicators in our analyses. First, we follow Bailey and Maltzman's strategy in selecting a number of core legal doctrines to create a measure of legal salience reflecting doctrinal importance. The cases were coded with regards to whether they related to one of five important legal doctrines in EU law; direct effect, supremacy, state liability, loyal cooperation and non-discrimination. The variable *Doctrine* was coded (1) if the case was cited as relating to one of these doctrines in the standard textbook on EU Law, and (0) otherwise.[16]

Second, we follow Fowler et al. (2007) and Derlén and Lindholm (2014) in using the precedential authority of cases, as measured by network techniques applied to the citation network of the entire body of case law. The authority score of a case is based on the number of other cases citing it (indegree centrality), and the network centrality of these citing cases. Thus, a case that is often cited by other cases, and by cases that in turn are central to the citation network, receives a higher score. Cases with high authority "are important cases, saying something vital about the content or development of EU law" (Derlén and Lindholm 2014, 684). The variable *Authority* uses the authority scores from Derlén and Lindholm, which were calculated on the basis of the entire caseload of 9,125 judgments made by the CJEU between 1954 and May 2011, including in total 38,278 citations of previous judgments (Derlén and Lindholm 2014).[17]

It is difficult to know to what extent the member states were aware of the potential legal significance of the cases at the time the requests for preliminary

[16] We used *'EU Law: Text, Cases and Materials'*, by Craig and de Búrca, Oxford University Press. Both the fourth (2008) and the fifth (2011) editions were used. See Naurin et al. (2013) for details of the coding.

[17] The values of the original Authority variable are very small relative to the other predictors (ranging from 0 up to 0.000675) and positively skewed. We therefore performed a log-transformation of the variable. Since zero-values were represented, a constant (c=[lowest non-zero value]/2) was added to the original Authority values.

references were filed in Luxemburg. Just as the alternative attempts of capturing legal significance, both *Authority* and *Doctrine* are measured *ex post facto*. Furthermore, whether a case actually becomes legally important is largely determined by the quality and innovativeness of the legal reasoning of the Court, which is a factor that is unknown before the ruling is handed down. Nevertheless, our analyses will indicate whether 1) cases that never received high authority scores, i.e. never became important sources of law, and 2) cases that were not considered important enough to be mentioned in the key textbook on EU law, are associated with lower levels of member state activity. If we find that this is the case, our interpretation will be that the member states have an ability to recognize legally significant cases, and a willingness to act when they do.

As already mentioned, previous research has often had difficulties distinguishing between legal and political salience of cases. One way of capturing the political importance of legal cases that has been used in studies of international courts is to identify particular subject matters as "politically sensitive", and then control for all cases that relate to that subject. For example, Voeten in his study of judicial behaviour in the European Court of Human Rights, treats cases relating to torture and inhumane treatment (Article 3) as especially politically sensitive (Voeten 2008, 421). Busch and Pelc use the same strategy when controlling for agriculture and health and safety standards in their research on legal conflicts in the WTO (Busch and Pelc 2010, 271). While this is certainly a reasonable strategy, it is also a bit crude in the sense that it assumes that all states find these subject matters equally sensitive.

Instead, we develop a measure of political salience that takes into account the individual variation regarding salience both between states and cases. For this purpose, we use the data by Thomson et al. (2012) who have collected data on the positions of EU governments during the negotiations in the Council of the EU. The data refers to 125 legislative proposals that were negotiated in the time period 1996 to 2008. By means of expert interviews, the researchers identified controversial issues within the legislative proposals, and the positions and salience of the member states with regard to these issues. Each legislative proposal included one or several

such controversial issues. Most of the proposals led to a final legal act, while a few were suspended or rejected. The "salience or importance they attach to issues" was given by the experts as a score on a scale from 0 to 100, where 100 means that an issue was "of the highest importance" to a member state and 0 means that the issue is "of no importance whatsoever" (Thomson *et al.* 2012, 613). In our analysis, the variable *Political Salience* takes the mean value of the salience scores of the issues of each legislative proposal.

For example, one legislative proposal (COD/1998/325) subsequently resulted in the directive 2000/31/EC on electronic commerce. The proposal contained three controversial issues among the member states. One of these concerned the application of the country of origin principle vs. international private law to ecommerce contracts. A second issue concerned the inclusion of professional services in the directive, while the third issue related to the location liability for the content of websites. For the UK, the proposal was highly salient. The average salience value across the three issues was 83.3. The Netherlands, on the other hand, was only moderately interested in the proposal, and had a mean salience value of 16.7.

In order to create a dataset containing both the legal and political factors discussed here the data on policy salience of Thomson et al. (2012) was matched with the data set on preliminary references of Naurin et al. (2013). The latter data contains information on 1,599 preliminary reference procedures that were introduced during the time period 1997 to 2008. It contains the information that we need for the dependent variable of the study, i.e. whether written observations were submitted. The dependent variable *MS Observation* denotes whether a member state submitted an observation in the case at hand.

The data of Naurin et al. also records which legal acts that the case concerned, in the sense of being interpreted or referred to by the CJEU.[18] In order to match the two datasets we used the Celex numbers of the legal acts that were

[18] The coding is based on the "case affecting" heading in EUR-lex.

produced from the legislative proposals negotiated in Thomson et al.'s data, to search the data from Naurin et al. for court cases where these legislative acts had played a role. Returning again to the directive on electronic commerce, we find that this directive features in two of the preliminary reference cases in the time period up until 2008: C-275/06 *Promusicae* and C-236/08 *Google France and Google*. The Netherlands did not file any observation in these cases, while the UK did so in *Promusicae* but not in *Google France*. However, *Promusicae* also saw observations filed by Italy, Finland and Slovenia, all of which had varying salience levels in the Council negotiations.

In total, we were able to match 51 court cases in this way, of which each concerns at least one of the controversial legislative acts.[19] The final matched dataset for the models including the variable Political Salience therefore amounts to 765 country-case units of analysis relating to the 15 member states that were members before the enlargement in 2004 (51*15=765). Clearly, this is not a representative sample of either legislative acts or preliminary reference cases. All the 51 cases include political controversy at the legislative stage, and some degree of legal uncertainty leading to requests for preliminary references. Furthermore, the cases also refer to other legislative acts for which we lack information on salience, as these were not included in Thomson et al.'s data.[20] There are of course alternative ways of measuring member states' preferences, such as manifesto data or expert survey data. The unique advantage of our approach, however, is that the data we use contains precise measures of governments' positions at the level of legislative proposals.

[19] Where a court case concerned several of the controversial acts, the average salience value of these acts for the particular member state was used.

[20] In most cases (65%) we have salience data on all legal acts cited by the Court. For the other cases, we lack salience values for one (18%) or two (14%) legal acts, while for two cases we lack salience values on more than two legal acts. When we compare the number of member states' observations in cases where we have all the data, to cases where we lack some data, we find that the latter tend to have fewer observations (13% compared to 23% of the cases citing these laws contain observations). This is what we would expect given that 1) Thomson et al.'s data includes only legislative acts that were to some extent salient (measured by media attention) and 2) our hypothesis that political salience is connected to member state activity in the legal arena. Furthermore, for robustness we have run a simple model, including our measures of legal and political salience, on only those cases where we have all the data. We find that both variables have the expected effects also in this limited model with fewer observations.

Nevertheless, our analyses should be seen as a first attempt to study the link between individual member states' policy preferences in the legislative arena and their subsequent behaviour in the judicial arena in cases where the link should be possible to identify.

Another strategy that has been attempted as a proxy for political salience in previous research is to use the 'complexity' of the case. The logic would be that "as more legal areas are involved, a case becomes important to more observers […]. Increased complexity therefore indicates the likelihood for greater policy consequences (or impact)" (Vining and Wilhelm 2011, 561). We find the use of legal complexity as a proxy for political salience problematic, not least since it fails to distinguish between political and legal salience. It is also possible to argue that member states may be less inclined to submit observations in more complex cases that require more resources and legal analysis. However, we will include complexity as a control variable in our analyses, although we do so without a clear expectation regarding the direction of the effect. The variable *Complexity* is calculated from a factor analysis of two variables: the number of questions the national court sent to the CJEU, and the number of affected issue areas (treaty chapters) involved in the case.

Resource constraints is a factor that needs to be taken into account (Granger 2004, 23f; Gleason and Provost 2016, 259f). Van Stralen (2015) finds that this is indeed an issue that is perceived as important among Dutch and Swedish government officials representing their states in Luxemburg. As already seen in the descriptive data in the previous section, larger member states tend to be more active in the preliminary reference procedure. We therefore include a control for the economic size of the EU member states. The variable *GDP* takes the (logged) Gross Domestic Product from OECD (2016).

Before we turn to the empirical analyses we will note that one other factor also needs to be taken into account. The decision on whether or not to participate in a preliminary reference procedure by submitting an observation is strongly affected by whether the request for a preliminary ruling comes from one of the member

state's own national courts, or whether it origins in another member state's court. In the 1,599 preliminary reference cases in the dataset by Naurin et al., member state governments submitted observations in 79 per cent of the cases where the referral came from one of their own courts. By contrast, in cases originating in other states' courts member states submitted observations in only 6 per cent of the cases. As we already noted, this is also likely to be one factor behind the clear difference between large and small states that we saw in Figure 2, as more court cases are likely to be raised in larger states. Member states are more likely to submit observations in cases originating from their own courts, both as a matter of principle and responsibility, as they are likely to have superior knowledge about relevant facts to the case compared to other governments. Furthermore, both the general awareness of the case, and the political and legal significance, is likely to be higher when the case directly concerns national policy and law. In the empirical analyses we will therefore distinguish between observations filed to cases that stem from a domestic court, and observations filed to cases that originated in another state. For robustness, we will use the variable *Domestic Court*, which takes the value of 1 if the case comes from the member state in question, and 0 otherwise, as a control variable. Table 1 shows the summary statistics of all the variables included in the analysis of the matched data.

Table 1. Summary statistics of variables in matched dataset

Variable	N	Minimum	Maximum	Mean	Std. Deviation	Variance
MS Observation (DV)	765	0	1	0.193	0.395	0.156
Authority	765	-10.702	-7.268	-9.022	0.755	0.570
Doctrine	765	0	1	0.216	0.412	0.169
Political Salience	765	0	97.5	54.880	21.839	476.955
Domestic Court	765	0	1	0.064	0.245	0.060
Complexity	765	-1.377	3.412	0	1	1.001
GDP	765	3.212	8.057	6.180	1.188	1.411

Findings

As we explained in the previous section the dependent variable *MS observation* is binary, noting whether a particular member state submitted an observation or not in the case at hand. Therefore, we use logistic regression models to analyse the data. Table 2 shows the results of four different regression models. The first two models investigate the effect of legal significance – as measured by the two variables *Authority* and *Doctrine* – across the whole dataset of Naurin et al. (2013). The unit of analysis is country-case for the 15 member states that were members of the EU over the whole time-period, which amounts to an N of 23955 (1597*15).

Table 2. Logistic regression with robust standard errors: The effect of political and legal salience on the likelihood of member states submitting observations

DV: MSobservation (0;1)	Model 1 Odds Ratios	Model 2 Odds Ratios	Model 3 Odds Ratios	Model 4 Odds Ratios
Authority (-10.702 – -7.268)	1.3568*** (0.0356)		1.8915*** (0.2912)	
Doctrine (0; 1)		1.5747*** (0.7172)		2.2968** (0.5923)
Political Salience (0 – 100)			1.0090† (0.0049)	1.0116* (0.0050)
Domestic Court (0; 1)	27.2089*** (1.8765)	26.7750*** (1.8339)	8.5807*** (3.1684)	8.3588*** (2.8548)
Complexity (-1.494 – 3.286)	1.0680** (0.0220)	1.0988*** (0.0226)	0.6898** (0.0836)	0.7882* (0.0879)
GDP (3.212 – 8.057)	1.4993*** (0.0260)	1.4921*** (0.0258)	1.5370*** (0.1462)	1.4976*** (0.1448)
Constant	0.1462*** (0.0368)	0.0086*** (0.0010)	2.2328 (3.3430)	0.0063*** (0.0039)
Log likelihood	-7948.204	-7975.930	-321.464	-325.325
Nagelkerke's R^2	0.283	0.279	0.212	0.198
AIC	15906.408	15961.860	654.927	662.651
BIC	15946.828	16002.279	682.767	690.490
N	23,955	23,955	765	765

*†p<0.10, *p<0.05, **p<0.01, ***p<0.001. Odds ratios reported. Robust standard errors reported in parentheses.*

We find that both our indicators of the legal significance of the case are associated with a higher tendency of member states' filing observations. Calculating the predicted probabilities based on the two models indicates that the effects are relatively substantive. The probability that a member state will file an observation in a case that does not concern legal doctrine is about 11 per cent (0.105) according to model 2, holding the other variables at their means. If the case does concern one of the legal doctrines – direct effect, supremacy, state liability, loyal cooperation or non-discrimination – the chances that a government submits an observation increases to 16 per cent (0.156), i.e. an increase of almost 50 per cent from the case when none of these legal doctrines were involved. Comparing the minimal and maximum values of *Authority* from model 1 in a similar way shows an even larger increase in the predicted probabilities, from about 7 to about 18 per cent chance of seeing an observation filed.

The legal salience of the case thus clearly affects the propensity of member states making their voices heard in the preliminary reference procedure. Models three and four introduce our measure of political salience, as derived from member states' policy preferences at the stage of negotiating the legislation that the court is interpreting. As previously explained, these models have a much lower N as they are based on the 51 cases where the court is interpreting one of the legislative acts for which we have data on the salience of member states' preferences (15*51=765).

We find that the effect of political salience is more uncertain than the variables measuring legal salience. In model 3, which includes *Political Salience* along with *Authority* and the control variables, the effect of *Political Salience* is associated with a p-value of 0.066. In model 4, where legal significance instead is measured by *Legal Doctrine*, the effect is slightly more certain (p=0.019). Substantively, the effects are non-trivial. Based on model 3, we find that a state that did not indicate much of an interest in the controversial issues during the negotiations of the legislative act (*Political* Salience = 0) has a probability of submitting an observation of about 10 per cent. The chances more than double if the state had a strong preference in the Council negotiations (*Political Salience* = 100), when the probability of submitting an

observation is 22 per cent. In model 4, the effect is even stronger, with the probability increasing from 9.5 per cent up to 25 per cent.

Importantly, as models three and four also include the two variables that we use to capture legal significance, which are both highly significant, the effects of salient policy preferences that we find are added to the legal aspects, rather than subsumed by these. Thus, although the legal and political aspects of a case may be difficult to disentangle our results indicate that to fully understand governments' behaviour both aspects need to be taken into account.

Finally, we note that the control variables that were included turned out to be significant in all the models. The large and significant effects of *GDP* and *Domestic Court* were highly expected, given the descriptive data that we showed previously. In particular, a member state is much more likely to submit an observation if the request for a preliminary reference comes from one of its own courts. This is natural, as the member states' own legislation is more directly at stake in these cases, even though the interpretations made by the CJEU formally affects all member states. Somewhat puzzling is that the effect of *Complexity* shifts from positive in the larger sample of cases in models one and two, to negative in the smaller sample in models three and four.[21]

[21] A closer look at the distribution of complexity in the two samples demonstrates that cases of higher complexity are less common in the smaller sample, which may contribute to the difference.

Conclusions

The preliminary reference procedure has been recognized as a key mechanism in the development of European legal integration. So far, however, it has been conceived mainly as a judicial affair, providing the opportunity for the alliance between the CJEU and lower-level national courts to 'mask and shield' the advances of European law (Burley and Mattli 1993). The member states' role in the procedure has been largely omitted, even though a few studies have found that their observations have a significant impact on the Court's decisions (Carrubba and Gabel 2008; Larsson and Naurin 2016). This article has provided the first systematic large-scale analysis of the member states' propensity to engage in the procedure by submitting written observations, thereby potentially influencing the development of EU law.

We have found that participation in the preliminary reference procedure is an uneven phenomenon, both across states and cases. While most states file briefs when their own legislation is directly at stake, it is significantly less common to take a broader European perspective in the sense of engaging in cases that have their origin in other states. The fact that more cases are raised in larger member states partly explains why these states file more observations, but we also found that economic size has an independent positive effect over and above case origin. More resources available for monitoring case law and conducting legal analysis is probably of importance in this respect. Overall, and with a few exceptions (Austria and the Netherlands in particular) participation in the preliminary reference procedure is dominated by larger states.

Our study also suggests that member states participate in the process both with an eye to influencing the broader development of European law, and with the purpose of defending more immediate policy preferences. Cases that are potentially more important in terms of their effect on legal doctrine and their status as sources of case law (Authority) tend to trigger more member state observations. This indicates that the purported 'mask of law' may not be as impenetrable to EU governments as previous research has suggested (cf. Larsson et al. 2017).

In this regard, our study complements and deepens the ongoing reinterpretation of the larger narrative of European legal integration as an opaque and unintended development from the perspective of the member states, driven mainly by courts, lawyers and litigants. Besides the political science work in more recent years, emphasising the sensitivity of the CJEU to member states' preferences (Carrubba and Gabel 2008; Martinsen 2015; Larsson and Naurin 2016), legal historians have found the constitutionalization of the treaties a more contentious and politicized process than previously assumed (Davies 2012; Davies and Rasmussen 2012). Building on the previous work of Granger (2004) and Rytter and Wind (2011), our study provides further nuance and precision to the role of member states in the preliminary ruling procedure.

We find that member states are able to keep both law and politics in mind at the same time, when deciding whether to engage in the preliminary reference procedure. The fact that we were able to trace member states' preferences during the legislative phase to their participation in subsequent court cases demonstrates that there is a link between the formally separate institutional arenas. In this respect, the practice of filing observations contributes to coherence in the ongoing judicial-political dialogue that determines the development of EU law.

4 Paper II. CJEU Public Communication Between Compliance and Contestation

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Abstract

International institutions face increasing pressure to legitimate their actions when their competences grow. International courts are no different in this regard. To satisfy such demands, they engage in public communication with press releases and social media, without being directly accountable to voters. Questions of legitimacy, transparency, and politicization have been particularly prominent in studies of European politics. However, both the public perception and public communication of the Union's highest court have remained a blind spot. This paper addresses this gap by asking under which conditions the Court issues press releases. Using data for CJEU cases decided 1997-2012 in a regression design, we show that the Court, in addition to promoting legally important cases, also seems to strategically increase its public relations efforts for politically conflictual decisions.

Introduction

Legitimacy is of paramount importance to any institution that wants others to comply with its decisions or follow its recommendations, but can neither use threats of force or promises of material gains to compel them to do so. As the competences and power of international organizations has increased over time, new demands for legitimation have arisen for international institutions, along with new ways of theorizing their attempts to meet these (Ecker-Ehrhardt 2018a; Ecker-Ehrhardt 2018b; Ecker-Ehrhardt 2018c; Gronau and Schmidtke 2016; Tallberg and Zürn 2019; Cohen *et al.* 2018). However, for legitimation to take place, the work of the institution must be known to its potential support constituents, be they the public, NGOs, national courts, or state governments.

This creates a problem for international institutions, whose work might seem obscure and distant to the general public. International courts certainly face this challenge, as they are more detached from domestic public discourses than domestic courts and are confronted with rather precarious public support (see Caldeira and Gibson 1995; Gibson and Caldeira 1995; Vanberg 2001, 358; Voeten 2013). Supranational courts such as the Court of Justice of the European Union (CJEU) "tend not to receive the same degree of public attention" (Vanberg 2001, 358) as domestic high courts.

Studies of domestic courts have revealed incentives for courts to communicate to audiences outside the judiciary. Previous research underpins the importance of strategic communication by courts to stimulate media coverage (Staton 2010, 86) and to ensure compliance (Staton 2006; Staton 2010). Media coverage was described as an important tool by which to evoke public attention as an "indirect enforcement mechanism of courts" (Carrubba 2009, 65; see also Stephenson 2004; Vanberg 2004). According to this literature, courts will primarily engage in public communication to raise awareness of their decisions on issues that face political resistance and where there is a threat that the responding governments might not comply with the decision. Lacking both the powers of the sword and the

purse,[23] decisions that face government resistance are particularly challenging for judicial institutions. They require courts to reach out to other actors in order to ensure that their decisions are followed.

While ensuring that governments follow rulings can be the main focus of certain courts in certain situations, we argue that a court operating in a setting of deeper international cooperation will not only be concerned with this ('compliance') problem specifically. Instead, it will be concerned with the contestation and politicization of its decisions in general, regardless of whether these primarily concern compliance with judgments or not. We have two reasons to believe this: (1) The conflicts among states and courts go beyond the supranational-versus-national divide; (2) non-compliance with rulings is not the only reaction of states that courts have reasons to fear. Therefore, we believe that previous literature on courts has over-emphasized the role of compliance with judgments in stimulating efforts to garner public attention for courts, to the detriment of other explanations.

In the EU integration setting of recent decades, where contestation and politicization have increased (de Wilde and Zürn 2012), conflict among the key institutional players will matter for the behaviour of the CJEU. We assume that signals about political conflict will also affect the CJEU's public communication. Therefore, our research question reads: *How does conflict among institutional actors in the EU affect the public communication activities of the CJEU*?

We expect that a court concerned with its legitimacy and authority will have reasons to mobilize support constituents not only when faced with threats of non-compliance, but also when disagreement within the relevant political community is strong. The more contested a decision is, the more likely is politicization and backlash, by which we mean actions by governments with the intention of either forcing the court to change course or to weaken it. Crucially, decisions can be contested in more ways than a defending government not wishing to comply with

[23] *Baker v. Carr*, 369 U.S. 186.

supranational rules. Disagreement among the institutional actors within the EU polity can take various forms.

In a regression design, we use data on court decisions and accompanying press releases from the CJEU, as these are the primary public communication tool of the Court. Our results indicate that the mobilization of governments in court procedures leads to an increase in the propensity of the Court to issue press releases. This happens irrespective of whether the Court deepens EU integration or not. We do not find effects of the threat that governments might not comply with a ruling, indicating that compliance matters might have been overemphasized in previous literature. Meanwhile, disagreement of institutional actors within the EU polity has a strong relationship with the propensity of the Court to engage in public communication, regardless of case outcome. This relationship is particularly strong when member state governments are in conflict over the issues of a court case, even though this finding is somewhat uncertain or at least partly dependent on the overall legal importance of the case. Conflict between the Commission and the Court, on the other hand, consistently increases the probability of the Court to issue press releases.

We conclude that the CJEU's public communication activities are neither primarily driven by a concern about non-compliance with its rulings, nor to promote pro-integration rulings. Besides the legal importance of cases, it is rather disagreement among EU institutions and among member state governments, which contributes to the Court's propensity to engage in public communication. This is also what we expect given the multi-dimensionality of conflicts before the Court and in face of the broad set of tools available to governments that are displeased with the Court's judgments.

Theory

As inter- and supranational institutions gained in competences and importance, their powers have been questioned more and more often, and they have increasingly become the subject of debate (Zürn, Binder, and Ecker-Ehrhardt 2012). This has led to new demands for legitimation (Ecker-Ehrhardt 2018a; 2018a; Gronau and Schmidtke 2016; Tallberg and Zürn 2019) and requires international institutions to pursue legitimation efforts. International courts face the very same necessity (Bogdandy and Venzke 2012; Cohen *et al.* 2018; Madsen 2018). Theoretical accounts on legitimation processes suggest that "the intensity of legitimation [matters]", and research shows that "the loudest messages in a setting of competing messages have the greatest impact on public opinion, and that communication has to be repeated for its effects not to fade over time" (Tallberg and Zürn 2019, 596). Thus, 'more intensely communicated messages' should be more advantageous for ICs for building legitimacy among their various audiences. The instruments used for such messages can be manifold, such as public oral hearings of court procedures (Krehbiel 2016), tweets (Barberá *et al.* 2017), or press releases for judgments. Issuing a judgment is a message sent out to the public while issuing a press release for that judgment is clearly a more intense mode of communication. Thus, to the extent that the hidden and uncontested efficacy of the law does not, simultaneously, fulfil other objectives and demands such as transparency, legitimacy and compliance with rulings, international courts have to engage in communication to outward audiences.

In recent decades, international organizations have increased both the intensity and scope of their public communication efforts, as they have targeted "an expanding audience, including journalists, experts, activists, and citizens" (Ecker-Ehrhardt 2018a, 723). International courts (ICs) are no different in that regard. They have engaged in public communication and professionalized their public relations strategies with the help of press releases and by using social media (Barberá *et al.* 2017). Thus, ICs seem to try to compensate the lack of public attention (Vanberg 2001, 358) by means of purposeful, strategic communication. However, we do not know for which decisions ICs disseminate information, and what the underlying mechanisms or reasons are. While it is well established that IOs have increased their

communicative efforts, it is less well understood why and when they do so. Given limited resources of institutions, IOs face a choice in what aspects of their work to promote and which to downplay. This paper investigates an international court in a deeply integrated and politicizing polity setting, which is expected to make its decisions contested. Therefore, we seek to investigate *how conflict among institutional actors in the EU affects the public communication activities of the CJEU*.

Non-Compliance, Contestation, and Communication

The literature on communication efforts of international organizations links them to the ambition of these organizations to strengthen their own legitimacy and to change the behavior of other actors. By carefully selecting which parts of their work to publicize in line with the institutions' goals, they can aim at increasing (decreasing) attention to decisions that align (do not align) with the views of certain groups. Over recent decades, IOs have expanded their public relations activities. Recent scholarship explains this as a response to increased politicization of the issues that IOs deal with (Ecker-Ehrhardt 2018c).

Previous research has conceptualized three main motivations for IOs to engage in public communication. First, IOs communicate in order to provide public information in line with their mandate as public institutions and transparency requirements (Grigorescu 2003; 2007). Second, IOs have been argued to use public communication in an effort of self-legitimation: They emphasize those achievements, which the organization believes strengthen its public image and standing while de-emphasizing those that do not (Ecker-Ehrhardt 2018a; 2018b; 2018c). Third, IOs have been argued to use public communication as a means to call upon so-called compliance-constituencies that promote compliance by pushing states to follow the rules and decisions of the international institutions (Carrubba 2009; Dai 2005; Panke 2007). In order to tailor our conception of (non-)compliance for studying courts and the binding effect of their decisions, we define *compliance as the abidance to or following-through on a court decision*. Thus, compliance in this sense is less close to the EU implementation literature, but more in line with the literature on courts (see Staton 2006; 2010; Carrubba 2009).

Motives of self-legitimation and improved compliance with decisions are, of course, not mutually exclusive, and the results of one might strengthen the goals of the other. A more legitimate institution will have fewer problems with non-compliance, and an institution that manages to ensure compliance will garner more legitimacy over time. The literature rather discusses these motives in terms of which is the primary one.

What an international institution prioritizes will likely vary with the institutional and political setting it is located in. An institution that does not produce any injunctions, for example, norms that others have to comply with, but rather produces information or recommendations, can be expected to prioritize strategic, legitimizing communication. An institution faced with a unidimensional compliance problem, where few states support the institution, and most are skeptical towards supranationalism, is expected to rather utilize public communication as a means to elicit compliance with its decisions. However, in a highly developed IO setting such as the EU, the political conflicts that are at stake before the Court do not only concern conflicts between a supranational court and a recalcitrant government that does not wish to comply.

Conflicts about the interpretation of EU laws and treaties have become more multi-dimensional, beyond the traditional conflict line between supranationalism versus national sovereignty (Larsson and Naurin 2019). Therefore, the Court will not only face challenges from individual governments that are required to comply with supranational decisions. It will also increasingly face challenges from other governments that are not directly a party to the case, but which nevertheless routinely participate and have a stake in CJEU case deliberations and outcomes (see Dederke and Naurin 2018). These governments will neither uniformly defend national sovereignty nor uniformly support a non-complier. Depending on the issue at stake in the case and how this interacts with different national interests, different governments will advocate different outcomes at court. Some will take positions that imply support for national sovereignty, and others for stronger supranationalism.

Moreover, non-compliance with rulings is only one out of many tools governments have to strike back at courts whose actions they seek to challenge. Governments can politicize appointments (Malecki 2012), withhold (Castro-Montero *et al.* 2018) or retract jurisdiction (Schaffer *et al.* 2013; Vleuten 2007), tamper with budgets, or (threaten to) override court decisions (Martinsen 2015, ch. 5-6). Such instruments can challenge and potentially damage the court's authority and standing. While non-compliance can only occur when a court charges a state to do something, the other tools can be activated in any situation where a government is displeased with the court's decisions. In short, governments will be dissatisfied with the Court for more reasons than having to comply with a ruling, and they have more means than non-compliance by which to strike back at the Court.

This is not to say that ICs, in general, do not fear non-compliance. Instead, we argue that non-compliance with a ruling is just one form of political contestation that should be of concern to a court. IOs in general and ICs, in particular, face various forms of backlash from discontent governments. Solely focusing on non-compliance seems insufficient, since we might remain blind to the broader picture of contested adjudication, especially in deeply integrated regional cooperation settings such as the EU. While the threat of non-compliance should be considered one key potential driver of strategic decision-making or strategic communication on the part of courts, it is certainly not the only relevant form of contestation. Political conflict, generally speaking, and beyond a specific court case, should motivate a court like the CJEU to engage in strategic public communication. In the following section, we discuss these theoretical propositions further and derive hypotheses for subsequent testing.

Public information

The logic of communication as public information is relatively straight-forward: IOs believe that they do important work, and want to herald this to the rest of the world. Similarly, courts want to inform both the public and administrative apparatuses about their decisions. This serves both, to declare that a particular issue has been settled, and to inform about how lasting interpretations of law (precedent) have been established. However, all communication is selective, since commending every single action would defeat the purpose of communication. Public communication based on a logic of information prioritizes work that is important. For a court, this should imply efforts to promote the communication of important court decisions above routine ones. The propensity to communicate will increase, the more important an issue is.

Self-legitimation

When following a logic of self-legitimation, Ecker-Ehrhardt (2018c) argues that international organizations will selectively herald those decisions they believe will strengthen a certain image appealing to a certain set of values, among relevant audiences. The goal here is to strengthen an image, which is key for the organization to ensure the support it requires to further other goals (continued existence, compliance, etc.).

How this plays out for a given organization or institution necessarily depends on context (see Alter *et al.* 2016). A human rights court that aims to strengthen its image as a defender of human rights might herald those decisions where it advances the reach of such rights. Meanwhile, it will rather play down the importance of those decisions where it does not expand rights, for example, in the face of government pressure.

For the CJEU, we see two potential drivers: One where the Court promotes attention to decisions that strengthen the supranational dimension of EU governance, and one that aims at communicating decisions that preserve national sovereignty. The ideological goal with which the Court has been most closely connected has been European integration (Vauchez 2012) and its role as the

guardian of the treaties in the face of government resistance. Thus, the Court might be most inclined to herald the achievements of European legal integration to outward audiences. At the same time, when communicating to outward audiences in a strategic manner, trade-offs might be inevitable. This is especially so in times of increased resistance to supranationalism, and the waning of the 'permissive consensus' from the 90s onwards (see Hooghe and Marks 2009).

Generally speaking, EU law seems to be effective when doing its work behind the curtain. In the EU, integration through law thrived as long as the CJEU remained a rather unknown arbiter (see Burley and Mattli 1993; Weiler 1994). Keeping a low profile might have helped the Court in forging an alliance with domestic courts, and furthered European integration. Legal integration transformed Europe (Weiler 1991) without much notice or at least without being contested for a long time (though see Davies 2012).

However, these times might be over (see Caldeira and Gibson 1995; Cotter 2017, 100; Martinsen and Blauberger n.d.). The competences and output of international and supranational institutions have become much more contested and subject to debate, particularly so in the EU. These developments require a more active management of the public image of EU institutions and should not hold short of the Court. Judicial authority is expected to become politicized just as the competences and power of other international institutions are (Zürn *et al.* 2012, 93). According to Ecker-Erhardt, such communication efforts on the part of IOs, in general, focuses on "like-minded advocates of favored ideas" (Ecker-Ehrhardt 2018a, 734). Thus, given its reputation as an engine of integration, we suggest that the CJEU is likely to signal its achievements for and commitment to the integration project to its various interlocutors such as, for example, legal professionals and domestic courts:

H1: The Court is more likely to engage in public communication of those court cases in which it takes a decision in favor of deeper European integration than those that preserve national sovereignty.

Contestation

Communication can also be deployed strategically in order to advance social, cultural, or technological change – i.e., to influence the behavior of important actors shaping society. One key challenge of IOs in this regard is to get states to follow their decisions or recommendations. For international courts, state non-compliance with international law and court decisions is a recurring threat and problem (Carrubba 2005; Carrubba *et al.* 2008; Carubba and Gabel 2015). Communication can be a tool to ameliorate these difficulties, to the extent that it enhances the IO's or court's capacity to get others to follow its recommendations and/or decisions.

With regards to courts, Staton has argued for the importance of public support for compliance (Staton 2006), as publics who view the court as legitimate will punish other actors who defy the court's authority. Carrubba and colleagues (Carrubba 2005; Carrubba *et al.* 2008) have argued that for an international court facing compliance problems, primary target audiences can be other governments. They could, for example, punish a non-complier within a trade regime by taking steps to limit the non-compliers' benefits of the regime (withholding funds, erecting trade barriers, etc.). According to another theoretical strand (Alter 1996), international courts can also have powerful domestic allies within the national judiciaries themselves. These allies could force compliance with a ruling even if the government of a state opposes it. Moreover, beyond the work about the alliances between the CJEU and domestic courts (Alter and Weiler), there are also instances where the national bureaucracies of EU member states forced governments to comply (Beach 2001).

How then do courts mobilize these potential allies? On the one hand, courts can focus on the framing and crafting of court judgments, and on their use of precedence (Busch and Pelc 2014; Hume 2006; Lupu and Voeten 2012; Larsson et al. 2017; Staton 2010). By carefully crafting their legal reasoning and the use of precedence, courts can enhance their capacity to convince the loser(s) about what the law demands in the specific case. On the other hand, courts can also (try to) mobilize allies by employing tools that are not directly related to adjudication as such. Instead, courts can call attention to their judgments with help of public

communication tools in order to make sure that any non-compliance does not go unnoticed. In that way, courts can raise awareness for rulings among national allies, governments, media, or the general public. Such activities should be more likely to be deployed, the higher the threat of non-compliance is. The more governments that oppose a court decision, the more likely the Court will actively communicate the outcome of a case.

H2: The higher the risk of non-compliance with a court's judgment, the more likely the court will promote the respective judgment with public communication tools.

Meanwhile, as discussed above, non-compliance with a judgment is by far not the only behavior that threatens the Court's authority, and thus not the only form of contestation the Court should be concerned with. In recent decades, the European public sphere has developed into a highly politicized environment (Wilde and Zürn 2012). In this environment, the output EU institutions produce is more contested than in earlier phases of EU integration. A permissive consensus has vanished (Hooghe and Marks 2009), and the tides of the public mood affect everyday decision-making and the polity as a whole more than before. In order to cope with these developments, EU institutions have developed strategies to address increasing demands for legitimation. The Court is no different in that regard. It seems to have become more careful in its jurisprudence with regard to highly politicized issue areas (Blauberger *et al.* 2018) and is generally sensitive to political signals (Larsson and Naurin 2016). Building on Larsson and Naurin's findings of "a strong correlation between the CJEU's rulings and the political signals it receives" (ibid., 377), we assume that public communication of the Court is at least equally affected by political signals.

The Court's political environment is uncertain, as the ways governments can react to unwanted Court decisions are manifold, and as the governments themselves are often split on important legal issues of case law. The many ways in which governments can react vary in how unified the governments need to be for the threat to be real. For example, overrides require broad coalitions, treaty amendments require unanimity, but politicized appointments or non-compliance require only one

state to take action. Meanwhile, what a court can infer is that the potential of politicization broadly increases with the degree of conflict or contestation. We define contestation as *the degree to which actors or groups of actors stand for different positions that are mobilized to influence the object or decision under consideration.*

Larsson et al. argue that "courts use different types of rhetorical action to improve their case with outside audiences" (Larsson *et al.* 2017, 902) and find that "the CJEU reacts to political controversy by strengthening its citations to precedent" (ibid.). Their findings imply that communicating to audiences outside of the Court is particularly useful and more likely if the judgment is anticipated to be more contested or more conflictual. We assume that signals about political conflict will also affect the CJEU's public communication. It will not only "speak law to power" (Larsson *et al.* 2017, 881) but also to the public and will be more inclined to communicate to the wider public, the press, and media in rather contentious cases. Such audiences beyond the main political institutions and branches of power might be even more important for building public support and to legitimate the Court's actions. In line with our argument, Staton (2006) also suggests in a study of the Mexican Supreme Court that promoting case results with help of press releases is more likely for contentious decisions, namely those in which a court strikes down the status quo.

If a court case is contested and there are both winners and losers, it will be harder to ensure legitimacy, and demands for legitimation will be stronger. Thus, in order to retain a favorable image in the public, the court will have to be more active under conditions of higher levels of conflict. We expect that this is exactly what the Court will do and thus suggest a relationship between contestation and public communication that goes beyond concerns for non-compliance:

H3: The Court is more likely to promote its output, the higher the degree of disagreement among involved institutional actors, and irrespective of an imminent threat of non-compliance.

Data

The dataset we use includes 1,597 preliminary reference procedures lodged before the CJEU between 1997 and 2008 (Naurin *et al.* 2013). It offers original data not only on characteristics of the court cases but also on positions of the involved actors such as the Commission, the Advocate General, and governments as amici curiae. Moreover, we collected data on CJEU press releases from the Court's website for the entire set of court cases included in the analysis.[24]

We use this dataset on preliminary references as it contains the most comprehensive collection of the variables we need to test our hypotheses. Crucially, it includes data for whether the Court ruled for deeper integration, in effect more supranationalism (called "More Europe" in the original dataset), or for preserved national sovereignty ("Less Europe"). The positions of all participating member state governments are coded on this scale (Naurin *et al.* 2013).

It might strike the reader as odd not to use data on infringement proceedings when the issue of non-compliance figures prominently in our theoretical discussion, as this is a procedure specifically designed to deal with non-compliance. The lack of appropriate data is the main reason why we do not look at both infringement and preliminary reference procedures.[25] At the same time, compliance defined as the abidance to or following-through on a court decision is far from a non-issue in preliminary reference cases. The vast majority of CJEU cases, including paradigmatic cases such as Van Gend en Los[26], Costa[27], or Cassis[28], or latter-day controversial cases such as Laval[29] or Watts[30], concern a national governmental decision or law which one party claims to be in violation with EU law. In many ways, the preliminary reference procedure functions as a decentralized compliance-monitoring system,

[24] For details on the data collection, see Appendix A3.1 for paper 3 of this dissertation.
[25] Carrubba et al. (2008; 2015) build their work on infringement procedures on data up to the year 1997, while data on CJEU press releases is only available from the website starting 1997. Stone Sweet and Brunell (2007) do not include similar data on the positions of actors participating in the procedures.
[26] C-26/62 Van Gend en Loos v Nederlandse Administratie der Belastingen.
[27] C-6/64 Costa v ENEL.
[28] C-120/78 Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein.
[29] C-341/05 Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet.
[30] C-372/04 Watts v Bedford Primary Care Trust.

where private plaintiffs challenge member state actions they argue to be non-compliant with EU law. In that way, by analyzing preliminary reference procedures, we are also able to test for the relevance of non-compliance beyond the established findings for infringement procedures. Finally, preliminary rulings have proven to be the CJEU's "powerbase" (Hornuf and Voigt 2015; see also Stone Sweet 2004; Weiler 1991). They have been most influential in shaping the development of EU law and the course of European legal integration.

Dependent variable

The dichotomous dependent variable *Press Release* indicates whether the Court published a press release (1) for the respective judgment or not (0). The CJEU issues press releases only in a minority of decisions (about 15% overall, see Table 1), and the ratio varies across procedures. There are press releases for only 7% of infringement procedures, 12% for annulment procedures, and 26% for preliminary reference procedures. By using preliminary reference procedures, our data includes 1,187 cases for which the press release variable denotes 0 and 413 cases for which it denotes 1.

Table 1. Share of press releases by procedure

	Press Release			
	0		**1**	
Type of procedure	No.	%	No.	%
Preliminary reference	1,187	74.2	413	25.8
Infringement	1,350	93.4	95	6.6
Annulment	1,821	88.2	244	11.8
Total	4,358	85.3	752	14.7

Source: Own data collection of press release data from curia.europa.eu; mapped on three combined datasets for CJEU cases (Adam et al. 2015; Stone Sweet and Brunell 2007; Naurin et al. 2013).

Independent variables

In order to determine under which conditions the Court issues press releases, each of the theoretical propositions has to be operationalized. As a baseline assumption, we expect the Court to issue press releases based on the importance of a case. For the legal importance of the case, we use two alternative, established measures. Following Carrubba, Gabel, and Hankla (2008), we use *Chamber size* as an indicator of legal importance as perceived by the Court itself. It is measured as the percentage of judges dealing with the case as a share of the full court and ranges between 0 and 1. Legal importance can also be measured by *Authority* that represents the precedential authority of cases in their case citation network (following Fowler *et al.* 2007; Derlén and Lindholm 2014). This network measure for a court case reflects the number of other court cases citing it and the centrality of these citing court cases within the network. Since it is determined post-hoc, i.e. after a case has been settled, it can only be a mere *proxy* for operationalizing legal importance prior to the decision of issuing a press release. We use Authority scores from Derlén and Lindholm that were calculated based on all "9125 judgments rendered by the CJEU from December 1954 until May 2011" (Derlén and Lindholm 2014, 672)

The variable *CJEU Decision* codes the CJEU's decisions for each individual issue that is at stake in a case according to their implication for legal integration.[31] Decisions implying that EU law relevant to the case restricts the autonomy of member states were coded as 1 ("More Europe"). By contrast, if the decision "implies that EU law does not restrict the autonomy of the member states in the case at hand" (Naurin *et al.* 2013, 33), the code would be Preserved National Sovereignty (-1, "Less Europe"). Decisions with ambivalent or no implications in this regard are coded as 0.

Preliminary reference procedures have a specific link to a single EU country. It is always a domestic court that initiates the procedure by submitting questions to the CJEU regarding the appropriate application of EU law. Such domestic cases

[31] The data we use is coded on the level of legal issues in accordance with the legal questions posed in the respective procedure. This implies that one court case can involve several issues (for details see Naurin *et al.* 2013; Larsson and Naurin 2016). For the analysis in this paper, we aggregated the data to the level of court cases because the dependent variable varies only on this level, and to allow a more straightforward interpretation of the regression results.

should receive more attention in the respective member state. The member state government in the respective country is a particularly important actor regarding the procedure under consideration and will often get involved in these domestic cases as amicus curiae (Dederke and Naurin 2018, 878). Therefore, we test specifically for the alignment of positions of the government of the state from which the case originates with the CJEU's position in a court case. The variable *Government Violation* denotes a 1 if the government of the state from which a court procedure stems argues for "Less Europe", while the CJEU rules for "More Europe", and 0 otherwise.

To capture member state positions, we adapt the variables *MS Pro* and *MS Anti* from Larsson and Naurin's dataset (Larsson and Naurin 2016, 397). Based on member state observations submitted in the case, the variables summarize the weighted share of the EU Council votes supporting More Europe (*MS Pro*) and Less Europe (*MS Anti*), respectively. Both are continuous variables ranging between 0 and 1, "denoting the share of Council votes supporting more Europe and preserved national sovereignty, respectively" (ibid.). For example, if MS Anti equals 0, no states supported Less Europe, and if it equals 0.2, states with 20 percent of the voting power in the Council supported Less Europe.

The variables (i) *MS-CJEU Conflict*, (ii) *COM-CJEU Conflict* and (iii) *AG-CJEU Conflict* test whether the Court is more or less likely to issue a press release when its decisions are (i) in conflict with the majority of observing member states, (ii) the Commission, or (iii) the Advocate General.

We also include a control variable that we believe will likely increase the propensity of the Court issuing press releases: the GDP of the member state from which the case originates (World Bank 2018). Larger economies are of more importance to the internal market of the EU, and cases from such economies are more likely to affect more people and market operators. Table 2 displays the summary statistics for all included variables.

Table 2. Summary statistics

Variable	N	Min	Max	Mean	Median	SD
Press Release	1597	0	1	0.25	0	0.434
Chamber Size	1596	.1111111	1	0.32	.2	0.190
Authority	1597	0	.002025	0.00	.000112	0.000
CJEU Decision	1597	-1	1	0.15	0	0.683
Government Violation	1597	0	1	0.22	0	0.415
MS Pro	1597	0	.4736	0.03	0	0.053
MS Anti	1597	0	.97736	0.07	.04231	0.089
MS Pro * MS Anti	1597	0	.051168	0.00	0	0.005
MS-CJEU Conflict	1597	-1	1	-0.11	0	0.831
COM-CJEU Conflict	1597	-1	1	-0.39	-.5	0.576
AG-CJEU Conflict	1597	-1	1	-0.40	-.5	0.538
GDP (submitting MS)	1597	11.53921	3752.366	1300.07	1239.051	1031.903

Analysis

In order to test the hypotheses derived from earlier theory and our own argument, we conduct a series of logistic regressions. *Press Release* is our binary dependent variable, and we include a series of independent variables and controls in models 1-7 in Table 3. Models 6 and 7 replicate models 4 and 5 but substitute *Chamber Size* with *Authority* as a proxy to control for an alternative measure for legal importance, as discussed above.

First, where *Chamber Size* is included, the significant relationship across all models confirms that the CJEU is indeed promoting legally important cases with the help of its public communication tools. In order to ascertain the substantive effect of increases in Chamber Size, we predict the change in probability of a press release based on the results of model 4 in Table 3 (keeping all other variables at 0, which we also do for all subsequent predictions). An increase of Chamber Size by one standard deviation increases the probability of a press release by .04 [.03; .05], and an increase

from the minimum value of Chamber Size to its maximum increases the probability by .44 [.32; .56].

For hypothesis 1, i.e. that the CJEU would be more prone to issue press releases when it rules for More Europe (*CJEU Decision*), we find no significant correlation in any of the models. Thus, the CJEU's use of press releases does not seem to be connected in any way to the implications of the Court's rulings for European integration.

In order to determine whether the risk of non-compliance increases the propensity for press releases (H2), we conduct two tests. First, a relatively straightforward one in model 1, where *Government Violation* has no significant coefficient. This indicates that the CJEU is not more likely to issue press releases in the scenario when the government of the state where the court case stems from argues for "Less Europe", while the CJEU rules for "More Europe". In fact, government violation did not show any conventional standards of significance ($p<0.05$) in any of the models we used in the analysis. The position of the government of the state where a case stems from appears as less important for public communication than we expected.

Hypothesis 2 is further tested with *MS Anti* and *MS-CJEU Conflict* in the subsequent models. While *Government Violation* proved insignificant, *MS Anti* also represents a good measure for a threat of collective or multiple non-compliance by several states, in instances where the Court rules for More Europe. While the position and non-compliance threat by a single government does not seem to affect the Court's public communication, the positioning of a larger group of member states does, as indicated by the significant coefficient of *MS Anti* in models 2 and onwards. The more member states that are potential non-compliers, or potential supporters of a non-complier, the more likely the Court is to issue a press release. This finding is in line with *H2*.

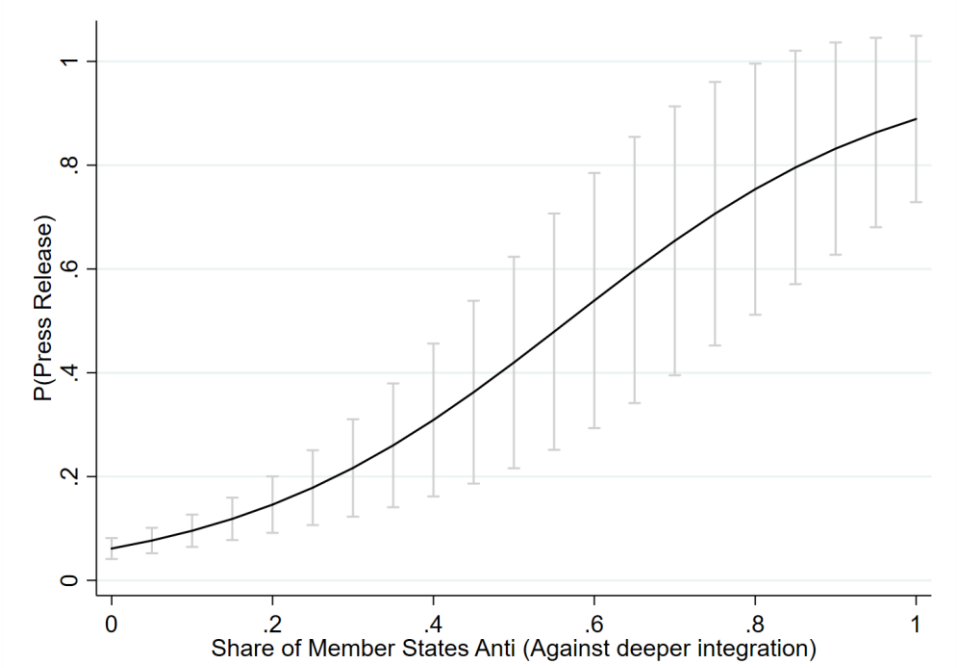
Table 3. Logistic regression on press release

	Dependent variable: Press Release (0 / 1); Generalized linear regression models (logit)						
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Chamber Size	3.280***			2.736***	3.275***		
	(11.06)			(8.79)	(11.02)		
Authority						3003.7***	3557.3***
						(7.32)	(8.81)
CJEU Decision	-0.0288	0.194†	0.00966	0.150	0.0146	0.125	-0.0102
	(-0.28)	(1.74)	(0.10)	(1.30)	(0.14)	(1.10)	(-0.10)
Gov. Violation	0.129	-0.334†		-0.261		-0.337†	
	(0.77)	(-1.81)		(-1.37)		(-1.79)	
MS Pro		3.200*		2.980*		3.318*	
		(2.45)		(2.22)		(2.50)	
MS Anti		6.054***		4.810***		5.106***	
		(7.42)		(5.71)		(6.01)	
MS Pro*MS Anti		35.58*		30.32†		36.85*	
		(2.16)		(1.77)		(2.18)	
MS-CJEU Conflict			0.00337		-0.000219		-0.0574
			(0.04)		(-0.00)		(-0.71)
COM-CJEU Conflict		0.270*	0.219*	0.245*	0.199†	0.299**	0.263*
		(2.51)	(2.09)	(2.19)	(1.81)	(2.72)	(2.45)
AG-CJEU Conflict		-0.129	-0.296*	-0.153	-0.282*	-0.135	-0.273*
		(-1.07)	(-2.54)	(-1.24)	(-2.34)	(-1.10)	(-2.29)
GDP (bns)	0.000213***	0.000106†	0.000139*	0.000177**	0.000218***	0.000136*	0.000174**
	(3.60)	(1.81)	(2.49)	(2.89)	(3.66)	(2.26)	(3.00)
Constant	-2.536***	-1.775***	-1.321***	-2.729***	-2.562***	-2.207***	-1.915***
	(-15.86)	(-13.40)	(-11.64)	(-15.25)	(-15.22)	(-14.68)	(-13.93)
Log-Likelihood	-831.2	-834.7	-892.9	-793.6	-828.0	-805.2	-848.5
Pseudo-R^2	0.0750	0.0725	0.00783	0.117	0.0785	0.105	0.0572
AIC	1672.5	1687.4	1797.8	1607.2	1670.0	1630.4	1711.0
BIC	1699.3	1735.8	1830.1	1661.0	1707.6	1684.2	1748.6
Observations	1596	1597	1597	1596	1596	1597	1597

*Note: † p<0.1; * p<0.05; ** p<0.01; *** p<0.001; Generalized linear regression models (logit). Data: from Naurin et al. (2013) & own data collection. SE in parentheses.*

Figure 1 depicts for model 4 the predicted probability of a press release on the y-axis and the value of MS Anti (the share of governments with a position against further integration) on the x-axis.

Figure 1. The probability of a press release depending on MS Anti (model 4)



A rise in MS Anti increases the probability of a press release considerably. With an increase of MS Anti by one standard deviation, the probability of a press release increases by 0.03 [0.02; 0.04]. With an increase of MS Anti from its mean to its maximum, the probability of a press release increases by .79 [0.63; 0.96]. At the same time, we have to acknowledge again that *CJEU Decision*, i.e., whether the Court rules for deeper integration or preserved national sovereignty, did not make a difference in the analysis. This requires us to reconsider that the effect of MS Anti might support the non-compliance argument in H2. Instead, *CJEU Decision* does neither have a significant effect on its own in any of the models, nor did the value of CJEU Decision alter the relationship between MS Anti and press releases in additional tests. Thus, it seems that a larger non-compliance threat does not increase the

probability of a press release for preliminary reference procedures. However, evidence by Larsson and Naurin shows that with an increase in *MS Anti* the Court is already much less likely to rule for deeper integration (2016, 399). Thus, it appears as if the Court will react to non-compliance threats already in its judgments and not with its press releases. The latter is also reconfirmed by the insignificant coefficients of *MS-CJEU Conflict* in models 3, 5, and 7, i.e., a conflict between the majority of intervening governments and the CJEU does not increase the probability of a press release.

Since the role of member state governments in court procedures has caused intense scholarly debate (Carrubba *et al.* 2012; Larsson and Naurin 2016), we investigate the role of member state positions and conflict in more detail. As mentioned before, the variables *MS Pro* and *MS Anti* introduce the positions of governments. Both have a significant coefficient, indicating that both, member state positions in support and in opposition to More Europe, increase the probability of a press release. This shows that more member state attention to a court procedure will increase the probability of a press release, irrespective of whether these promote or oppose More Europe.

The hypothesis that contestation will increase the probability of a press release is tested by the interaction term *MS Pro * MS Anti*. The positive, significant coefficient of this variable in models 2 and 6 ($p<0.05$) indicates that it is not only both, *MS Pro* and *MS Anti,* that increase the probability of a press release. These relationships will also increase in strength, the more member states who argue opposite positions, i.e. when there are conflicting positions among governments. In simpler terms, the more governments who argue for Less Europe, the stronger the effect of those arguing for More Europe, and vice versa. As the significance values of this variable indicate ($p<0.05$ in models 2 and 6; but $p=0.077$ in model 4), this correlation remains somewhat uncertain at best. Only when not controlling for legal importance (model 2) or when legal importance is operationalized with Authority (model 6), the interaction term for MS Pro * MS Anti reaches conventional levels of significance.

Figure 2. Comparing the effect of adding and interacting MS Pro and MS Anti (model 6)

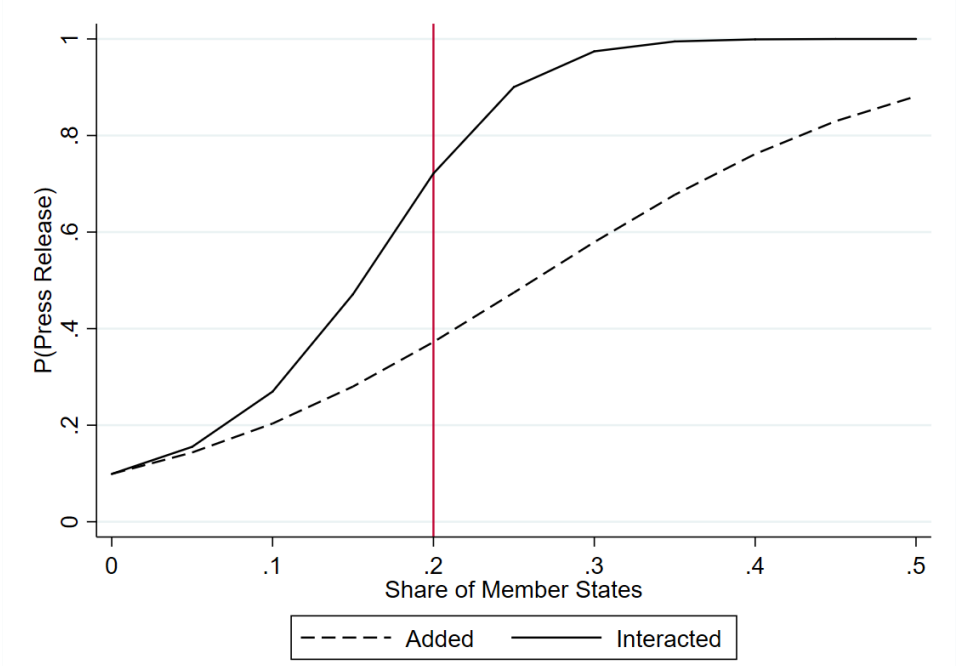


Figure 2 illustrates the interaction effect measured as the additional effect of more states taking adverse positions as compared to simply summarizing the effects of *MS Pro* and *MS Anti* (based on model 6). The y-axis again displays the probability that the CJEU issues a press release for the case. The dotted line indicates how the probability of a press release increases when both *MS Pro* and *MS Anti* simultaneously reach the share of member states denoted on the x-axis, not taking the interaction effect into account. For example, when both MS Pro and MS Anti equal 0.2 (represented by the red, vertical line), the predicted probability of a press release is .37, ignoring the interaction effect. The solid line graph indicates how the probability changes when the interaction effect, i.e., the effect of contestation, is also taken into account. When both MS Pro and MS Anti equal 0.2, the value of the interaction term is 0.2 * 0.2= 0.04. When the interaction effect is taken into account, the predicted probability of a press release increases to .72. All differences in the graph are significant up to the x-level of x=0.4. Above this value, the probability of a

press release for both alternatives approaches 1, and the difference is no longer significant.

To summarize, there is a substantial increase in the probability of a press release when there is disagreement among member states. This effect is distinct from the effect of a case simply garnering a lot of attention. Thus, conflict among governments based on their positions on the legal dispute seems to have a considerably stronger effect compared to that of the number of participating governments. Some statistical uncertainties regarding this correlation remain, as mentioned before.

We continue to believe that communication is not primarily affected by the positioning of actors as such, but that communication is driven by disagreement or conflict among key institutional players. We further test our argument that conflict will increase the propensity for press releases (H3) with several additional variables. The results in Table 3 above indicate that *MS-CJEU Conflict* does not significantly affect the probability of press releases. By contrast, *COM-CJEU Conflict* has a weak, positive, significant relationship, and *AG-CJEU Conflict* has a weak, negative, significant relationship ($p<0.05$ in models 3, 5, and 7). Whether a substantial proportion of member states stands in conflict with the Court does not seem to make a difference, while in conflicts with the Commission, the Court is more likely to communicate (in line with H3). The negative effect of conflicts with the Advocate General is plausible in so far as such a conflict expresses *internal* disagreement or at least different legal interpretations *within* the institution, and the Court might thus not be eager to promote attention for such decisions.

We conclude that while an effect of the risk of non-compliance might affect the CJEU's decisions (Carrubba 2005; Carrubba *et al.* 2008; Larsson and Naurin 2016, 399), other dynamics seem to have a stronger influence on the CJEU's public communication. The number of member states participating in a procedure as amici curiae, conflict between the Commission's position and the judgment, and conflict among governments make a substantial difference. In fact, the strongest effect is that of disagreement among governments. This finding holds irrespective of whether the

Court rules for More Europe or for Less Europe. The conflict among member states matters for when the CJEU issues press releases, even though this correlation is somewhat uncertain and dependent on the operationalization of the legal importance of the case.

Robustness checks

Since member state positions and CJEU decisions are correlated (Larsson and Naurin 2016), it could be hazardous to include both, CJEU Decision as well as member state positions (MS Pro and MS Anti), as independent variables in the same models, as we do in models 2-7 in Table 3. Therefore, following Staton (2006), we include a bioprobit regression that estimates two models simultaneously in an additional robustness check (Table A2.1 in Appendix A2). One of the simultaneous models is the same one as in models 4 to 7 in Table 3. The other simultaneously considers CJEU decisions as dependent on member state positions as well as the positions of the Advocate General and the Commission. In that way, we can model CJEU Decision as being predicted by member state positions and, simultaneously, include both CJEU Decision and member state positions as predictors of press releases. We document the models in the Appendix (Table A2.1). All results discussed above are substantially the same in these models as well, suggesting that our findings also hold in light of this robustness check.

Conclusions

In recent decades, IOs have increased the intensity and scope of their public communication activities, targeting "an expanding audience, including journalists, experts, activists, and citizens" (Ecker-Ehrhardt 2018a, 723). Previous literature has identified several reasons for this behavior, ranging from norms of transparency, via

concerns for governance capacity, to demands for legitimation. Even though courts are not directly accountable to voters, a handful of credible reasons have been proposed that make it meaningful for judiciaries to engage in public communication, to spend resources on this matter, and to spread information about their actions. We argue that just as other international institutions, international courts like the CJEU should be concerned with transparency, public support, and legitimacy as well. Previous literature on the role of public communication for courts has mostly acknowledged the threat of non-compliance as an important driver. We argue that conflict dynamics beyond non-compliance should be taken into account more thoroughly when asking for the determinants of IO public communication. Conflicts in the EU's political system go beyond situations where the Court pushes for more supranationalism and the states resist. Moreover, the means by which states can react to unwelcome court decisions go beyond non-compliance with judgments. Specifically, we expected that disagreement among states and between the CJEU and other actors increases the propensity of the Court to issue press releases.

Our findings confirm previous research insofar as we find support for the Court's efforts to provide public information based on the importance or authority of its judgments. At the same time, our analysis could not confirm the most straightforward test for self-legitimation when ruling for deeper European integration (H1). The decision direction of a judgment (in favor or against "More Europe") does not contribute to explain when the Court issues press releases. Moreover, we did not find support for public communication in reaction to compliance concerns in case of preliminary reference procedures. Neither the position of a single member state government correlates with the Court's behavior to issue press releases, nor did conflicts between the majority of intervening states and the Court. This speaks against H2. Thus, compliance concerns seem to be less of an issue than previous literature led us to expect.

Finally, the positions of member state governments and conflict among them appeared as strong determinants of the Court's public communication efforts (H3), even though with some statistical uncertainty for the role of conflict among member

states. Conflict between the Commission and the Court has a consistently positive relationship with press releases of the Court, while conflict between the opinion of the Advocate General and the judgment of the Court has a negative effect. A negative effect of such *internal* disagreement on the propensity to issue press releases appears as plausible and does not speak strongly against our expectation in H3.

In sum, we find that the Court does not systematically promote decisions in favor of more European integration or those that go against a single government of the state where a court case originated. At the same time, concerns for legitimation still seem to be at play when the Court tries to explain its judgments under conflictual circumstances. Previous literature on IO public communication offers convincing theoretical arguments regarding legitimation efforts and compliance concerns. We conclude that in European politics, that has become a politicized environment, conflict and disagreement, or 'contestation' is an important additional driver of public relations activities of the CJEU. This could also be the case for other courts in contested and politicized polities.

Appendix

A2.1 Robustness check

5 Paper III. CJEU Judgments in the News – Capturing the Public Salience of International Court Decisions

Julian Dederke

Acknowledgments:

I am thankful for crucial research assistance by Victor Kadlubowski and Nadia Mondini, who both supported me during the data collection for this paper.

Abstract

Case salience data are prominent in the US judicial politics literature. By contrast, such data is not available for international courts so far. With the continued judicialization of politics in the EU and the CJEU's growing importance, court decisions should increasingly receive public attention. Inspired by US case salience data, this paper provides insight into newly collected data on newspaper coverage of 4,357 CJEU decisions in eight EU broadsheets. Asking under which conditions newspapers report on judicial decisions, the article links theoretical expectations about the politicization of judicial authority and courts' legitimation strategies with empirical data on CJEU case salience. Multi-level regression models provide evidence that the salience of international court decisions varies depending on the standing of courts in national political systems, case characteristics, inter-institutional conflict, and the Court's public relations activities. These findings have implications for the perception, legitimacy, and accountability of the CJEU and other international courts.

Introduction

Authoritative decisions can lead to politicization, no matter whether they are of legislative, executive, or judicial character. However, courts and judicial decisions often appear as sheltered by the law, which serves as a "mask and shield" (Burley and Mattli 1993, 72). This applies probably even more so for international courts (ICs) – judiciaries that are detached from national public discourses and that might avoid public display for the sake of the unobstructed efficacy of international law. However, many ICs have experienced an increase in authority, which makes their decisions more prone to reactions by other institutions and societal actors and bears potential for politicization. In light of such developments, ICs' competences and decisions will likely not remain unchallenged.

Amidst this trend, the Court of Justice of the EU (CJEU) evolved as the most powerful IC. The early story of European legal integration is one of considerable transformative power and bold moves by the Court that constituted a "quiet revolution" (Weiler 1991; Weiler 1994). This happened relatively unforeseen by the member states who still accepted the Court's steps (Weiler), which were partly debated among the elites (Davies 2012), but remained unchallenged by the broader public that adhered to a permissive consensus favoring the integration project. However, with continuing integration, new cleavages evolved and supranational powers became increasingly questioned and subject to debate (Hooghe and Marks 2009; Kriesi *et al.* 2012). Transferring competences to supranational institutions bears potential for politicization (de Wilde and Zürn 2012; Zürn *et al.* 2012), as numerous studies have shown. I follow previous research by defining *politicization* as "growing public awareness of international institutions and increased public mobilization of competing political preferences regarding institutions' policies or procedures" (Zürn *et al.* 2012, 71). The effects of such processes for the CJEU as the EU's highest court and most powerful IC, however, remain underexplored. Whether and under which conditions ICs' decisions are subject to public attention and discussion in the news is largely unclear, despite the relevance of the Court's public image and public support (see Harsch and Maksimov 2019).

In the US literature on judicial politics, the relationship between the United States Supreme Court (USSC) and public opinion, the question of issue salience, and data for the salience of court cases have a prominent standing (see, e.g., Epstein and Segal 2000; Casillas *et al.* 2011). By contrast, data for the public salience of court cases are not available for other courts so far, including ICs. Both, politicization research as well as research on judicial politics, suggest demand for data on the prominence of IC cases in the public sphere. Building on seminal work on case salience by Epstein and Segal (2000), this paper addresses this gap and introduces a newly collected dataset of case salience values for CJEU cases. It poses the research questions: (1) Which CJEU cases are salient in the media?; and (2) Under which conditions do newspapers report about CJEU decisions? Inspired by the US literature about court case salience, the objective is *(a)* to apply the concept and measurement strategy to the context of ICs, and *(b)* to deliver an empirical analysis of media attention to CJEU cases. Building on an extensive newspaper database (Factiva), the paper introduces newly collected data on the newspaper coverage of 4,300 CJEU decisions in eight European quality newspapers.[32]

After deriving theoretical expectations about when a case is expected to be salient, I present results of multi-level regression models analyzing the salience of CJEU decisions in European quality newspapers. The findings indicate that there are several important independent variables that show strong correlations with public salience: the strength of judicial review in national political systems, characteristics of the court cases, the intensity of inter-institutional conflicts, as well as the Court's use of press releases. The findings suggest that the role and power of courts in national political systems might be important predictors for how domestic actors and media process IC decisions. Moreover, the CJEU's strategic use of its public relations toolbox could be an important instrument for the Court to react to or to stimulate media attention.[33] Not least, successfully applying the public salience

[32] Data was collected for nine newspapers, but for one of them the database coverage is limited, so that only eight of them were included in the analysis.
[33] Without additional data, a stronger statement about causal relationships is not possible in this regression design and remains subject to future research.

measure introduced in the US context to CJEU cases suggests great potential for future analyses amidst the growing importance and power of international judiciaries.

Strategies for the Assessment of Salience of CJEU cases

Salience is an often and widely used concept that is measured and operationalized in various ways. Previous studies in the research field of judicial politics have used different measures of salience for court cases. Some of them have made their way into the EU judicial politics literature, while others have not been applied in this context so far. In an influential article, Epstein and Segal (2000) situate the salience of court judgments in a broader framework of salience measurements. The authors introduce case salience data that measure the New York Times' front-page coverage of US Supreme Court cases the day after the court decision and present it as a sophisticated alternative to earlier measures. Both, the availability and comparability for a large number of observations, and the applicability of this measure to a broad research field have made Epstein and Segal's measure the most widely applied measure of case salience in the US context. There, newspaper coverage as a measure for case salience is used on a wide range of topics concerning judicial politics, inter-institutional relations, and court-society relations. Comparing newspaper coverage as a measure of case salience to other measures reveals several research fields that will potentially gain from data on newspaper coverage (Table 1 below).

Conceptually, the case salience measure used by Epstein and Segal is closely connected to the visibility or relevance of a judicial decision in the public sphere or public debate. This makes it particularly useful to capture dynamics of the public debate in an environment like European politics that has been described as increasingly politicized (de Wilde and Zürn 2012). The public salience of events or decisions of institutions has taken a prominent stance in this research area (e.g., Rauh 2016), because it captures the relative importance of some events or decisions compared to others. I define case salience based on Rauh's definition for salience as

"the attention or the relative prominence the public devotes to a particular [court case] at a given point in time" (Rauh 2016, 54; see also ibid.: 54-56 for a more detailed conceptual discussion). Inspired by the US literature on court case salience, this paper applies the strategy used by Epstein and Segal (2000) to the context of the CJEU as the most powerful IC. It is the first quantitative study of its kind identifying conditions under which IC decisions are reported in domestic media.

Table 1. Measures of court case salience and their fields of application for studies on the CJEU

Measure of Case Salience	**Example Studies**	**Potential Fields of Application**
Measure 1. Cases covered in major law textbooks	Slotnick 1979 (USSC)	Post-decision salience; Authority in the legal field
Measure 2. Constitutional standing/ doctrinal standing of the case	Bailey & Maltzman 2008 (USSC); Dederke & Naurin 2018 (CJEU)	Pre- and post-decision salience; Authority in the legal field;
Measure 3. Case citation and network scores	Lupu & Voeten 2012 (ECtHR); Larsson et al. 2017; Dederke & Naurin 2018 (CJEU)	Post-decision salience; Authority in the legal field; Judicial behavior; Relationships judiciary-legislature/ judiciary-executive;
Measure 4. Court chamber size	Carrubba et al. 2012; Larsson & Naurin 2016; Kelemen 2012 (all CJEU)	Pre-decision salience; Judicial behavior;
Measure 5. Newspaper coverage	Epstein & Segal 2000; Bailey et al. 2005; Vining & Wilhelm 2011; Collins & Cooper 2015; Strother 2017 (all US courts)	Pre- and post-decision salience; Politicization of judicial authority; Public authority; Court legitimacy; Relationship court-public;

Note: Own illustration following Epstein and Segal (2000).

Data on media coverage is particularly well suited to address questions concerning the politicization of supranational institutions and their output. Newspapers, in particular, appear as an ideal medium to study public salience. They do not only allow generating reliable and comparable data across thousands of cases

and different countries due to their formats and mostly daily publishing intervals, but also provide conceptual advantages compared to other news outlets. News websites, blogs, tweets, and social network contributions as modern news outlets reach only a small and homogenous group of users and are far from dominating media discourse (see, e.g., Hindman 2009, 101). They are also prone to spread shorter, less coherent, robot-created, or even false content (Hindman 2009, 111 et seqq.; Vosoughi *et al.* 2018). Moreover, newspaper reports provide the opportunity for comparison with a large body of existing literature and potentially allows an extension to the early decades of EU integration in which the CJEU played a significant role. Compared to this solid fundament, research on news coverage in younger forms of media outlets is still in its infancy and does not fulfill the requirements for comparability for the time period covered here (1997-2016). Other than the tabloid press or TV news and despite the growing importance of other forms to disseminate information, the quality press is still a "leading medium of political coverage" (Dolezal *et al.* 2012, 41). Broadsheets are largely read by a well-educated elite and decision-makers (see Chan and Goldthorpe 2007) and inform those actors who influence the legislature and executive in each political system. Thus, collecting data on broadsheet coverage should be particularly suitable for analyzing public salience in the context of political decision-making (see Epstein and Segal 2000, 72–73).

The following section makes a case for studying the politicization of judicial authority and the output of international judiciaries in particular. I introduce theoretical expectations and derive hypotheses regarding relevant independent variables or potential predictors for case salience.[34] From here on, I use the term 'case salience' as meaning the public salience of court cases measured as newspaper coverage the day after the decision, if not stated otherwise.

[34] Since I do not follow a causal inference design that tests a causal relationship, I limit myself to the term 'potential predictors'. Their predictive power will have to be determined in future studies.

Theory and Hypotheses

International politics is increasingly judicialized (Alter 2014b, 335), a trend through which an increasing number of societal questions are finally decided by adjudication. Defined as "the ever-accelerating reliance on courts and judicial means for addressing core moral predicaments, public policy questions, and political controversies" (Hirschl 2008, 94), judicialization is an expression of the increase of judicial authority vis-à-vis the other branches of power. The process transfers societal questions to legal arenas that are increasingly the battleground for political conflicts. Therefore, it is increasingly ICs that exercise power over societies and the citizens living therein. Such power shifts are closely connected to questions regarding the legitimacy and accountability of global and supranational governance institutions (Tallberg and Zürn 2019). To the extent that ICs grow into power-wielders and contribute to the 'authoritative allocation of values' (Easton), public attention and demands for transparency and accountability are expected to grow.

Judicialization is expected to be particularly strong in the EU (Hirschl 2009, 122; Kelemen 2013, 295). The CJEU grew into the most powerful IC, with high authority and independence and with the highest number of binding rulings delivered among ICs (Alter 2014b). In light of this development, there are legitimate concerns about the fact that decisions of the CJEU are often still hidden from the public eye within the impenetrable complexity and jargon of the law. Often the technicality of the law (Luhmann 2004), a language that successfully masks (judicial) politics behind a "'technical' legal garb" (Burley and Mattli 1993, 70), prevents public attention to the CJEU and its output. In the 80s, Stein described the ECJ as "[t]ucked away in the fairyland Duchy of Luxemburg and blessed, until recently, with benign neglect by the powers to be and the mass media" (Stein 1981, 1). This default story about the impervious character of the law and the Court as a silent arbiter can still be considered as an authoritative argument.[35] However, the picture might have

[35] For example, in 2004 Habermas stated in an interview: "Those political decisions that are taken in Brussels and at the European Court of Justice in Luxembourg affect our every-day life more fundamentally than national decision-making. But they remain unpolitical, in a sense hidden in impenetrable bureaucracies" *Süddeutsche Zeitung,* 18.06.2004, 15, own translation.

changed at least partly over time, and it is doubtful whether the CJEU can still afford to keep a low profile (Caldeira and Gibson 1995, 372–373; Cotter 2017, 100). The CJEU's mandate has broadened considerably. Combined with a continued judicialization trend, CJEU decisions are expected to increasingly receive public attention. This expectation is in line with arguments about the politicization of international institutions. In a strong theoretical account on the link between authority of an international institution and its politicization Zürn et al. claim that this link also holds for judicial authority: "societal actors politicize judicial authority as well, and […] the level of politicization is expected to lie in between that of political authorities and that of purely epistemic authorities" (Zürn *et al.* 2012, 93).

The increasingly broad scope of the EU and the increasing caseload of the CJEU suggest authority increase. Therefore, one can expect an increasing politicization of the EU's judiciary, i.e., of the CJEU and its output. Perhaps a politicization of courts and their actions is even "the inevitable flip side of judicialization" (Hirschl 2009, 120). These overarching trends emphasize why the prominence and impact of ICs' actions in the media and public sphere deserve additional attention.

In order to derive theoretical expectations about the public salience of court decisions, I build on research on the role of the judiciary in political systems in general, on politicization research, and on judicial politics literature. Insights into the dynamics of judicialization suggest a changing role of the judiciary in various political systems, including the EU. Given the variety of political systems in the EU, also the role of the judiciary in the member countries will matter for how attentive newspapers are to court cases. Thus, theoretical considerations regarding the role of the judiciary in general matter.

Sill et al. summarize a number of factors that are assumed to contribute to media coverage of court decisions: "*case origins, court behavior, issue area, case participants,* and *case salience* [prior to the decision, JD]" (Sill *et al.* 2013, 59, emphasis in original). Here, in Sill et al.'s study, 'case salience' is used in the sense of the importance of a case *prior* to a decision that is expected to contribute to public

salience *after* the decision. I agree with their conceptualization in so far as pre-decision importance will likely contribute to public case salience and thus influence my measure for media coverage, too. I continue, however, to use the term *case salience* for the public salience a court case has after the decision (other than Sill et al., but in line with Epstein and Segal 2000). Thus, I understand legal and political importance prior to the judgment as factors that contribute to public case salience, while media coverage is an indication of public case salience.

The case origin is most probably more important in the EU context than in the US due to the diversity of languages and countries. Other factors that might affect media attention are related to the characteristics of the court cases as such (participants, issues, conflict patterns, etc.). In the US judicial politics literature, also research on the behavior of individual judges has a prominent standing. This focus is less developed in case of the CJEU due to a less politicized appointment procedure and the lack of dissenting opinions at the CJEU. Thus, in the EU context analyzing judicial behavior as a determining factor for media coverage will be more fruitful by formulating expectations about court behavior, i.e., looking at the Court as a unitary actor instead of individual judges. These considerations suggest four broad categories of factors that can help to investigate or (in future studies) to predict public salience: role of the judiciary, case origins, case characteristics, court behavior.

Role of the Judiciary

In line with findings about the politicization of EU integration and supranational institutions (Kriesi *et al.* 2012; Hutter *et al.* 2016; de Wilde and Zürn 2012; Zürn *et al.* 2012; Blauberger *et al.* 2018), one can expect an increase in attention for the CJEU, its salience and the amount of evaluations in the public sphere. In order to test whether the increasing importance of the EU's judiciary leads to a corresponding increase in media attention, a first hypothesis reads:

H1 (time effect): The probability of media reports about court decisions increases over time.

The standing and power of courts in a country is dependent on the constitutional rules on judicial review, which Lijphart in his 'Patterns of Democracy' associates with varying "degrees of activism in the assertion of this power" (Lijphart 2012, 214). Moreover, Hirschl expects that "the impact of the judiciary on public policy outcomes is likely to be more significant under a decentralized, all-court review system" (Hirschl 2009, 131). Consequently, the strength of courts in a political system will also determine in how far media, governments, and perhaps other actors are aware of and sensitive to the implications of court judgments and judicial activism. I expect that this also affects the behavior of actors in the respective country related to CJEU decisions. Expectations could go both ways. Where judicial review is weakest, a bold move by the Court could very well be met with incomprehension (see Rytter and Wind 2011), and a certain ruling could thus be much more salient than in other countries where judicial activism is among the expected options. This expectation, however, seems rather conditional on the activism of the Court or the controversiality of rulings. On the other hand, in a national context in which strong judicial review is well known, newspapers could be more inclined to provide informed, broad, and differentiated coverage of judicial decisions. Therefore, a positive correlation seems more likely:

H2 (strength of judicial review): The probability of media reports about court decisions is higher for countries with strong judicial review.

Case Origins

Although the structure of a transnational judicial politics space seems to solidify in the EU, the multi-level character of the EU system of adjudication entails that most actors who initiate litigation or follow through on a court procedure are still actors established on the domestic level. Litigation is mostly channeled through a national court by means of the preliminary reference procedure. This entails that many CJEU cases have a specific link to *one* EU country. A court case will always be particularly important for the respective domestic media:

H3 (domestic case): The probability of media reports about court decisions is higher if the procedure involves a domestic court from the same country as the newspaper.

Case Characteristics and Conflict Intensity

Court cases before the CJEU are often referred by one of the domestic courts in the EU. Such *preliminary reference procedures* have been the most important cases for the process of European (legal) integration and represent the CJEU's powerbase (Weiler 1991). *Infringement procedures* in which the European Commission sues member states for a lack of transposition of EU law are a direct expression of the vertical conflict line between national and Union level. Third, *annulment procedures* serve applicants in the attempt to challenge the legality of legislation adopted by one or several of the EU institutions. So far, it is unclear which kind of cases result in most media attention and public reactions. Therefore, the analysis should control for the type of procedure, even though no clear theoretical expectations are connected to this.

Judicial politics literature has identified specific subject matters or issue areas at court that are considered as especially politically sensitive: abortion and death penalty in the US (Vining and Wilhelm 2011, 561), torture and inhumane treatment before the ECtHR (Voeten 2008, 421), or disputes concerning agriculture and health and safety standards at the WTO (Busch and Pelc 2010, 271). However, these insights do not include issues typically adjudicated by the CJEU. Based on findings by Kriesi et al. regarding the main debates surrounding globalization processes (Kriesi *et al.* 2012; Hutter *et al.* 2016), conflicts concerning economic liberalization and migration are expected to receive most attention. On the other hand, Hirschl discovered the role of numerous courts as enforcers of civil rights: "[b]old newspaper headlines reporting landmark court rulings" mostly concern issues such as "reproductive freedoms, samesex marriage, the place of religious symbols in the public sphere, or the rights of detainees" (Hirschl 2008, 94). Thus, while the CJEU has been and still is, to a large extent, an economic court (Alter 2014b), cases concerning civil rights and/or human rights can be expected to be more prominent in the public sphere. This reveals contradicting expectations regarding issue area effects. In lack of clear theoretical expectations, the subsequent analysis should mainly control for issue area effects.

Judicial behavior, the ideological composition of courts, and decision directions are prominent explanatory factors in the US judicial politics literature. Outside the US context, political behavior and ideological positions of judges have not received equally much attention, partly due to other research interests, partly due to a lack of available data. Meanwhile, research in the EU context oftentimes focuses on inter-institutional conflicts. In particular, the relationship between CJEU, Commission and member states, the Court's power, and potential backlash against its rulings are prominent topics and subject to intense scholarly debate (Garrett *et al.* 1998; Martinsen 2015; Carrubba *et al.* 2012; Larsson and Naurin 2016). It is a straightforward assumption that media are attentive to conflictual relationships. Therefore, inter-institutional conflicts in the EU are expected to provoke media attention. In fact, during the data collection, newspaper articles often mentioned explicitly when the Court went against the positions of the Commission or the opinion of the Advocate General. Such disagreement seems to attract media attention, and the more severe such conflicts are, the more likely there will be newspaper reports. Adapting hypotheses formulated by Larsson et al. (2017), I investigate the role of the relationships between the Court and the Commission (H4), the Court and its Advocate General (H5), and between the Court and the EU governments (H6) for the probability of news reports:

H4 (CJEU-COM): The probability of media reports about a court decision is higher for CJEU decisions that conflict with the opinion of the European Commission, than for those where no such conflict exists.

H5 (CJEU-AG): The probability of media reports about a court decision is higher for CJEU decisions that conflict with the opinion of the Advocate General, than for those where no such conflict exists.

H6 (CJEU-MS): The probability of media reports about a court decision is higher for CJEU decisions that conflict with the majority position among EU governments, than for those where no such conflict exists.

Court Behavior: Institutional Legitimation Strategies

To the extent that courts and their output are more likely to receive public attention, courts might also be more inclined to actively communicate their actions to a wider variety of audiences in order to influence how the judiciary and its actions are displayed in the public sphere. Such public awareness can be achieved mainly by addressing the news media as intermediary audiences between judges/courts and other actors. Generally speaking, "we should observe courts strategically utilizing institutional tools to increase public awareness and overcome threats of noncompliance" (Krehbiel 2016, 991). Courts use public relations activities to promote case results selectively (Staton 2006). This expresses a court's perceived need to communicate its actions to outside audiences for the sake of visibility and legitimation. Therefore, the CJEU's decisions to actively communicate some judgments to the media while not communicating others are relevant when identifying conditions under which court decisions are salient. Press releases, regularly issued by the CJEU immediately after a judgment is issued, could not only be a particularly useful but the primary institutional tool in this regard. If the Court is at least moderately successful in its public relations efforts, the promotion of a decision by the CJEU will contribute to media attention after the decision:

H7 (press releases): The probability of reports about a court decision is higher if the Court issues a press release for the respective decision.

On the other hand, issuing press releases might also be an indicator for careful media monitoring on behalf of the Court. If communications staff at the CJEU is aware of which court procedures are discussed in the public or media, it will most likely issue a press release to meet an obvious demand for information. Thus, a correlation between press releases and media salience might indicate a relationship in both ways and does not allow a straightforward causal interpretation.

Data

Dependent Variable: Case Salience

With help of an extensive newspaper database (Factiva), I collected data on newspaper reports of CJEU decisions in nine European broadsheets/quality newspapers: Die Presse, Der Standard (Austria), Politiken (Denmark), Le Figaro (France), Süddeutsche Zeitung (Germany), Irish Times (Ireland), Svenska Dagbladet (Sweden), The Guardian, and The Times (UK). Covering newspapers from all EU countries is beyond the scope of this project. Despite obvious limitations of the selection, it ensures an initial coverage of considerably different countries, including founding members (D, F), three early accession countries (DK, IE, UK), and two smaller EU states which joined during the third accession round (AT, SE). Thus, continental Europe, as well as the Anglo-Saxon and Nordic EU space are included, covering a considerable variation of socio-economic structures, media systems, languages, and public discourses in the EU. Moreover, this selection follows closely the established strategies by, for example, Kriesi et al. (2012, 40; Hutter *et al.* 2016, 45). The selection allows for up to nine measurements per court case.

The quantitative comparative design applied here asks *under which conditions newspapers report about CJEU decisions*. Access to several datasets on CJEU cases and a semi-automatized coding procedure allow me to cover 4,357 CJEU decisions. The covered cases stem from three combined datasets that include infringement procedures (Stone Sweet and Brunell 2007), annulment procedures (Adam *et al.* 2015), and preliminary reference procedures (Naurin *et al.* 2013) that were decided between 1997 and 2016. For each court case, a value for the public case salience of a CJEU decision was coded that measures whether the print version of a newspaper reported about the respective ruling at the day after the decision (e.g., for The Times *ttmSalience =1*) or not (*0*) (following Epstein and Segal 2000). Other than Epstein and Segal's measure, the collected data does not only cover front-page reports. Instead, it follows the more comprehensive strategy of Collins and Cooper (2015) by taking into consideration all reports that occur anywhere in the

newspaper.[36] This article provides an analysis of the case salience values coded for the entire set of 4,357 court decisions and eight newspapers each.[37]

Not surprisingly, for most of the court decisions, there are no newspaper reports on the day after the decision. About 14% of court rulings attracted media attention (610 out of 4,357 court cases), i.e., are salient to some degree. This illustrates the character of many CJEU cases that often concern very technical questions, for example, specific questions of taxation for a certain group of products. Nevertheless, the large number of court decisions covered here allows for complex inferential statistics. Moreover, the share of reported cases does also not differ much from the US case salience data, where about 13% of cases are salient in the public (for data updated through to 2009; Epstein and Segal 2000).

Independent variables

In order to determine under which conditions court cases are salient, each of the theoretical propositions has to be operationalized. The *Time* variable indicates the number of days between a case's decision date and the first judgment included in the analysis (T-6/97 decided on 03-03-1997). The Court's public relations activities are operationalized with help of a *Press Release* variable indicating whether the Court published a press release (1) or not (0). The strength of judicial review is operationalized as a continuous country-level variable based on the Varieties of Democracy dataset (Coppedge *et al.* 2018, variable *'v2jureview_mean'*).[38] I differentiate the court procedures with help of a factor variable that distinguishes *Infringement* procedures, and *Annulment* procedures, using preliminary reference procedures as the reference category.

The combination of three datasets for the different court procedures (see above, Stone Sweet and Brunell 2007; Adam *et al.* 2015; Naurin *et al.* 2013) provides

[36] Only print versions were included for matters of reliability and comparability across newspapers and the entire period. See Appendix A1 for details on coding and data collection.

[37] Since the database coverage for the Swedish Svenska Dagbladet is limited from April 2001 to October 2006, this newspaper was excluded from the analysis.

[38] See Appendix A3.4 for more details on this variable and robustness checks with an alternative operationalization.

a large number of observations for the primary analysis. At the same time, the variables covered differ between datasets and thus limit the data that is available across the entire population of cases. Therefore, in order to test the hypotheses about case origin (*H3*) and conflict intensity *(H4-H6),* this study builds on a subset of observations by using the most extensive of the datasets in terms of the number of variables included (Naurin *et al.* 2013). By covering information for 1,599 preliminary reference procedures, it provides a unique opportunity to include case characteristics such as the affected issue areas, the states of submitting courts, and measures for the conflict among the different EU institutions and member states.[39] The variable *Domestic Case* takes the value of 1 if the respective observation concerns a newspaper that comes from the same member state as the court case and 0 otherwise. The operationalization of inter-institutional conflict follows Larsson et al. (2017) with the variables *AG-CJEU Conflict* and *COM-CJEU Conflict,* indicating whether the CJEU's judgment was in line with or in conflict with the opinions of the Advocate General or the Commission respectively. Moreover, "*MS Conflict* then indicates whether the net weighted position of the member states is in conflict with (1) or in favor of (−1) the decision of the Court, or whether the position is ambivalent (0)" (Larsson *et al.* 2017, 904).

Control variables

Due to Europeanization effects and thus an inflationary tendency of newspapers to report about the EU over time, all models control for the number of news articles that mention the EU in any of its names on the day after the court decision *(EU-News*).

Potentially, the decision of the Court to issue a press release could, in fact, be driven by the importance of a case as perceived by the Court before the decision. In order to make the analysis more robust against the assumption that a correlation between press release and public salience merely expresses this reversed causality, a measure for the pre-decision importance of the case as perceived by the Court

[39] The variables capture the major conflict dimension in EU politics concerning the struggle between further integration ('More Europe') and preserved national sovereignty.

appears as necessary. An available measure that fits most closely this purpose is the size of the chamber allocated to a case (*Chamber Size,* see Table 1 above, data from Larsson and Naurin 2016 and Brekke *et al.* 2019). It is determined after third parties submitted amicus briefs that will provide the Court with cues about the importance and controversiality of cases with outside audiences (see Dederke and Naurin 2018). Thus, chamber size reflects legal importance combined with the Court's assessment of how salient the case will be. In this way, the analysis controls for pre-decision importance of the case. Since the number of actors participating in a court procedure might also affect its public case salience (Krehbiel 2016, 998), I include a count variable for the number of participating governments that submitted amicus briefs *(Amicus Briefs)*.

Given the multi-lingual and fragmented character of the 'European public sphere,' country-level effects might contribute to significant differences between the newspapers. In order to control for country- or newspaper-specific differences, country-fixed effects and newspaper-fixed effects were included as robustness checks (see Appendix A3.4). The same applies to issue area dummy variables as control variables (see Appendix A3.4).

Analysis and Results

The unit of analysis is transformed from individual court decisions to newspaper-court decisions. Thus, for each court decision, there are up to eight units of observation because data was collected for eight newspapers. Therefore, the observations amount to a maximum of $N = 4{,}357[court\ cases] * 8[newspapers] = 34{,}856$. Summary statistics for the data are provided in Appendix A3.2. Each individual newspaper has an underlying probability of reporting about a particular court decision (1) or not (0).

Table 2 shows the results of a multilevel logit regression with the salience of a court decision in a single newspaper as a binary dependent variable and with newspaper reports nested in court cases as the second level, since there are measurements for eight newspapers per court case. This mirrors the structure of the data. The model structure accounts for the fact that the event of an individual newspaper reporting about a judgment might not be entirely independent of other newspapers reporting about the very same judgment. It accommodates factors such as informal contacts between newspapers that might mutually affect the agenda of different newspapers. Since the continuous *Time* variable violated the linearity assumption and did not denote a linear relationship with the log-odds of the dependent variable, it was excluded from the analysis.[40] The variable *EU-News* was log-transformed in order to account for its positive skewness.

[40] Also in a transformed version, the time variable did not fulfil the linearity requirement.

Table 2. Two-level logit analysis of CJEU case salience

	Dependent variable: Salience (0 / 1); GLM multi-level models					
Odds ratios	(1)	(2)	(3)	(4)	(5)	(6)
CJEU press	33.245***	41.805***	42.260***	24.034***	24.232***	19.500***
release	(0.169)	(0.188)	(0.189)	(0.173)	(0.226)	(0.219)
Str.Judicial Rev.	1.262***				1.565***	1.569***
	(0.041)				(0.072)	(0.072)
Infringement	0.812	0.830	0.829	1.126		
	(0.211)	(0.232)	(0.233)	(0.211)		
Annulment	1.045	1.024	1.021	1.848***		
	(0.169)	(0.186)	(0.187)	(0.182)		
EU-News	2.260***	1.885***	1.897***	1.861***	2.013***	2.015***
	(0.051)	(0.059)	(0.059)	(0.059)	(0.076)	(0.075)
Chamber size				1.675***	1.365***	1.351***
				(0.070)	(0.086)	(0.084)
Domestic Case					25.979***	25.013***
					(0.163)	(0.161)
MS-CJEU Conflict					1.230*	1.248*
					(0.092)	(0.089)
COM-CJEU Conflict					1.039	1.067
					(0.096)	(0.092)
AG-CJEU Conflict					0.998	1.009
					(0.097)	(0.093)
Number of					1.310***	1.248**
Amici					(0.082)	(0.080)
Constant	0.001***	0.0003***	0.0002***	0.0003***	0.001***	0.001***
	(0.211)	(0.257)	(0.283)	(0.269)	(0.274)	(0.305)
Country FE	NO	*YES*	NO	NO	NO	NO
Newspaper FE	NO	NO	*YES*	*YES*	NO	NO
Issue area FE	NO	NO	NO	NO	NO	*YES*
Log Likelihood	-3,588.349	-3,418.796	-3,405.231	-3,187.778	-1,393.017	-1,367.682
AIC	7,190.699	6,859.591	6,836.461	6,403.556	2,808.033	2,787.364
BIC	7,249.899	6,952.621	6,946.405	6,519.343	2,890.045	2,981.210
Observations	34,794	34,794	34,794	28,868	12,780	12,780

*Note: * p<0.05; ** p<0.01; *** p<0.001; Two-level generalized linear regression models (logit) with newspapers nested per court decision, for overall population (models 1-4) and subsample (models 5-6). Cell entries are odds ratios, cluster-robust standard errors in parentheses. For information on missing data and detailed results of fixed-effect controls, see Appendix A3.3 and A3.4.*

Overall, the chances of an individual court decision to appear in the news the day after the decision are low (see above, page 85). However, the identified independent variables make a substantial difference. Model 1 indicates positive coefficients of Press Releases by the Court, the strength of Judicial Review, and the amount of EU-News. This supports hypotheses H2 and H7. In fact, the odds of a court decision being salient are more than 30 times or even 40 times larger with a press release than without one. The finding might indicate that the Court is successful in its efforts to selectively promote certain judgments, while not issuing press releases for others. It will be discussed in more detail further below. These results also hold in more complex models after including country-fixed or newspaper-fixed effects (models 2-3).

The role of the judiciary in a political system matters as well. The scaled variable for the strength of judicial review ranges from -2.3 up to 0.6. The odds of case salience are almost four times larger for newspapers from countries with strong judicial review than in case of weak judicial review (model 1; $\mathrm{OR} = 2.9 * 1.262 = 3.66$). Thus, newspapers in countries that are more familiar with the power of courts and the role of judicial review are more likely to report even about judgments of international courts. Since Judicial Review is a country-level variable, it displayed very strong multicollinearity with some of the fixed effect controls and could not be included in the same model. Instead, the models without Judicial Review control for the role of individual newspapers or countries, respectively (see Appendix A3.4 for details and descriptive graphs, e.g., for covered cases per newspaper).

There are no significant effects of the dummy variables for Infringement and Annulment procedures in models 1-3. Thus, the various court procedures do not seem to make a difference for case salience. However, when including the control for Chamber Size, the dummy variable for annulment procedures shows a significant, positive effect (model 4). A more detailed look at the data reveals that this effect is driven by a considerable number of annulment cases that were decided in small chambers (indicating routine cases), but that were still salient in the media. This accumulation stems from several groups of competition and cartel cases where firms

from various EU countries tried to appeal against Commission decisions that either discovered and punished cartels or forbade mergers (e.g., C-204/00 P Aalborg Portland & Others v Commission,[41] T-411/07 Aer Lingus Group v Commission, T-177/04 easyJet v Commission, T-77/02 Schneider Electric v Commission, T-201/04 Microsoft v Commission, T-377/00 Philip Morris International v Commission[42]). Many transnationally operating companies from different countries were involved in these cases. A qualitative look at the newspaper articles reveals that the conflicts and many defeats of the companies at Court led to media attention in many newspapers, although these cases were handled as routine cases in small chambers. This explains the significant positive effect of *Annulment* procedures in model 4.

By building on the most extensive dataset only (Naurin *et al.* 2013), I test for the role of the case origin and inter-institutional conflicts. This focus allows testing the remaining hypotheses. I include a variable for *Domestic Cases* to test whether cases referred from a national court result in more coverage in the respective newspapers. Moreover, the three variables *MS-CJEU Conflict, COM-CJEU Conflict*, and *AG-CJEU Conflict* indicate the effect of these institutions being in conflict with the Court's decisions. The number of participating governments that submitted amicus briefs *(Amicus Briefs)* serves as a control for the number of actors participating in a court procedure. Moreover, taking advantage of the broader database and more available variables in this dataset, models 4-6 control for the pre-decision importance of the court case with the best available data (*Chamber size*). [43] Model 6 also controls for issue areas affected by the court decisions (see details in Appendix). The variables for court procedures were dropped since only preliminary reference procedures are included here.

[41] Joined cases C-204/00 P, C-205/00 P, C-211/00 P, C-213/00 P, C-217/00 P and C-219/00 P.
[42] Joined cases T-377/00, T-379/00, T-380/00, T-260/01 and T-272/01.
[43] Additional models in the Appendix A3.4 control for the legal importance a court case carries with two alternative variables. The first proxy is the network Authority score of each case and the second variable (Doctrine) captures whether the case affects at least one of the legal doctrines supremacy, direct effect, state liability, non-discrimination or loyal cooperation (also see Dederke and Naurin 2018, 873). Since the Authority values are only determined post-hoc (after a case has been decided), the variable can be only a mere proxy(!) for the legal importance a case carries prior to the decision.

The reported correlations hold for this smaller sample, too. Crucially, the strong correlation between a press release and public case salience remains robust to the inclusion of the measure of pre-decision importance (*Chamber size),* albeit somewhat weaker than without this control. *Chamber size* also shows a positive correlation with case salience after the judgment. Moreover, as expected, domestic cases are considerably more salient in the respective newspapers than those court cases that were sent to the CJEU by a court in another country. It is twenty-five times as likely for a domestic case to be salient than for a non-domestic case (OR=25.0 in model 6). This shows that the case origin is a strong predictor for media salience, indicating media resonance for court cases in the country they stem from. Among the conflict variables, only MS-CJEU Conflict denotes a significant, and substantially rather weak effect (OR=1.25 in model 6). The number of amicus briefs has a weak, but significant, positive relationship with public case salience, indicating an increasing probability of newspapers reporting about a case when more actors are involved. Overall, conflict patterns that are prominent in the EU judicial politics literature do not seem to be major determinants for case salience.

In sum, the case origin *(H3)* plays an important role in explaining the case salience of CJEU decisions with domestic cases having a considerably higher probability of being salient. Second, the strength of judicial review *(H2)* has a positive effect on the salience of CJEU decisions. Third, the strongest relationship among the categorical independent variables can be observed for CJEU press releases (*H7*). MS-CJEU Conflict is significant and thus indicates that a conflict between the CJEU and the majority of member states increases the chances of a case being salient (supports *H6*). The other continuous variables that indicate conflicts between the EU institutions (*H4, H5*) do not support any positive relationship between the conflict intensity and public salience. Finally, there does not seem to be a (linear) time effect for case salience in the period 1997-2016, contrary to *H1*. Instead, the time variable had to be dropped from the regression models since the linearity requirement was not fulfilled for this continuous variable. While some of the control variables for individual newspapers, countries, and issue areas denote significant effects, including them does not alter the main relationships discovered.

The presented analysis goes with some limitations. Press releases showed a strong correlation with public salience of a case after the judgment. It appears as if press releases serve the CJEU well in its attempt to selectively promote particular judgments, just as previous research has suggested for domestic courts (Staton 2006). Being successful in employing its public relations tools will be of genuine interest to the CJEU as an IC in order to gain public attention and to potentially bolster its legitimacy. However, the regression design employed here does not allow such a causal interpretation, and the discovered correlation might also represent the fact that careful media monitoring on behalf of the Court leads to a press release. The Court and its staff might correctly evaluate or anticipate which cases will be salient after the decision. Controlling for pre-decision importance with help of available data on the size of the chamber in which the case was decided does not change the relationship between press release and public salience. However, this robustness check remains only an incomplete one at best. Testing the causal direction of the relationship between press releases and public salience remains a challenge for future research.

Including newspaper-fixed effects and country-fixed effects in addition to the other independent variables was avoided for the smaller subsample due to singularization effects in certain cells that result from the substantially lower number of observations. Moreover, due to a lack of comprehensive theory regarding the public salience of specific issue areas, the effects of issue areas were not covered in more detail in this analysis (see Appendix A3.4).

Conclusions

Politicization can be the reaction to authoritative decisions, no matter whether they are of legislative, executive, or judicial character. However, judicial decisions do often not have a very prominent standing in the public sphere. The language of law might shield courts from political pressure and public attention. International courts' decisions in particular routinely remain hidden behind the scenes, and ICs' actions might often seem detached from domestic public discourses. In light of a broad judicialization trend that is particularly strong in the EU, however, this story might not hold much longer. CJEU cases concern sensitive issue areas, judgments are issued on a regular basis, and with an unprecedented frequency, the Court has the opportunity to shape the EU's legal order. Based on expectations about the politicization of judicial authority and of the output of international institutions more generally (Zürn et al., 2012), an empirical analysis of public and political responses to CJEU decisions is worthwhile pursuing. The mobilizing effects of media coverage will be crucial to understand such public and political responses. This article contributes to such a research agenda by introducing a measure of public salience as the first of several components of the politicization of CJEU decisions. Inspired by research on the US Supreme Court, I argued for applying the concept of case salience and the established measurement strategy to the realm of ICs and the EU. This study is the first of its kind, introducing and analyzing case salience data for cases of an IC in a quantitative research design.

This article posed the question under which conditions CJEU decisions are salient, i.e., reported in newspapers. I provided empirical evidence regarding the role of case characteristics, country-level variables as well as court behavior for the salience of court cases. Most prominently, the case origin, the strength of judicial review in a country, and CJEU press releases showed strong relationships with the salience of court decisions in newspapers. Media resonance for domestic cases is considerably stronger than for cases that stem from another country. Moreover, in domestic contexts in which judicial review is strong and in which courts play an important role, IC decisions are more likely to be salient as well. This suggests that media and the public will process and evaluate IC decisions differently depending on

their familiarity with judicial review and the power of courts. IC decisions are observed and evaluated through the lens of national political systems and domestic media. These structures shape the public salience and perception of the output of the CJEU and potentially other international judiciaries.

Although the disagreement between a majority of member state governments and the CJEU indicated a weak positive relationship with public case salience, inter-institutional conflicts do not seem to be major determinants for case salience. These findings once again point to the fact that different measures of importance and salience (see Table 1 above) might be audience-specific and will always require careful selection according to the research problem under consideration. Similar to and inspired by Epstein and Segal's measure for the USSC (2000), the CJEU case salience data presented here provides the basis for a variety of analyses regarding the relationship between law and politics, or law and society more generally. It can foster empirical contributions in research areas such as the politicization of international judicial authority, CJEU legitimacy, the relationship between the CJEU and the public, and the societal impact of IC rulings.

Appendix

A3.1 Data Collection

A3.2 Summary Statistics

A3.3 Missing Data

A3.4 Robustness Checks and Extended Results

6 Paper IV. Upgrading the CJEU's Public Relations Toolbox – The effects of CJEU judgments on the Twitter debate

Julian Dederke

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Abstract

Public attention is relevant for courts to ensure compliance, support, and legitimacy. This applies even more so under conditions of increased pressure on judicial authority in the EU and amidst criticism of the CJEU. However, the way the CJEU reaches out to the public and media in order to disseminate information and to legitimate its actions has not been investigated so far. With press release data, twitter data, and interviews with CJEU communications staff, I investigate how the CJEU professionalized its communication strategies and extended its public relations toolbox recently. In a second step, I ask if and how the Court is capable of influencing the public debate by using various communication tools. I implement a generalized synthetic control design to identify the causal effects of CJEU judgments on the one hand and public communication tools, on the other hand. The analysis of press release data and Twitter data provides causal evidence for how strongly different institutional messages affect the public (Twitter) debate about the Court. I demonstrate, first, that judicial authority of this international court becomes politicized. Second, judgments that are communicated actively by the Court have a significantly stronger impact on the public debate. I show that these effects are not solely driven by case importance. Thus, public communication tools appear as useful instruments for the Court to intervene in the public debate. By using communication tools actively, the Court can influence politicization trends to some degree.

Introduction

> *"Rule of law: Poland must immediately suspend the application of the provisions of national legislation relating to the lowering of the retirement age for Supreme Court judges […]" (CJEU 18.10.2018).*

In tweets of only about 200 characters, the Court of Justice of the EU (CJEU) in October 2018 announced an order suspending a Polish national legal act – in English and in Polish (case C-619/18; CJEU 18.10.2018). This example is not only telling about the multilingualism lived at the Court,[44] but also about its public communications. The usage of Twitter since April 2013 (CJEU 15.04.2013) is just one of several indicators for an upgraded public relations toolbox the CJEU has developed in recent years. Platforms like YouTube and Twitter, press releases in multiple languages, and glossy brochures are used to actively communicate the Court's doing, including its tasks, summaries of the most relevant case law, events at the Court, as well as the Court's decisions and judgments. The CJEU's head of communications puts it in the following way: "We've moved from 'the Court informs about judgments' to 'the Court communicates'" (W. Valasidis, interview, 14.03.2019).

This development could be considered as surprising, given that legal integration in the EU has proven extremely effective as long as the CJEU remained a rather silent arbiter and kept a low profile. Without much public attention (Stein 1981, 1), in its early decades, the Court displayed considerable transformative power (Weiler 1991). With judgments that later turned out as crucial landmark rulings, it contributed to European integration (Burley and Mattli 1993; Conant 2007; Weiler 1994). The law as a "mask and shield" (Burley and Mattli 1993, 72) has, for a long time, served the Court well in furthering EU integration. However, these times might be over considering the expansion of the CJEU's public communication activities (see also, Cotter 2017, 13; Martinsen and Blauberger n.d.). The Court seems to depart

[44] For an illustration of the number of languages per press release over time, see Appendix A4.2.

more and more from its role as a rather quiet adjudicator but instead engages increasingly in public communication.

Crucial drivers of this development might be increased pressure on the rule of law and separation of powers in parts of the EU (Closa 2018; Khan and Shotter 2018), the contestation of EU politics (Statham and Trenz 2013) and of decisions of supranational institutions more generally speaking (Zürn 2018). The politicization of EU affairs and the contestation of international courts (Madsen *et al.* 2018) make the CJEU appear as more vulnerable to backlashes than in the early decades of EU integration. For example, in light of a non-cooperative stance of governments in Poland and Hungary, the bindingness of CJEU decisions has become more fragile (Pech and Scheppele 2017). Public communication as a means to create a favorable public image and to shape public opinion should be a particularly important instrument in order to actively seek to compensate or ameliorate this exposure. Increasing demands for legitimation (see Ecker-Ehrhardt 2018c; Gronau and Schmidtke 2016; Tallberg and Zürn 2019) in a context of a politicized EU (Hooghe and Marks 2009; de Wilde 2011; de Wilde and Zürn 2012) and in a world of immediate communication channels should require previously silent arbiters to actively manage their public images. Literature on public communication and legitimacy of international institutions suggests that the Court will seek to issue messages that aim at legitimation as "a process of justification" (Tallberg and Zürn 2019, 583). Such messages are "intended to shape [audiences'] beliefs" in the rightful and appropriate adjudication by the Court (ibid.). In order to achieve this, some messages will be more effective than others.

Creating a favorable image requires effective public communication in the sense that issued messages affect the public debate. So far, we do not know whether the public communication tools used by the CJEU are influencing the public debate. Therefore, this paper addresses the question *if and how the Court influences the public debate by using public communication tools*. If it were successful in doing so, this would support the value of communicating through these channels. If the Court succeeds in increasing attention for its judgments, its messages could potentially

serve the purpose of creating a favorable public image of the institution and its actions.

This paper proceeds in two steps. Based on interviews with employees at the CJEU's communications directorate, I first describe how the CJEU upgraded its public relations toolbox and professionalized its communication strategies. This part illustrates how the establishment of specific units dealing with public communication and the inclusion of online media platforms drove the reform process, shifting the Court's public relations focus from information to active communication.

In a second step, I build on a novel collection of Twitter data for the period October 2010 to September 2019 to analyze the impact of the CJEU's communication activities on the public debate on Twitter in a generalized synthetic control design (Xu 2017). I find that in recent years the Twitter debate is responsive even to judgments that are not actively communicated by the Court. Moreover, while the Twitter debate used to be responsive to judgments that are communicated with press releases, this effect is nowadays amplified by platform-specific messages in form of institutional tweets by the Court. Therefore, by driving the Twitter debate about the Court, both press releases and institutional tweets could potentially serve as valuable instruments in shaping the Court's image in the (Twitter) public. While I do not explicitly analyze the CJEU's image in the public, the paper delivers four contributions:

First, I deliver qualitative insight into how the CJEU professionalized its communication strategies and upgraded its public relations toolbox. *Second*, in line with theoretical expectations that have received little empirical attention so far, I demonstrate that judicial authority becomes politicized in the public debate. *Third,* I show that the Court is able to stimulate the public debate on Twitter by using public communication tools. *Fourth,* I deliver empirical evidence for a mechanism proposed in the literature on legitimation of IOs, which suggests that 'louder' messages influence the public debate more (Tallberg and Zürn 2019, 596).

Theoretical framework

The expansion of public communication by the CJEU might be surprising given the nature of judicial institutions. The often impenetrable language of the law does not lend itself to media communication. Its syntax and vocabulary might appear as bulky and hard to use in flashy tabloid headlines. The secrecy of decision-making at courts might often be more suitable for speculation than fact-based journalism. Moreover, courts are not directly accountable to voters. Courts could be argued to primarily draw their legitimacy from the authority and efficacy of the law and not from input- or output-legitimacy. Moreover, legal integration in the EU has proven extremely effective as long as the CJEU remained a rather silent arbiter and kept a low profile (Burley and Mattli 1993; Weiler 1994). From such a viewpoint, judicial institutions like the CJEU qualify as least-likely cases for an extension of public relations activities. However, there are good reasons to assume that in a politicized environment like European politics, courts should be worried about upholding a favorable public image just as other institutions do. Several strands of literature provide compelling arguments for why the CJEU should be expected to expand and professionalize its public communications toolbox.

First, research on domestic courts has emphasized the relevance of strategic public communication to foster media coverage (Staton 2010) and to facilitate compliance (Staton 2006; 2010), since public attention can serve as an "indirect enforcement mechanism of courts" (Carrubba 2009, 65; see also Stephenson 2004; Vanberg 2004). These dynamics should also matter for the CJEU (see papers 2 and 3 of this dissertation). Additionally, strategic public communication should be important for the Court in the face of a fundamental uncertainty about the Court's zone of discretion vis-à-vis the other branches of power (Larsson and Naurin 2016; Larsson *et al.* 2017), and considering the need for trust among the general public (see, Caldeira and Gibson 1995; Gibson and Caldeira 1995; 1998). This importance of strategic public communication should even have increased in light of the contestation of judicial authority and threats to the rule of law and separation of powers in parts of the EU (Closa 2018; Khan and Shotter 2018, case C-216/18). Under such circumstances, the CJEU will be able to ensure compliance and public

support only by mobilizing audiences outside the Court that can contribute to enforcing its decisions. 'Public relations' can be defined as "the management of communication between an organization and its publics" (Grunig and Hunt 1984, 6). Consequently, legitimacy might only be achieved when decisions are made publicly visible through actively communicating them to political actors and the general public.

Second, to the extent that inter- or supranational institutions gain in competences and authority, the probability and instances of public contestation and politicization increase (Statham and Trenz 2013; de Wilde 2011; de Wilde and Zürn 2012; Zürn *et al.* 2012). These developments go with increasing demands for justification and require international institutions to enhance their efforts for legitimation (Ecker-Ehrhardt 2018a; Ecker-Ehrhardt 2018c; Gronau and Schmidtke 2016; Tallberg and Zürn 2019; Zürn 2018). This also applies to international courts (Bogdandy and Venzke 2012; Madsen 2018). Politicization theory suggests that "societal actors politicize judicial authority as well" (Zürn *et al.* 2012, 93). Politicization, instances of contestation, and increasing exposure of international institutions to public scrutiny have been identified as key drivers of public communication reforms (Ecker-Ehrhardt 2018a; Ecker-Ehrhardt 2018c). Empirical evidence on public communication reforms shows that international organizations are, in fact, inclined to adapt to demands for transparency, justification, and legitimation with increased public communication efforts (ibid.). Therefore, a strategy to expand public communication activities of the CJEU as an international court would be in line with expectations for other supranational and international institutions.

Third, in the European context, the politicization of EU topics and stronger contestation of EU affairs (de Wilde and Zürn 2012; Zürn *et al.* 2012) has made EU politics salient and visible. EU institutions have increasingly been exposed to public scrutiny and are subject to transparency requirements and demands for justification (Brüggemann *et al.* 2006). This exposure puts additional pressure for legitimation on them and requires EU institutions to engage in a more proactive management of their

public images.[45] Under such conditions, previous research has argued that one should not only expect adaptation processes on the side of legislative and executive institutions (Rauh 2016; de Wilde *et al.* 2015) but also "Court responsiveness to politicization" (Blauberger *et al.* 2018, 1422; see also Zürn *et al.* 2012, 93). Blauberger et al. (2018) show for the field of EU citizenship jurisprudence that the CJEU's more restrained jurisprudence of recent years coincides with the turning tides of the public discussion about cross-border welfare and 'welfare tourism'. The Court and its judges appear as sensitive observers of their political surroundings (Blauberger *et al.* 2018, 1429). These findings are in line with a broader strand of literature showing that courts are constrained by public opinion (Casillas *et al.* 2011; Gibson and Caldeira 1998; Krehbiel 2016; Mishler and Sheehan 1993; Sternberg *et al.* 2015; Vanberg 2004, 125–126). Courts and judges nurture from a reservoir of diffuse public support (Caldeira and Gibson 1992; Caldeira and Gibson 1995; Gibson and Caldeira 1992; Gibson and Nelson 2014) instead of from input legitimacy in elections. Reaching out to the public in an effort to actively manage or influence the public image of the Court might be the only way to ensure the continued public support for the institution.

Building on Blauberger et al.'s argument that the CJEU is "responsive to public debate and politicization" (Blauberger *et al.* 2018, 1429), one should not only expect the Court to be careful in its decision-making in face of the increased politicization of sensitive issue areas. In light of the theoretical consideration on the importance of public communication and legitimation efforts, the CJEU should also be careful and strategic in its public communication. The Court will seek to intervene in the politicization process by issuing messages on its own behalf. It will try to ensure that relevant audiences (see Alter *et al.* 2016; Baum 2009; Madsen 2018) are (a) exposed to the Court's messages about judgments that are (b) framed in a way that is favorable for the Court.

[45] Legitimation strategies are "goal-oriented activities employed to establish and maintain a reliable basis of diffuse support" Gronau and Schmidtke 2016, 540.

While legitimacy as "beliefs of audiences that an IO's authority is appropriately exercised" can occur without active communication, legitimation as "a process of justification and contestation intended to shape such beliefs" (Tallberg and Zürn 2019, 583) is only possible through active communication. According to Tallberg and Zürn, "the intensity of legitimation [matters]" and "the loudest messages in a setting of competing messages have the greatest impact on public opinion" (Tallberg and Zürn 2019, 596). Messages that are emphasized more are expected to have a stronger public impact. Moreover, in a setting of competing messages, those that are issued by the CJEU itself should be more favorable for the Court since it can purposefully shape the public debate. There are various instruments to issue such messages, for example, public oral hearings of court procedures (Krehbiel 2016), press releases for judgments (see papers 2 and 3 in this dissertation), or tweets. While issuing a judgment is a message on behalf of the Court, issuing a press release or tweet for that judgment is a more intensely communicated message.

Based on the considerations above and in order to investigate the expansion of public relations at the CJEU empirically, the following section shows how the CJEU has extended its public relations activities in recent years. Subsequently, I ask *whether the Court is capable of influencing the public debate about judgments by using press releases and tweets*.

The CJEU's communication service

Despite the CJEU's considerable role in European integration and everyday EU politics (see e.g., Alter 2009; Martinsen 2015; Schmidt 2018) and although the CJEU significantly expanded its public communications activities, the scholarship on public communication of EU institutions has so far neglected the EU's judiciary entirely (Altides 2009; Anderson and McLeod 2004; Martins *et al.* 2012; Meyer 1999). Public communication encompasses "activities such as the production and channeling of text, audio, or video material to media organizations, the organization of public symposia, workshops, radio programs, websites, or social media activities" (Ecker-Ehrhardt 2018c, 522). The way the CJEU reaches out to the public and media in order to disseminate information and to legitimate its actions has not been investigated in a systematic manner so far. This paper leverages original interview material in order to shed light on the internal working procedures of the CJEU's communications department and the evolution and expansion of CJEU public communication. The interviews were mainly conducted during a research stay at the CJEU in March 2019, when I accompanied CJEU communications staff during their every-day work. I interviewed seven employees individually about their work and developments at the Court's communications department. I used semi-structured interviews in order to partly adapt to the specific roles of the interviewees (head of directorate, heads of units within the directorate, press officers, etc.) and to allow rather open conversations about the reform processes taking place.

The Court's communication service was founded in March 1986 and recently celebrated its 50th year of existence (CJEU 2018). There have always been contacts to the press and journalists in place at the press and information service of the Court. Media monitoring in form of press dossiers for the Court's press officers has been done for a long time, as long-term employees reported (longest since 1987; interviews, 12.-14.03.2019; see also Klinke 1989, 146). While press contacts are nothing new to the CJEU, it was for a long time the Court's information and documentation service that covered press relations. This allocation indicates that press relations where rather a 'side product' of the Court that was treated more in a mode of documentation and storage instead of active communication. It was only in

December 2014 that the directorate for communication was created in its current form, headed by William Valasidis, who had worked at different positions within the institution before.[46]

Originally, the communications directorate consisted of two units – the *press and information*-unit (press service) and the *access to documents*-unit.[47] The latter is responsible for maintaining and completing physical and digital archives of the Court as well as for requests by citizens, journalists, researchers, or lawyers to get access to the Court's documents and archives. Within the press service, press officers are responsible for different countries or language regions in the EU.[48] The press service also conducts its own media monitoring in order to follow reports about the Court and the cases it deals with (interviews 12.-14.03.2019). In February 2015, a new sub-unit of the directorate for publications and electronic media was created (E. Cigni, head of unit, interview, 13.03.2019). Moreover, future plans involve a more prominent role of social media in the organizational structure: "My ambition is to create a social media unit" (W. Valasidis, interview, 14.03.2019). These are typical changes in the institutional structure during the evolution of public communication policies in IOs (Ecker-Ehrhardt 2018a). In March 2019, the number of employees at the communications directorate was 42, of which 21 work in the press service. Interestingly, and in contrast to typical developments at other institutions (Ecker-Ehrhardt 2018a, 734), only one person working at the department is a trained journalist, while all other communication staff are trained lawyers (i.e., studied law), including all eleven press officers. This deliberate decision (press officer, personal communication, 12.03.2019) illustrates that legal precision is extremely important within the institution. The intention is that the media logic will never trump or compromise legal precision. This emphasizes the importance of the law and legal text in the work of the press officers.

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[46] For a short biography of William Valasidis, the head of the CJEU's communications directorate ('directeur de la communication'), see Appendix A4.1.
[47] An organizational chart of the CJEU, its departments and units can be found here: https://curia.europa.eu/jcms/upload/docs/application/pdf/2018-01/en.pdf (last accessed 18.03.2019).
[48] For a list of people working at the press service, see https://curia.europa.eu/jcms/jcms/Jo2_25870/ (last accessed 15.12.2019).

An upgraded public relations toolbox in a more politicized environment

Since "profound experiences of politicization [...] may motivate IOs to reform their public communication in an effort to more effectively manage public legitimacy" (Ecker-Ehrhardt 2018a, 728), such factors should not hold short from effects on international judiciaries such as the CJEU. In fact, the public communication activities of the CJEU underwent a significant transformation and evolution in recent years. The Court did not only increase the number of languages in which it communicates (in line with its multilingual identity and the accession of new member states) but also used new channels of communication such as YouTube and Twitter. While previously the policy was that the Court only communicates through its judgments and case law, the attitude shifted towards active communication. "We've moved from 'the Court informs about judgments' to 'the Court communicates'", the head of communications summarized the development (W. Valasidis, interview, 14.03.2019). Not only are the times of "benign neglect" of the Court (Stein 1981, 1) over, but the Court actively seeks to contribute to this development. It does not only seem to "speak law to power" (Larsson et al. 2017, 881), but also to the public. The perception at the CJEU's communications directorate is that the Court cannot afford to not actively engage in this environment: "We are on an opinion market place, and our opinion has to be present" (W. Valasidis, interview, 13.03.2019).

Nowadays, various channels and instruments are used to achieve the goal of being present on the 'opinion market place'. The CJEU's website was launched in 1996. While it was initially mainly supposed to provide access to the Court's case-law, it developed into a communication tool and is now regarded as such and administered by the staff at the communications directorate (C. Fretwell, interview, 13.03.2019). In June 2018, the website underwent a design change that was supposed to implement a more modern and structured interface, now also offering animated clips of the CJEU's YouTube channel at a very prominent position on the landing page (https://curia.europa.eu/jcms/jcms/j_6/en/).

Both Twitter and YouTube, as online media channels, are nowadays used actively by the Court. The CJEU's English and French twitter accounts were launched in April 2013 (CJEU 15.04.2013). The CJEU's YouTube channel was created in January 2017,

and the first video was published on 30 March 2017 (CJEU n.d.). Since then, various video clips explaining the Court's work, summarizing case law, and reporting about events and press conferences at the Court are getting published frequently on the channel in various languages. The Court adapts to new forms of communication in a world of digital media. Even additional channels like Instagram, LinkedIn, and Facebook are under consideration:

"We're basically rethinking our social media strategy now. At first, the approach was that Facebook is more for a network of a private nature, whereas Twitter present[s] itself more like a network of communications professionals […] and stakeholders in politics and law as well. That's why we chose to be present on Twitter [...]. We're trying to put together now a piece of paper in order to propose an evolution of our social media strategy. That would include Facebook, and possibly Instagram as well. [...] And then, a more particular aspect of that thought process [...] is how best we could use LinkedIn as well, [...] which is more professional in nature. Snapchat etc. we don't feel that it's appropriate for the Court" (W. Valasidis, interview, 19.10.2018).

These considerations illustrate a profound expansion of the tools used for public communication at the CJEU. In this regard, the Court partly resembles developments for government leaders (Barberá and Zeitzoff 2018), as well as international institutions beyond the EU (Ecker-Ehrhardt 2018a). The following section addresses the core research question of *whether the Court is capable of influencing the public debate about judgments by using press releases and tweets.*

The CJEU on Twitter

Data

Long gone are not only the times of the 'invisibility' of EU politics (see Meyer 1999), but also the times when the traditional mass media such as print newspapers and television dominated the news market. Online media or social media have become immensely important to describe public and political discussions (Varnelis 2008). Print newspapers have lost in subscribers, circulation, and reach. Social media allow real-time discussion and participation of various actors and groups in the political

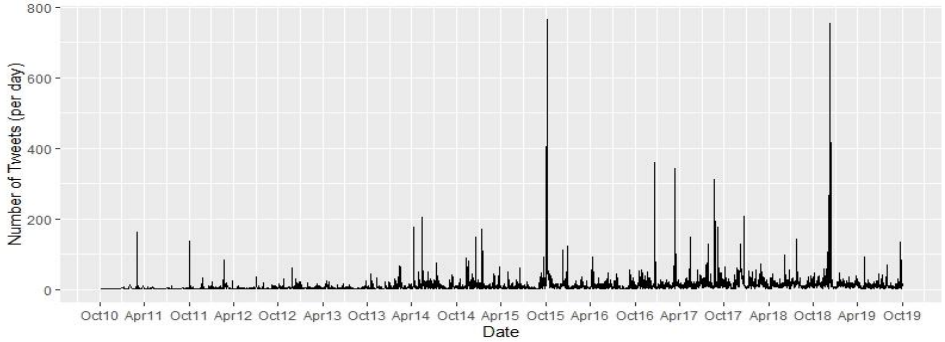
debate. Among them, Twitter has established itself as a key transnational platform for political campaigning, public relations, and public and political discussions in the 21st century. Most institutional actors nowadays engage with this medium, including the CJEU.

In order to investigate the public debate in times of digital news channels and social media, this paper focuses on Twitter data. On the one hand, I use data for tweets of the Court's official account between the creation of the CJEU's English twitter account on 2013-04-15 up until 2019-09-30 (N=1,136 tweets).[49] On the other hand, I utilize the overall stream of tweets that include the hashtags *#ecj*, *#cjeu,* or *#EUGeneralCourt* between 2010-10-03[50] and 2019-09-30 in order to capture the public debate about the CJEU (N= 37,107; see Figure 1 below). When referring to the 'public debate', the paper at hand refers to the Twitter debate without going beyond this medium. The implications and limitations of this choice are discussed further below, after presenting the results.

The overall number of daily tweets mentioning the Court usually remains below 100. There are some exceptions when the debate intensified after crucial CJEU rulings, with two remarkable outliers. On 2015-10-06, the Court ruled on the case brought by the Austrian Maximilian Schrems against the transfer of personal Facebook data to the US (C-362/14 Schrems). On 2018-12-10, the Court ruled in the famous Brexit case that the UK could unilaterally decide to revoke the activation of Article 50 TEU (C-621/18 Wightman). Both days show the most extreme values in Figure 1 below. The question arises whether the public debate about the Court on Twitter is also driven or influenced by messages of the Court and, if so, by which messages.

[49] For an illustration of the monthly number of tweets published on the CJEU's English Twitter account @EUCourtPress see Appendix, figure A4.3.1. For a differentiation of the types of tweets the CJEU issues see appendix, Table A4.3.2.
[50] This date was chosen since it is a Sunday, i.e. the start of the first week in October 2010.

Figure 1. Twitter debate about the CJEU



Note: Tweets mentioning #ecj, #cjeu, #EUGeneralCourt Oct 2010 to Sept 2019. Own data collection with Twitter API.[51]

Twitter offers a practical application programming interface (API) that can be accessed to collect Twitter data. A key advantage is the immediate availability of a large amount of data and variables for each tweet. At the same time, retrieving this data under Twitter's premium subscription scheme is expensive. Without large funding opportunities, either a limitation of the time period or a random selection of observations is necessary, and only a relatively small amount of the entire tweet flow can be accessed. This paper builds on data from nine years of the Twitter debate (2010-10 until 2019-09). This way, I am able to include a period in which 8,213 CJEU judgments were decided,[52] and I cover a period before the CJEU's Twitter account was created (before 2013-04-15) as well as after.

In order to compare Twitter as a rather new communication tool to more traditional means of communication, I use the Court's press releases as collected from the Court's website as a second data source.[53] Press releases and contacts to journalists have served the Court as a tool for public communication for a long time (Klinke 1989, 146). By using press releases to model an alternative stimulus of the public debate, I should be able to differentiate between the effects of institutional tweets about judgments and other messages of the Court.

[51] While Figure 1 offers a complete picture, a moving average of tweets might be more suitable to visually identify periods with up- or downward trends (see appendix, Figure A4.3.2).
[52] This number counts joined cases as one individual case each.
[53] For an illustration of the data, see Figure A4.2.1 in the appendix.

How can one capture whether the overall debate involves reactions to press releases or tweets that announce judgments? In order to assess *whether the Court is capable of influencing the public debate about judgments with help of its communication tools*, I analyze for each calendar day how the CJEU's messages affect the overall tweet flow of those tweets that include the hashtags *#ecj, #cjeu, or #EUGeneralCourt.* In line with research on public debates and politicization in the EU, three primary components are considered as crucial to capture the public debate in times of politicization: salience, polarization and the amount of actors (see page 8 in this dissertation and Zürn 2016, 169 for a systematic overview of these components). I operationalize these with the number of tweets (salience), their distances in sentiment (polarization), and the number of accounts taking part in the debate (amount of actors). Polarization has to be determined based on the positions of actors or the content of messages. Since no data on the positions of actors participating in the debate is available, I use the content of messages to calculate a polarization measure that builds on the sentiment intensity of each text, i.e., each tweet (see Murthy 2015 for an example). The sentiment of all #ecj/#cjeu/#EUGeneralCourt-tweets is determined with the most established sentiment dictionaries provided by Lexicoder (Young and Soroka 2012) and implemented in the *'quanteda'* package in R (Benoit *et al.* 2018). Each tweet's sentiment score is calculated as the sum of positive and negative sentiment. Subsequently, following Dolezal, Hutter, and Wüest's polarization measure (Dolezal *et al.* 2012, 57), polarization is calculated per day by taking the squared distance of the sentiment score of every single tweet from the mean sentiment scores of all tweets of that day.[54] The squared distances are summarized in

$$\sum_{k=1}^{K} (x_k - \overline{x})^2,$$

[54] For the analysis, polarization is later calculated per hour in order to fit the structure of the GSC design that will be explained further below.

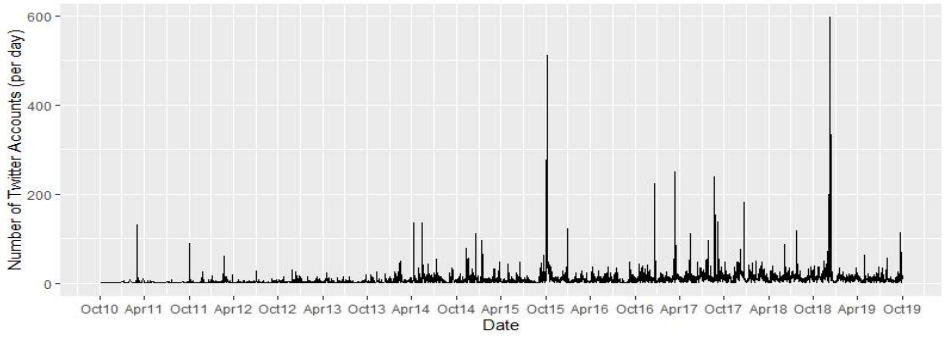
where x_κ is the sentiment score of tweet κ and $\overline{x}$ is the mean sentiment score of all tweets of that hour. Thus, polarization is operationalized as the sum of distances in sentiment intensity. This is not an ideal measure for polarization but still captures polarity in the debate. It allows an automatized coding strategy and to avoid labor-intensive hand-coding for thousands of tweets.[55] Similar strategies have been used by other scholars that analyzed the sentiment of tweets (e.g., Murthy 2015).

All *re*tweets are excluded from this analysis in order to only count genuinely 'new' tweets without those that are recycled by other users via Twitter's retweet function. Since Twitter hashtags (#), as well as methods of sentiment analysis, are language-dependent, and since communication on Twitter is often primarily in English, I limit the analysis to English tweets. This is in line with the Court's language(s) of communication on Twitter, which is mainly English (besides French). The implications and limitations of this choice are discussed further below after the analysis.

The illustration of salience (above, Figure 1) is supplemented by visualizing the amount of actors (Figure 2 below) and the intensity of sentiment (Figure 3, below left) and polarization (Figure 3, below right) per day across the covered time period. In the covered time frame, there are 11,878 Twitter accounts in total participating in the debate and 11 accounts on average per day. While the amount of actors develops similar to the number of tweets in the debate, the daily sentiment intensity and polarization increased strongly since the end of 2017. Most probably, mentions of the Court in the heated Brexit discussion have contributed to this trend. In sum, the descriptive figures suggest an overall increase in the politicization of the Twitter debate about the Court in the covered time period.

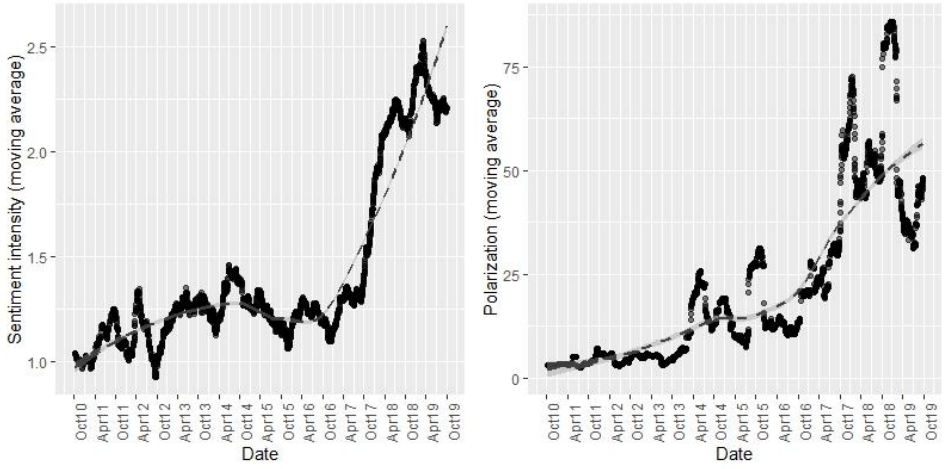
[55] Proksch et al. (2019, 108) show that an automatized coding of the sentiment of texts with the Lexicoder dictionaries is very reliable compared with hand-coding.

Figure 2. Amount of actors in Twitter debate about CJEU



Note: Tweets mentioning #ecj, #cjeu, #EUGeneralCourt Oct 2010 to Sept 2019. Own data collection with Twitter API.

Figure 3. Daily mean sentiment (left) & daily mean polarization (right) of CJEU Twitter debate (4-month moving average)



Note: Tweets mentioning #ecj, #cjeu, #EUGeneralCourt October 2010 to September 2019. Own data collection with Twitter API. Dashed curve is a loess smoother.

Method

In order to estimate the causal effects of both, press releases and institutional tweets on the Twitter debate, I use the generalized synthetic control method (GSC), introduced by Xu (2017). It builds on the classical synthetic control method (Abadie *et al.* 2015) and both, the classical and generalized method, have found their way into the European politics literature for cross-country comparisons (Armingeon *et al.* 2016; Schraff and Schimmelfennig 2019). The method allows estimating actual and counterfactual trends across time by taking into account when a certain treatment occurred and dividing the time-axis into pre- and post-treatment periods. This way, one can measure the effect of a treatment (or different treatments) as a stimulus for the dependent variable. Further details are provided in the analysis section below.

Analysis and Results

Since a key mechanism proposed in the literature on legitimation of IOs suggests that louder messages influence public opinion more (Tallberg and Zürn 2019, 596), I aim to measure the effects of institutional messages of variable strength on the public debate. In order to distinguish between the different groups of messages the Court sends, I differentiate between *(i)* judgments without press release or tweet, *(ii)* judgments with press release but without tweet, and *(iii)* judgments with both, press release and tweet. Since the debate on Twitter is likely to be most affected by platform-specific messages, tweets by the CJEU should be considered the 'loudest' message. Press releases are not platform-specific, but still represent active communication by the Court. Meanwhile, judgments without press release or tweet can be considered as the weakest or quietest among the messages issued by the Court. Consequently, the effect of judgments on their own on the public debate should be weakest, followed by judgments with press releases, and followed by judgments with tweets:

H1: CJEU judgments on their own have a weak positive effect or no effect on salience, actor expansion, and polarization of the public debate about the CJEU.

H2: CJEU judgments with press releases have a positive effect of medium strength on salience, actor expansion, and polarization of the public debate about the CJEU.

H3: CJEU judgments with tweets have a strong positive effect on salience, actor expansion, and polarization of the public debate about the CJEU.

The reform process of public communications at the CJEU described above did only lead to the opening of a Twitter account on 2013-04-15. Therefore, I separate the two periods before and after 2013-04-15 for the analysis. Table 1 distinguishes between the different groups of messages by cross-tabulating the number of days with or without certain messages by the Court.

Table 1a shows the cross-tabulation of days when the CJEU issued judgments *without* a press release, against those when the CJEU issued judgments *with* press releases. On 145 days, the CJEU issued judgments without issuing press releases for those judgments (Treatment Judgment=1; Treatment CJEU Press Release=0). On 155 days, the CJEU issued judgments accompanied by press releases (Treatment Judgment=1; Treatment CJEU Press Release=1). In the same way, table 1b allows distinguishing between the same groups of days after 2013-04-15. Table 1c cross-tabulates 813 days with judgments against 365 days with judgments accompanied by tweets. Finally, Table 1d compares days with CJEU press releases against days with CJEU tweets. Mostly, when the Court nowadays issues judgments with press releases, it also tweets about the respective judgments (Treatment CJEU Press Release=1; Treatment CJEU Tweet=1). This is the case for 362 days, whereas on 60 days, the Court issued a judgment press release without tweeting about it (Treatment CJEU Press Release=1; Treatment CJEU Tweet=0; Table 1d).

Table 1. CJEU messages per day

Amount of Days with treatments (2010-10-03 to 2013-04-14)

Table 1a

Treatment = Judgment only	*Treatment = CJEU PR*		***Total***
	0	1	
Judgment = 0	625	0	625
Judgment = 1	145	155	300
Total	770	155	**925**

Table 1a shows figures for the period before the CJEU used Twitter.

Amount of Days with treatments (2013-04-15 to 2019-09-30)

Table 1b

Treatment = Judgment only	*Treatment = CJEU PR*		***Total***
	0	1	
Judgment = 0	1547	0	1547
Judgment = 1	391	422	813
Total	1938	422	**2360**

Table 1c

Treatment = Judgment only	*Treatment = CJEU tweet*		***Total***
	0	1	
Judgment = 0	1547	0	1547
Judgment = 1	448	365	813
Total	1995	365	**2360**

Table 1d

Treatment = CJEU Press Release	*Treatment = CJEU tweet*		***Total***
	0	1	
PR = 0	1935	3	1938
PR = 1	60	362	422
Total	1995	365	**2360**

Note: PR= Press release; Own data collection from curia.europa.eu, and Twitter data with Twitter API from developer.twitter.com

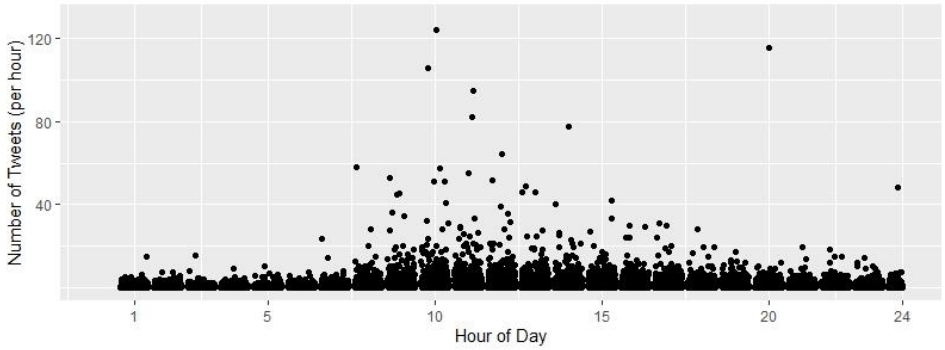
As mentioned, I use the generalized synthetic control method (GSC; Xu 2017) that allows measuring the causal effects of all three groups of CJEU messages. A major advantage of the GSC method is that it incorporates a procedure for cross-validation that "selects models before estimating the causal effect. It relies on the control group information as well as information from the treatment group in pretreatment periods" (Xu 2017, 63). The GSC estimates actual and counterfactual trends across time by taking into account when a certain treatment occurred and dividing the time-axis into pre- and post-treatment period. Schraff and Schimmelfennig summarize the advantages of the GSC:

> *"The goal of the estimation is to arrive at a counterfactual time trend under the condition that the treatment had been absent. […] The interactive fixed-effects model includes time and unit fixed-effects. It also estimates a set of time-varying factors (unobservable controls) that further balance treatment and control group, conducting a factor analysis of the residuals. Therefore, the method does not require an explicit modeling of control variables. The balancing of treatment and control group is part of the estimation procedure"* (Schraff and Schimmelfennig 2019, 367).

Variation of the treatment, i.e., of messages by the Court, occurs primarily per day. Therefore, I divide every day into 24 hours that are either all untreated (for control days) or divided into pre- and post-treatment periods for treated days. I match these hourly data for the Twitter debate with the timestamps of tweets and press releases (for details, see Appendix A4.3 on CJEU Twitter Data). This allows me to determine the timing of each stimulus or treatment by a press release or tweet and thus allows me to measure the effects of CJEU messages. The design enables me to distinguish between the effect strengths of (i) judgments on their own, (ii) judgments with press releases, and (iii) judgments with tweets on the public debate.

Figure 4 illustrates the daily Twitter activity by plotting the daily tweet flow of 3,285 days on the same time (x-)axis, divided into the 24 hours of each day (2010-10-03 until 2019-09-30). The y-axis indicates the number of all tweets with the selected hashtags per hour. This figure illustrates the typical daily pattern of activity on Twitter with very inactive early morning hours, highest activity before and while people start their working days, and a continuous decline towards the evening.

Figure 4. Tweet flow per hour of day with all hours



Note: Tweets mentioning #ecj, #cjeu, #EUGeneralCourt October 2010 to September 2019. Own data collection with Twitter API. Jittered data. Two outliers excluded for readability within the scale.

The Court usually tweets between 9 and 12 o'clock and never in the early morning or late evening.[56] This is not only in line with usual working hours, but also supports the opportunity to employ a panel data design with measures per hour. With treatments occurring at similar times of the day, there is a good opportunity to model pre- and post-treatment periods. Moreover, the number of pre-treatment periods reaches a necessary number of minimum eight, usually nine pre-treatment periods (i.e., hours), which is crucial for estimating the counterfactual cases in a GSC analysis (Xu 2017, 59).

Public reactions to Court rulings can be driven by the legal, political, or societal relevance or divisiveness of a judgment. Such factors might also affect the decision of the Court to communicate more actively. Therefore, it is difficult to distinguish between the effect of a judgment in itself and the effect of a press release or tweet as a more vocal message of the Court; even in a GSC design that allows causal statements. Since the CJEU's Twitter account was only created in April 2013, measuring the effect of judgments with or without press releases on the Twitter debate before 2013-04-15 allows me to capture the true effect of press releases on the Twitter debate. Subsequently, I can compare this to the effect of tweets after this

[56] For a table illustrating in which hours of the day the Court tweets, see Appendix A4.3, Table A4.3.1.

date. Meanwhile, differentiating between the effects of press releases and judgments on their own remains more uncertain, because any judgment that is not communicated through a press release might just not be relevant enough and might thus also not lead to any public debate. Therefore, measures for the importance of the case should be included in order to separate the effect of the case importance from the effect of communication activities of the Court. I will do this in an additional robustness test after presenting the main analysis.

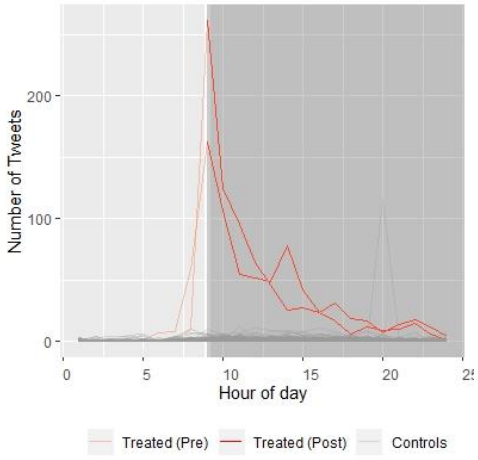
Salience

Figure 1 above introduced the daily number of tweets that include the selected hashtags. This is an indicator for the amount of media attention for the Court. Therefore, the number of tweets is useful to operationalize *Salience* as the first component of the public Twitter debate about the CJEU. In order to measure which messages of the Court contribute to the salience of the CJEU on Twitter, I use the number of tweets mentioning *#ecj, #cjeu,* or *#EUGeneralCourt* per hour (nTweets) as the dependent variable.

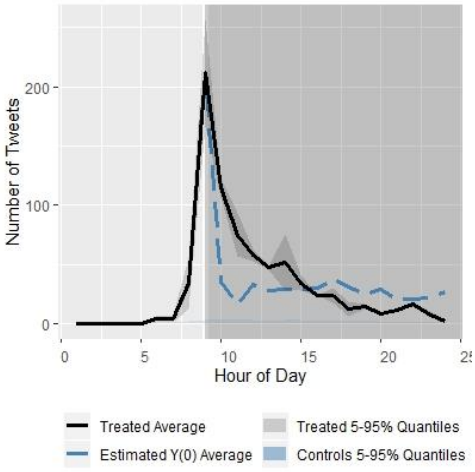
To illustrate the effects of CJEU judgments, I first visualize the example for the two extreme outlier days with judgments in the cases C-362/14 Schrems and C-621/18 Wightman (Brexit case; as mentioned above). As a result of the GSC analysis, Figure 5 documents the observed data (5a, two outliers in red), treated and counterfactual averages (5b), and the average treatment effect on the treated days (ATT, 5c). The ATT-values always refer to every hour after the treatment.

Figure 5. The effect of CJEU messages for two extreme cases C-362/14 Schrems & C-621/18 Wightman

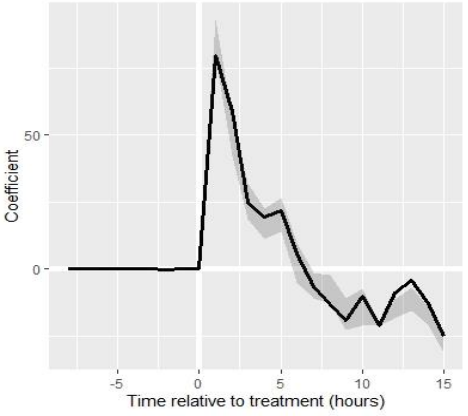
(5a) Raw data



(5b) Treated & counterfactual averages



(5c) Average treatment effect on treated days (ATT)



The two days when these cases were decided experienced a significant and substantially very strong, positive average treatment effect on each treated unit (ATT=5.899; p<0.01). The raw data (Figure 5a) indicates more than 150 tweets and more than 250 tweets, respectively, for the hours when the two judgments in *Schrems* and *Wightman* were announced (by both press release *and* CJEU tweet). These numbers are extremely high compared to those

for untreated days visualized with grey line graphs in Figure 5a. Figure 5b also visualizes the treated average across the entire day for the two treated days (bold black line) and the estimated counterfactual scenario if there were no messages by the CJEU on those two days (dashed, blue line). Figure 5c visualizes the ATT over time. Both figures, 5b and 5c, indicate that the effect is somewhat sustainable in the sense that even five hours after the treatment the ATT is still positive and significant. Towards the end of the day, however, the positive, significant effect ebbs away and vanishes towards the evening. Thus, even in extreme cases, one should expect the timeliness and immediacy of Twitter as a medium to surface in the time trends. A significant effect for more than five hours after a treatment would have to be considered as extraordinary. In a subsequent step, the question arises whether the discovered significant positive effect of judgments communicated with both, press releases and tweets of the Court, prevails when looking at the bigger picture for many days.

Table 2 (below) presents in model 1 the result of the GSC analysis of the two outlier cases visualized above. Furthermore, the table includes models for larger samples of 600 days and with three different treatments: judgments only (models 2, 4), judgments with press releases but *no* tweets (models 3, 5), and judgments with press releases *and* tweets (model 6). Each of the models follows the same logic by combining treated days that saw judgments by the Court with untreated control days (i.e., without CJEU judgments). Consequently, model 2 builds on a random sample of 600 days out of *(i) all those days when the Court issued a judgment, but no judgment-press release*, and *(ii) all days that experienced no treatment of any kind*, i.e., control days without judgments. On these control days, there were no judgments and, consequentially, also no judgment press releases, and no judgment tweets. The result in model 2 indicates that judgments on their own (without any press release or tweet promoting them) do not lead to a significant average treatment effect on each treated unit (ATT=0.033 [-0.019; 0.112], p=0.245). Thus, when judgments are not actively communicated, on average public attention for the Court does not increase after the decision.

Model 3 uses judgments with press releases as treatment and reports on the results of a random sample of 600 days out of which 120 saw judgments with press releases. In face of a standard deviation of the normalized dependent variable of 1.0,[57] the ATT of 0.156 (p<0.001; model 3) represents a change in 0.156 standard deviations. The finding for press releases, however, holds only before 2013-04-15. This will most likely be because any relatively important judgment is not only accompanied by a press release (model 5), but also by a tweet (model 6). After 2013-04-15, only 60 days saw judgments with press releases but without tweets (mod. 5).

Table 2. The effect of CJEU judgments on salience (GSC estimates)

Data basis	2 Outliers	Before creation of CJEU Twitter account (<2013-04-15)		After creation of CJEU Twitter account (>2013-04-15)		
	(1)	(2)	(3)	(4)	(5)	(6)
DV	nTweets	nTweets	nTweets	nTweets	nTweets	nTweets
Treatment	**CJEU Tweets**	**Judgments**	**CJEU Press Releases**	**Judgments**	**CJEU Press Releases**	**CJEU Tweets**
CJEU Judgment		0.033		0.050		
		(0.034)		(0.075)		
CJEU Press release			0.156***		0.102	
			(0.032)		(0.111)	
CJEU Tweet	5.899**					0.359***
	(0.516)					(0.094)
Day FE	X	X	X	X	X	X
Hour FE	X	X	X	X	X	X
Unobserved factors	4	0	0	1	3	6
N	9648	14,400	14,400	14,400	14,400	14,400
Treated days	2	114	120	122	57[58]	112
Control days	400	486	480	478	543	488

*Note: GSC=generalized synthetic control; Standard errors based on parametric bootstrap with 2000 runs. * p<0.05; ** p<0.01; *** p<0.001; DV = Dependent variable.*

[57] The outcome variable was normalized to improve computing speed. For details, see R package 'gsynth' for Xu (2017).

[58] Since the number of treated days in this category is as low as 60 in total (see Table 1c), I include *all* treated days with only press releases and non-missing data (N_{tr}=57), and sample only the untreated control days (N_{ct}=543).

Based on model 2 in Table 2, Figure 6a plots the pooled ATT over time for the sample of 600 days, out of which 114 were treated with judgments. In comparison, based on model 3, Figure 6b plots the pooled ATT over time for the sample of 600 days, out of which 120 were treated with press releases. The size of the coefficients illustrates the different effect strengths. Both figures illustrate a positive effect. However, it is only significant for judgments with press releases (model 3) where it holds for seven hours after the treatment (Figure 6b). Substantially, the coefficients indicate that the effect of press releases is almost five times larger than the one of judgments that are not actively communicated (0.156/0.033 = 4.727).

Figure 6a. ATT of CJEU judgments on amount of tweets

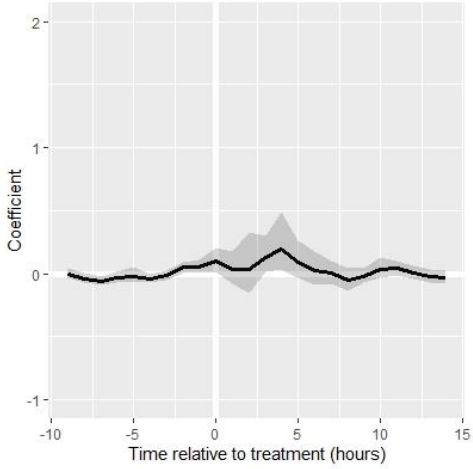
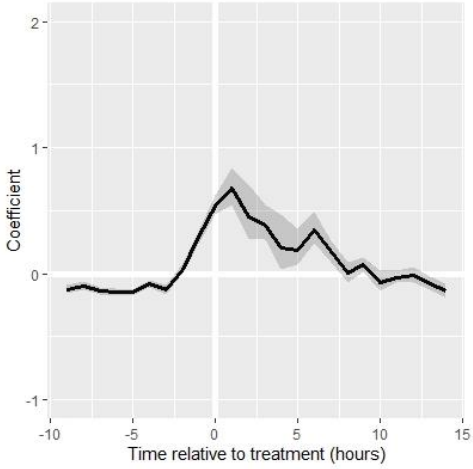


Figure 6b. ATT of CJEU judgments with press releases



Compared to the period before 2013-04-15, similar results hold after 2013-04-15 when using tweets about judgments as the treatment, albeit with a considerably stronger effect (model 6). The ATT amounts to 0.359 [0.185 ; 0.564] ($p<0.001$; model 6).

Based on model 5 in Table 2, Figure 7a plots the pooled ATT over time for the sample with 600 days, of which 57 were treated with press releases. In comparison, based on model 6, Figure 7b plots the pooled ATT for the sample with 600 days, of which 93 were treated with CJEU tweets.

Figure 7a. ATT of CJEU judgments with PR on amount of tweets

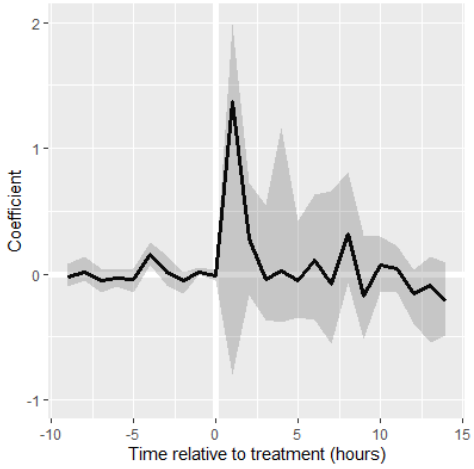
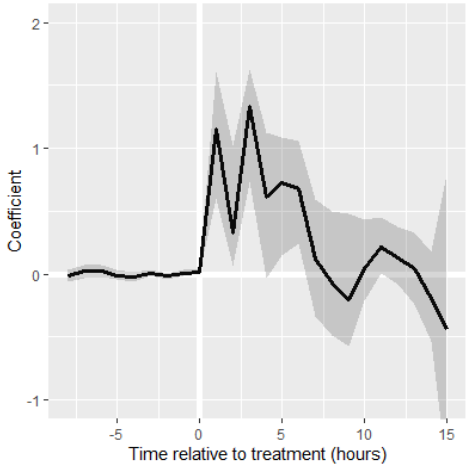


Figure 7b. ATT of CJEU judgments with tweets



The size of the coefficients illustrates the different effect strengths. The effect of press releases is rather weak and uncertain, while CJEU tweets lead to a strong and temporally sustainable effect until six hours after the treatment. Substantially, the coefficients indicate that the effect of CJEU tweets is more than three times as large as the one of judgments with only press releases after 2013-04-15 (0.359/0.102 = 3.520). This should not be overinterpreted though, since the latter is not significant.

Since after 2013, almost all judgments that are communicated with tweets are also communicated with press releases, the comparison of CJEU tweets after 2013-04-15 with CJEU press releases before that day should be more telling in this regard. The effect of CJEU tweets is twice as large as the effect of press releases before 2013-04-15 (0.359/0.156 = 1.968; compare Figure 6b and 7b). Both effects are significant.

The ATT value for the two extreme outlier cases in model 1 (ATT=5.899; p<0.01) was about sixteen times as large as the general ATT of judgment tweets (5.899/0.359 = 16.432). This is in line with the role of the two cases in model 1 as extreme outliers. Nevertheless, the general picture confirms that judgments with tweets have a significant, positive effect on the overall tweet flow for several hours.

Amount of actors

Besides the salience of a topic or institution in the media, the *Amount of Actors* participating in a debate is the second primary component of public debates. I use the number of Twitter accounts participating in the Twitter debate per hour to operationalize this component. Accordingly, a second set of models takes the number of unique Twitter accounts taking part in the debate *(nAccounts)* as the dependent variable and tests how the judgments of the Court affect this number (Table 3).

Table 3. The effect of CJEU judgments on the amount of actors (GSC estimates)

Data basis	2 Outliers	Before creation of CJEU Twitter account (<2013-04-15)		After creation of CJEU Twitter account (>2013-04-15)		
	(1)	(2)	(3)	(4)	(5)	(6)
DV	nAccounts	nAccounts	nAccounts	nAccounts	nAccounts	nAccounts
Treatment	**CJEU Tweets**	**Judgments**	**CJEU Press Releases**	**Judgments**	**CJEU Press Releases**	**CJEU Tweets**
CJEU Judgment		0.036		0.150***		
		(0.030)				
CJEU PR			0.155***		0.101	
			(0.025)		(0.091)	
CJEU Tweet	9.968***					0.441***
	(1.515)					(0.090)
Day fixed-effects	X	X	X	X	X	X
Hour fixed-effect	X	X	X	X	X	X
Unobs. factors	3	0	0	0	3	5
N	14,400	14,400	14,400	14,400	14,400	14,400
Treated days	2	114	120	122	57	112
Control days	598	486	480	478	543	488

*Note: GSC=generalized synthetic control; Standard errors based on parametric bootstrap with 2000 runs. * p<0.05; ** p<0.01; *** p<0.001; DV = Dependent variable; FE = fixed effects.*

For models 1-3, the results are similar to those in Table 2 and indicate that the outlier cases (model 1), as well as judgments communicated with press releases

(model 3), stimulate actor expansion in the overall Twitter debate. The strengths of the effects are similar, too. Other than for the number of tweets in the debate, the amount of actors also shows a significant increase for judgments on their own after April 2013 (model 4). This positive, significant effect of judgments without press release or tweet is a first indication that judicial authority becomes politicized in the Twitter debate even without active communication by the Court. The finding for press releases, however, holds only before 2013-04-15. This is probably once again the case because any relatively important judgment would not only be accompanied by a press release, but also by a tweet. The latter show a positive, significant effect on the amount of actors as well (ATT=0.441 [0.241 ; 0.603]; p<0.001; model 6). Thus, judgments with tweets also affect this second measured component of the public debate; in similar strength as the first one.

In order to illustrate the most active accounts in the debate, the Appendix provides descriptive statistics on the Twitter accounts that are most influential in the debate (Figure A4.3.3). However, none of the accounts tweeting about the CJEU contributes to more than 0.02% of all tweets mentioning the hashtags #ecj, #cjeu, or #EUGeneralCourt. This supports the relevance of these findings, since it is obviously a large number of actors participating in the debate about the Court and not only a few influential accounts that monopolize the debate (11,878 Twitter accounts in total, 11 accounts on average per day).

Polarization

Besides salience and the amount of actors participating in a debate, *Polarization* is the third primary component of public debates (Zürn 2016, 169). Therefore, a third set of models takes polarization as the dependent variable and tests how the messages of the Court relate to this third component of the debate (Table 4). The polarization variable and its change over time have been introduced in Figure 3 above. For the analysis in the GSC design, the polarization values are now calculated per hour instead of per day.

Table 4. The effect of CJEU judgments on polarization (GSC estimates)

Data basis	2 Outliers	Before creation of CJEU Twitter account (<2013-04-15)		After creation of CJEU Twitter account (>2013-04-15)		
	(1)	(2)	(3)	(4)	(5)	(6)
DV	Sentiment Polarization	Sentiment Polariz.	Sentiment Polariz.	Sentiment Polariz.	Sentiment Polariz.	Sentiment Polariz.
Treatment	**CJEU Tweets**	**Judgments**	**CJEU Press Releases**	**Judgments**	**CJEU Press Releases**	**CJEU Tweets**
CJEU Judgment		-0.073		0.212***		
		(0.047)		(0.068)		
CJEU PR			-0.088		0.141	
			(0.034)		(0.141)	
CJEU Tweet	26.830*					1.122***
	(5.070)					(0.128)
Day FE	X	X	X	X	X	X
Hour FE	X	X	X	X	X	X
Unobs. factors	3	3	3	0	3	7
N	14,400	14,400	14,400	14,400	14,400	14,400
Treated days	2	114	120	122	57	112
Control days	598	486	480	478	543	488

*Note: GSC=generalized synthetic control; Standard errors based on parametric bootstrap with 2000 runs. * p<0.05; ** p<0.01; *** p<0.001; DV = Dependent variable; FE = fixed effects.*

The outlier cases show once again a significant effect on the polarization of the debate. For the earlier time period before April 2013, there are no significant effects of CJEU judgments on their own (model 2), or those communicated with press releases (model 3) on the polarization of the Twitter debate. By contrast, after April 2013, judgments on their own (model 4), and those communicated with tweets (model 6) stimulate polarization in the overall Twitter debate. This is in line with Figure 3 above, which already showed that only in recent years, the Twitter debate about the Court was more polarized. Once again, in this period, judgments on their own seem to contribute to politicization, even without active communication. The effect is substantial for judgments only (ATT=0.212 [0.081 ; 0.342]; p<0.001, model 4) and considerably stronger when judgments are communicated with tweets (ATT=1.122 [0.810 ; 1.325]; p<0.001, model 6). The insignificant effect of judgments with press releases (model 5) points once again to the fact that any relatively important judgment would not only be accompanied by a press release, but also by a tweet.

In sum, the findings presented here provide some evidence that messages by the Court have an effect on the main components of the public debate about the Court. The significance and strength of these effects are dependent on the type of messages the CJEU issues. Once again, we need to distinguish two time periods. Before the creation of the CJEU's Twitter account, it is judgments with press releases that have a positive, significant effect on two out of three politicization components (salience and amount of actors, but not polarization). Since the CJEU started using tweets, it is nowadays judgments that are communicated with *press release and(!) tweets*, which have positive, significant effects on all three politicization components. Interestingly, even judgments on their own, without active communication of the Court, lead to significant effects in the public debate, albeit the weakest among the various stimuli. At the same time, this finding could be considered as the strongest support of the theoretical claim that "societal actors politicize judicial authority" (Zürn *et al.* 2012, 93). Finally, platform-specific messages in form of tweets by the CJEU have the strongest effects compared to all other messages of the Court. The relative magnitude of these effects is in line with initial theoretical expectations. These findings provide empirical evidence that louder messages are more influential in the public debate (see Tallberg and Zürn 2019, 596).

Robustness check

In order to test whether the measured effects can be interpreted as causal effects of CJEU public communication on the public debate, I control for the importance of the case. This should enable me to tell apart the effect of the importance of the judgments from the effects of active communication of the Court. First, I separate important cases from less important ones with data on the chamber size (Brekke *et al.* 2019), operationalized as the number of judges sitting in on a case.[59] Routine cases are dealt with in chambers of three or five judges (Kelemen 2012, 51). I coded those as less important (*Case Importance* = 0), and all cases dealt with in larger chambers I coded

[59] This is just one of the variables that can potentially be used to operationalize the importance of cases, as discussed in the other papers of this dissertation. To my knowledge, data for the number of judges per case is the only data available for the entire recent time period covered in this paper. For a frequency table of the number of judges sitting on a case, see appendix, Table A4.4.3.

as more important (*Case Importance* = 1). Since this factor for case importance is time-invariant for each day, it cannot be included in the original analysis as a classical control variable. Instead, the robustness check splits the samples into important (1) and less important cases (0). Tables 5a-5c below document the effects of CJEU judgments depending on case importance for *nTweets* (models 1 and 2), *nAccounts* (models 3 and 4), and *Polarization* (models 5 and 6). This is done for all messages by the Court, i.e., for judgments with press releases before 2013-04-15 (Table 5a), judgments with press releases after 2013-04-15 (Table 5b), and judgments with tweets (5c).

Table 5a. Effect of CJEU judgments with press releases (<2013) split on case importance (GSC)

Data basis	Before creation of CJEU Twitter account (<2013-04-15)					
	(1)	(2)	(3)	(4)	(5)	(6)
DV	nTweets	nTweets	nAccounts	nAccounts	Sentiment Polariz.	Sentiment Polariz.
Treatment	**CJEU PR**	**CJEU PR**	**CJEU PR**	**CJEU PR**	**CJEU PR**	**CJEU PR**
Case Importanc	0	1	0	1	0	1
CJEU PR	0.104***	0.254***	0.103***	0.256***	-0.052	-0.332
	(0.038)	(0.047)	(0.032)	(0.042)	(0.014)	(0.055)
Day FE	X	X	X	X	X	X
Hour FE	X	X	X	X	X	X
Unobs. factors	0	0	0	0	3	3
N	13,416	12,504	13,416	12,504	13,416	12,504
Treated days	79	41	79	41	79	41
Control days	480	480	480	480	480	480

*Note: GSC=generalized synthetic control; Standard errors based on parametric bootstrap with 2000 runs. † p<0.1; * p<0.05; ** p<0.01; *** p<0.001; PR = Press release; DV = Dependent variable; FE = Fixed effects.*

In Table 5a above (period before 2013-04-15), both groups, less important cases as well as more important cases, show significant effects on the salience of the debate (models 1 and 2) and the amount of actors (models 3 and 4). The effects are stronger for important cases, but still significant for less important cases. For the third component (polarization), both groups of cases show negative, insignificant effects, which is in line with the findings in the main analysis in Table 4 above. In sum, for two out of three components of politicization, this robustness test supports

the claim that the effects found in the main analysis are caused by the messages of the Court. They are not merely an expression of the importance of cases.

In Table 5b below (period after 2013-04-15), more important cases communicated with press releases consistently show stronger effects than less important cases. However, neither of the two groups shows significant effects on any of the three components. This is in line with earlier findings (tables 2-4 above), and a differentiation between less important and more important cases does not alter these results.

Table 5b. Effect of CJEU judgments with press releases (>2013) split on case importance (GSC)

Data basis	After creation of CJEU Twitter account (>2013-04-15)					
	(1)	(2)	(3)	(4)	(5)	(6)
DV	nTweets	nTweets	nAccounts	nAccounts	Sentiment Polariz.	Sentiment Polariz.
Treatment	**CJEU PR**	**CJEU PR**	**CJEU PR**	**CJEU PR**	**CJEU PR**	**CJEU PR**
Case Importance	0	1	0	1	0	1
CJEU PR	0.049	0.280	0.073	0.194	0.158	0.149
	(0.126)	(0.166)	(0.100)	(0.122)	(0.165)	(0.265)
Day FE	X	X	X	X	X	X
Hour FE	X	X	X	X	X	X
Unobs.	3	3	3	3	3	3
N	14,088	13,368	14,088	13,368	14,088	13,368
Treated days	44	14	44	14	44	14
Control days	543	543	543	543	543	543

*Note: GSC=generalized synthetic control; Standard errors based on parametric bootstrap with 2000 runs. † p<0.1; * p<0.05; ** p<0.01; *** p<0.001; PR = Press release; DV = Dependent variable; FE = Fixed effects.*

In Table 5c below, both groups, less important cases as well as more important cases communicated with tweets, show significant, positive effects on all three dependent variables. The effects are stronger for important cases, but still significant for less important cases.

Table 5c. Effect of CJEU judgments with tweets depending on case importance (GSC estimates)

Data basis	After creation of CJEU Twitter account (>2013-04-15)					
	(1)	(2)	(3)	(4)	(5)	(6)
DV	nTweets	nTweets	nAccounts	nAccounts	Sentiment Polariz.	Sentiment Polariz.
Treatment	**CJEU Tweets**	**CJEU Tweets**	**CJEU Tweets**	**CJEU Tweets**	**CJEU Tweets**	**CJEU Tweets**
Case Importance	0	1	0	1	0	1
CJEU Tweet	0.316*	0.733**	0.436**	0.650***	0.873**	1.642***
	(0.110)	(0.168)	(0.102)	(0.143)	(0.136)	(0.231)
Day FE	X	X	X	X	X	X
Hour FE	X	X	X	X	X	X
Unobs.	6	6	5	5	7	7
N	13,704	12,432	13,704	12,432	13,704	12,432
Treated days	83	30	83	30	83	30
Control days	488	488	488	488	488	488

*Note: GSC=generalized synthetic control; Standard errors based on parametric bootstrap with 2000 runs. † p<0.1; * p<0.05; ** p<0.01; *** p<0.001; DV = Dependent variable; FE = Fixed effects.*

Therefore, for all three components of politicization, this robustness test supports the claim that the effects found in the main analysis are caused by the messages of the Court. They are not merely an expression of the importance of cases. In sum, the robustness test that separated less important from more important cases supports the interpretation that the discovered effects are also driven by CJEU public communication and not only by case importance.

Limitations

This paper focuses on the English Twitter debate about the CJEU. Analyzing the Twitter debate in several languages is much more demanding regarding time, costs, and language capabilities. While a large share of the Twitter debate (especially

among the well-informed, highly educated elite) might happen in English, the analysis presented here still leaves unobserved a large chunk of data. This data in other languages could potentially be relevant to capture the public debate about the CJEU and its judgments on Twitter. At the same time, the languages in which the CJEU communicates on Twitter are mostly English and French. This might also lead to a mostly English and French debate in response to CJEU tweets. Limiting the analysis to English tweets also implies that the British and Irish debates are probably overrepresented, and, for example, that the public debate about Brexit might affect the captured debate about the Court more than in other languages. These limitations can mainly be justified by cost and time restraints.

The insights of this paper are limited to a particular part of the public debate since it only delivers evidence for the public debate on Twitter. This comes with the limitation that a large part of the public is excluded. Many people and societal actors might not use Twitter, relevant public discussions happen on other social networks and also in more traditional news media. However, just as such limitations apply to the study at hand, they also apply to any other studies, for example, on newspaper coverage. Social media are immensely important for the public discussion in the 21st century and might further increase in importance in the future. In this regard, this paper delivers new insights into the effects of communication tools on the discussions on Twitter as an important platform for the current public debate.

Conclusions

Nowadays, international institutions use various platforms and channels to communicate to outward audiences. In face of increasing demands for justification, international institutions, including international courts, enhance their efforts for legitimation (Bogdandy and Venzke 2012; Gronau and Schmidtke 2016; Madsen 2018; Tallberg and Zürn 2019; Zürn, Binder, and Ecker-Ehrhardt 2012; Zürn 2018). Public communication tools are particularly important instruments for this purpose (Ecker-Ehrhardt 2018a; 2018c). I argued that under conditions of increased contestation of EU politics and politicization of EU affairs, the relevance of public

communication to uphold a favorable image in the public has also increased for the Union's highest Court. For courts, public attention is important to ensure compliance, support, and legitimacy. This should, in particular, be the case in face of pressure on judicial authority in the EU and amidst criticism of the CJEU.

So far, we hardly knew anything about the CJEU's public communication efforts. Only by looking at how the Court reaches out to the public and in how far its messages influence the public debate, it is possible to assess whether public communication is successful and potentially advantageous for legitimation. Previous research has not delivered any systematic insights into how the CJEU disseminates information and how it communicates to the public and media.[60] This paper contributes to fill this gap.

Following the theoretical assumption that "societal actors politicize judicial authority as well" (Zürn, Binder, and Ecker-Ehrhardt 2012, 93), I argued that one should empirically investigate public responsiveness to CJEU judgments and public communication of the Court. Therefore, this paper showed how the CJEU has extended its public relations activities and asked if and how more actively communicated judgments influence the public debate. The CJEU has upgraded its public relations toolbox considerably in recent years. It uses social media platforms, press releases in many languages, and glossy brochures to actively communicate its work, including its tasks, summaries of relevant case law, events at the Court, and judgments. As the CJEU's head of communication described it, the Court has moved from a policy that focused on information to one that is concerned with communication.

In a second step, I used press release data and Twitter data in order to assess the influence of the CJEU's messages on the public (Twitter) debate. For the period before the CJEU used a Twitter account, judgments that are communicated with press releases showed significant effects on the number of tweets and the number of actors in the debate. This indicates that messages of the Court do not only activate

[60] With the exception of other parts of this dissertation.

the usual participants of the debate to tweet more actively about the Court but instead trigger also a wider participation in the Twitter debate. The data revealed that none of the accounts tweeting about the CJEU contributes to more than 0.02% of all tweets mentioning the hashtags #ecj, #cjeu, or #EUGeneralCourt. Thus, there are no strong influencers in the debate. Furthermore, for the time since the Court is present with its own account on Twitter, tweets of the Court show an even stronger effect with considerable increases in the number of tweets mentioning the Court and in the polarization of the Twitter debate about the Court. In sum, this paper showed that the Court's judgments and messages stimulate the overall Twitter debate about the Court.

The contribution of this paper is threefold. *First,* I show that the Court is able to influence or stimulate the public debate on Twitter by using communication tools. This does not only provide empirical evidence for the effectiveness of the Court's communication tools to spread information about its decisions. It also matters for the visibility of the CJEU and its output in the realm of EU politics. Since courts are not directly accountable to voters, the demonstrated visibility of the Court's decisions in the public sparks additional questions regarding the acceptance of CJEU decisions. The Court has tools at hand that allow it to influence the public debate on Twitter as one of the key social media in the early 21st century.

Second, I deliver empirical evidence for the mechanism proposed in literature on legitimation of IOs that "the loudest messages […] have the greatest impact on public opinion" (Tallberg and Zürn 2019, 596). Messages or public decisions, in this case judgments, that are emphasized more intensely have a stronger public impact. I do not measure or provide evidence for *successful* legitimation as such (i.e., whether the public image of the Court is positive). Nevertheless, the fact that louder messages of the Court influence the public discussion about the institution more is a crucial precondition for the legitimizing potential of such messages. Influencing the public debate is a prerequisite for the "process of justification […] intended to shape [legitimacy] beliefs" (Tallberg and Zürn 2019, 583). The CJEU does not only appear as passively exposed to

politicization trends and the turning tides of the public mood. Instead, its communication tools appear as useful instruments to intervene in the public debate and to attract attention for its decisions.

Third, the findings show that after April 2013, judgments increase the amount of actors and degree of polarization in the public debate, even without additional communication efforts. This effect does not hold before April 2013, which might have to do with a generally increasing attention to CJEU judgments in recent years. For the period after 2013, judgments on their own as authoritative edicts of the Court intensify the discussion about the Court on Twitter. This indicates that judicial authority is politicized in the public debate, just as other forms of authority are. It is in line with theoretical expectations (Zürn et al. 2012, 93), but has so far not yet been empirically tested for international judiciaries in general and CJEU judgments in particular. Future insights into the debates about certain judgments could further qualify these findings.

Appendix

A4.1 Biography of William Valasidis, Director of Communications, CJEU

A4.2 CJEU Press Release Data

A4.3 CJEU Twitter data

A4.4 Analysis and Model Documentation

7 Discussion and Conclusion

This dissertation aimed at extending politicization research to an understudied arena that increasingly contributes to the 'authoritative allocation of values' (Easton). Judicialization has gained a foothold in the European Union (Hirschl 2009, 122; Kelemen 2013, 295). The legal arena in the EU is increasingly the battleground for societal conflicts. It will thus not remain untainted by the consequences of politicization that have transformed European politics (see de Wilde and Zürn 2012; Rauh 2016). Consequently, the CJEU as an institution and its actions are expected to attract various actors' attention. In face of these developments, the rulings and competences of the EU's highest Court will not remain unquestioned. This dissertation built on the expectation that processes of (public) mobilization, contestation, and politicization matter for the Court and its judgments. The main aim was to identify under which conditions CJEU procedures and decisions trigger reactions in the public and political environment of the CJEU. I operationalized and measured core components of contestation and politicization, and delivered empirical analyses of governmental attention and media attention to CJEU cases, as well as of the public communication tools the CJEU uses.

While research on the contestation of and backlash against international courts has gained ground (Madsen *et al.* 2018), there is to date no comprehensive theory on the politicization of the output of judicial institutions. This dissertation did not seek to develop such a theory. Instead, it has an empirical focus that builds on theory regarding the politicization of supranational institutions and EU politics (e.g., Zürn *et al.* 2012; de Wilde and Zürn 2012), and theory on processes and strategies of legitimation (e.g., Ecker-Ehrhardt 2018a; 2018c; Tallberg and Zürn 2019). Politicization can both undermine and reinforce the authority of an inter- or supranational institution (see Zürn 2018). At the same time, these institutions will continuously engage in legitimation efforts by communicating to outside audiences (see Ecker-Ehrhardt 2018c). International *judicial* institutions like the CJEU could be considered as least likely cases for both – politicization of their actions and output, as well as for an extension of public communication. The story about the influential

and yet unnoticed and uncontested working of the CJEU has, in fact, been dominating for a long time (Stein 1981, 1; Burley and Mattli 1993; Weiler 1991; Weiler 1994). However, there were good reasons to assume that in a politicizing environment like European politics, both, politicization and an extension of public communication, will occur.

This dissertation followed the guiding question under which circumstances CJEU cases and decisions become contested and/or politicized. The first part of the dissertation looked at the conditions under which member states are mobilized to intervene in CJEU procedures (paper 1) and what role the contestation of CJEU cases has for the CJEU's public communication (paper 2). In paper 1, I investigated together with Daniel Naurin under which circumstances EU member states submit amicus briefs ('observations') in preliminary reference procedures. We were able to identify conditions that help explain when governments are mobilized to intervene in CJEU cases and distinguished between the legal importance of CJEU cases and their political salience for each individual government. The process of mobilization of EU governments as amici curiae and the contestation of CJEU cases proved to be driven by both, concerns for "doctrinal development of EU law" (Dederke and Naurin 2018, 867) and policy preferences about the issues that are at stake. This led us to conclude that the behavior of member states in the judicial and legislative arenas in the EU have stronger links than earlier research might suggest. Both are driven by differences in member state preferences, and mobilization and conflicts in one of those arenas are likely to be mirrored in the other. If politics and political preferences are at stake at court just as much as they are at stake in the legislative process, contestation and politicization should be no less prevalent in the EU's judicial arena than in other arenas. Some previous literature might have underestimated what is at stake for member states in CJEU procedures.

Paper 2 linked the phenomenon of contestation and mobilization in CJEU procedures to the public communication efforts of the Court. I investigated together with Olof Larsson whether the positions of and conflict among institutional actors and the EU governments increase the propensity of the Court to issue press releases.

To this end, we used the same data as in paper 1, allowing us to leverage information on government positions to capture dynamics of mobilization and contestation. We combined them with newly collected data on press releases for CJEU cases. We found that conflict among EU governments that participate as third parties in CJEU cases and conflicts between the Commission and the Court indeed contribute to a higher probability of Court press releases. Disagreement or conflict among key institutional actors in the CJEU's polity influence its public communication efforts. The Court does not only promote legally important cases but also politically divisive ones. This is in line with research that documented the CJEU's sensitivity to political and public signals it receives (Larsson and Naurin 2016; Larsson *et al.* 2017; Blauberger *et al.* 2018) and adds to this literature by showing that contestation also influences the public communication of the Court.

Contestation of judicial procedures increases the demand for legitimation, and the CJEU's public legitimation efforts are at least partly driven by government contestation. This also illustrates that legitimation strategies and public communication of the EU's highest court are in line with findings on the legitimation strategies of IOs amidst politicization (see Ecker-Ehrhardt 2018c). Thus, international courts like the CJEU should be included when studying legitimation strategies of IOs and the effects of politicization. ICs could, in fact, be crucial test cases in this regard. While in its early decades the CJEU's judgments were still hidden behind a "'technical' legal garb" that served as a "mask and shield" (Burley and Mattli 1993, 72), the CJEU now appears as more alike to the other political institutions in the EU's polity. It is exposed to processes of contestation and politicization and communicates actively about its work. This could be exemplary for other courts or ICs.

Future research could focus on whether these findings only apply for ICs in strongly integrated polity settings or whether other ICs face similar challenges. Given judicialization trends and the increase of ICs' power in various jurisdictions, the question arises: Do ICs in other regions of the world (see Alter 2012; Alter 2014a)

and those that are not linked to regional integration projects engage in active communication and legitimation, too?

The second part of this dissertation focused on the politicization of CJEU decisions that is linked to the public display and discussion about CJEU cases. I investigated newspaper coverage of CJEU cases (paper 3) and the Twitter debate about the Court (paper 4). In doing so, I considered the concepts salience, amount of actors, and polarization as components of the public debate. All three allow capturing key characteristics of the public debate about an institution or its decisions in any medium. Quality newspapers still represent a "leading medium of political coverage" (Dolezal *et al.* 2012, 41) and thus allowed a comparable measurement of the public salience of more than 4,300 CJEU decisions. However, in recent years the internet, digitalization, and the rise of online and social media have transformed the public debate fundamentally (see Varnelis 2008) to the disadvantage of print media. Therefore, paper 4 contributed to a broader overview by investigating politicization on Twitter as a new online medium.

By investigating media coverage as well as public communication of the CJEU, I was able to address the demand side as well as the supply side of public attention. On the demand side, media, the public, and other actors outside of the institution are interested in the outcome of CJEU cases for various reasons. On the supply side, the decisions which judgments to promote or to publicize, build on careful and strategic considerations within the CJEU as an institution that takes collectively binding decisions. Both, demand and supply side are expected to influence which decisions of the CJEU are finally salient in the public sphere and covered in media. Inspired by research on the US Supreme Court, paper 3 introduced data on the public salience of CJEU cases. With multi-level regression models, I identified factors that are relevant for media attention and the public salience of CJEU cases: Case characteristics, the role of courts in national political systems, inter-institutional conflict, and the Court's efforts for public communication. I identified case origin, the power of courts in national political systems, and press releases by the Court as factors that showed strong relationships with the public salience of CJEU

cases. Thus, the domestic context, country characteristics, and public communication of the Court appeared as important. The design of this paper also illustrated that, to date, we lack comparable case-level data that are available across all types of CJEU procedures. In the future, a comparison of more case characteristics would be desirable to extend this research agenda.

Building on the finding in paper 3 that press releases of the Court and the public salience of CJEU cases have a very strong relationship, paper 4 looked in more detail at the role of public communication tools of the Court. By focussing on Twitter as a relatively new online medium and a recent time frame, I was able to distinguish different public communication tools and their impact on the public debate about the CJEU on Twitter. I delivered an overview about how the CJEU professionalized its communication strategies in recent years and showed that they partly aligned with reform processes at other institutions or IOs (Ecker-Ehrhardt 2018a; 2018c). The paper demonstrated that judicial authority in form of CJEU judgments becomes politicized in the public debate on Twitter. Moreover, judgments that were communicated actively by the Court had a stronger effect on the public debate on Twitter. Thus, public communication tools can be considered as valuable instruments for the CJEU to influence the public debate. The Court does not only appear as an actor that is exposed to politicization trends, but it can, to a certain extent, shape politicization by influencing the public debate. Politicization is not only something that is potentially harmful for the efficacy of the CJEU as an institution or the efficacy of EU law, but politicization can also be a vehicle for transporting legitimacy frames (see Tallberg and Zürn 2019; Zürn 2018). Paper 4 and this dissertation overall did not investigate whether legitimation efforts by the Court are successful in the sense of creating a favorable image in the public. Instead, it merely showed that the CJEU has useful tools and effective avenues to communicate to outward audiences and to distribute its own messages. To find out whether it is successful in influencing its public image in a way that is favourable for the institution remains a certainly desirable avenue for future research.

This dissertation is situated within a framework of fundamental changes in the configuration of the media landscape and what we could call 'the public' more generally speaking. Newspapers have adapted to the age of digital news markets and continue to be key platforms that inform about political developments. At the same time, the news market and public debate have become more rich and diverse in the number and types of publication platforms and communication platforms. Capturing the entire public discourse or public debate about a certain topic has therefore perhaps become more difficult than ever before, since it requires the collection of various data. This dissertation supplemented the analysis of newspaper coverage with the analysis of Twitter as a new important medium for the public debate. Despite the combination of data for newspaper coverage and Twitter coverage, this dissertation continues to look only at parts of the public debate. This limitation roots mainly in issues of data availability and the multilingual character of the public debate in the EU. No individual researcher can deliver an analysis of the public debate on EU topics in all EU languages and for all relevant media. Neither alone nor in combination, newspaper coverage, and coverage on Twitter represent a full picture of 'the public' or the public debate. Nevertheless, this dissertation represents a comprehensive effort to study the public debate about the CJEU and its judgments.

Parts of this dissertation considered the CJEU as an institution as a 'black box', i.e., they do not explicitly address issues of agency and conflict within the institution itself. It rather follows seminal work on EU politics in looking at the Court as a unitary actor that behaves strategically within its public and political environment (e.g. Larsson and Naurin 2016; Blauberger *et al.* 2018). Some of the decision-making processes and procedures within the institution remain undisclosed in this setting. Paper 4 of this dissertation opened up this black box by introducing the work and reform process within the CJEU's communications directorate. However, more insights into the internal workings of the CJEU would be desirable. An evolving research agenda, for example, looks at the chamber constellations at Court (Holmgren and Naurin n.d.) and case allocations to judge-rapporteurs (Hermansen 2020), factors that appear as highly relevant to understand the internal working of the CJEU.

The topic and phenomena studied in this dissertation also revealed limitations in terms of data availability. First, we still lack complete datasets for all CJEU cases and judgments in the history of the EU. This is a clear disadvantage for any research design that builds on quantitative methods. Future research will benefit greatly from a large-scale data collection project by Brekke et al. (2019) and more complete data on CJEU cases. Nevertheless, this dissertation combined available datasets on CJEU cases in order to capture dynamics for thousands of decisions and across the various procedures at the CJEU. Second, while online and social media potentially provide an unlimited supply of data, privacy concerns and restrictions to data access (see e.g., Pegg 2019 for Facebook and the Cambridge Analytica scandal) limit the extent to which the public discussion about any phenomenon can be captured to full extent. When investigating the public debate or attention for institutions or decisions, every studied medium in itself will only represent a small part of the public debate. This is especially true in a multilingual framework like European politics. Even those studies that were successful in combining a large number of newspapers or several online media usually have a limited focus on a certain selection of languages or media. This dissertation is and cannot be free from such limitations.

This dissertation investigated CJEU cases in the context of contestation and politicization as key processes that have transformed politics in the EU in recent decades. By combining several existing datasets and newly collected data, this dissertation delivers novel insights into public and political reactions to CJEU cases. It also revealed how the Court of Justice of the EU upgraded its public relations toolbox and how its judgments affect the Twitter debate. To my knowledge, this dissertation is the most comprehensive quantitative effort to capture dynamics of the public debate about the CJEU and thousands of its judgments. The insights of this dissertation enable us to understand better how the EU's highest court fares in the deeply integrated and highly politicized setting EU politics has become.

Appendix

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Appendix A1 (Paper I)

(Appendix for paper I: Friends of the Court? Why EU governments file observations before the Court of Justice)

No supplementary information.

Appendix A2 (Paper II)

(Appendix for paper II: CJEU Public Communication Between Compliance and Contestation)

The four models replicate models 4 to 7 that were presented in paper 2 in Table 3 (page 62), but include a bioprobit regression that estimates *CJEU Decision* as dependent variable simultaneously. The coefficients below the dotted line are those that predict CJEU Decision. The robustness check reconfirms our findings in paper 2.

Table A2.1 Logistic regression and bioprobit on press release

Dependent variable: Press Release (0 / 1); Logistic Regression and Bioprobit				
	(A4)	(A5)	(A6)	(A7)
Chamber Size	1.631***	1.974***		
	(8.91)	(11.23)		
Authority			1795.4***	2135.3***
			(7.48)	(9.15)
CJEU Decision	0.0401	-0.0157	0.00543	-0.0418
	(0.57)	(-0.22)	(0.08)	(-0.60)
MS Pro	1.985*		2.284**	
	(2.49)		(2.90)	
MS Anti	2.691***		2.817***	
	(5.60)		(5.84)	
MS Pro * MS Anti	15.49		20.14*	
	(1.59)		(2.07)	
MS-CJEU Conflict		-0.00619		-0.0389
		(-0.13)		(-0.83)
COM-CJEU Confl.	0.154*	0.113†	0.187**	0.153*
	(2.35)	(1.75)	(2.90)	(2.41)
AG-CJEU Conflict	-0.0828	-0.171*	-0.0609	-0.159*
	(-1.15)	(-2.42)	(-0.86)	(-2.30)
GDP (bns)	0.000106**	0.000125***	0.0000825*	0.000101**
	(3.00)	(3.62)	(2.37)	(3.00)

Chamber Size	0.134	0.137		
	(0.78)	(0.79)		
Authority			320.7	327.4
			(1.49)	(1.53)
MS Pro	1.312†	1.251†	1.335†	1.221†
	(1.89)	(1.79)	(1.93)	(1.74)
MS Anti	-2.181***	-2.254***	-2.241***	-2.363***
	(-5.02)	(-5.00)	(-5.18)	(-5.26)
AG Pro	1.240***	1.242***	1.238***	1.237***
	(10.91)	(10.93)	(10.92)	(10.93)
AG Anti	-0.944***	-0.942***	-0.941***	-0.940***
	(-8.07)	(-8.05)	(-8.08)	(-8.08)
COM Pro	0.881***	0.880***	0.877***	0.879***
	(7.67)	(7.66)	(7.69)	(7.71)
COM Anti	-0.711***	-0.712***	-0.709***	-0.707***
	(-5.63)	(-5.63)	(-5.63)	(-5.61)
athrho	-0.00564	0.0424	0.0132	0.0677
	(-0.08)	(0.61)	(0.19)	(0.98)
cut11	1.647***	1.540***	1.342***	1.149***
	(16.53)	(16.05)	(16.02)	(14.74)
cut21	-0.598***	-0.602***	-0.600***	-0.608***
	(-7.41)	(-7.46)	(-8.80)	(-8.86)
cut22	0.613***	0.609***	0.614***	0.605***
	(7.61)	(7.53)	(9.00)	(8.80)
Log Likelihood	-2026.7	-2060.0	-2038.6	-2080.5
Akaike Inf. Crit.	4091.4	4154.0	4115.2	4195.1
Bayesian Inf. Crit.	4193.5	4245.4	4217.3	4286.5
Observations	1596	1596	1597	1597

*Note: † p<0.1; * p<0.05; ** p<0.01; *** p<0.001; Generalized linear regression models (logit) and bioprobit. Data: from Naurin et al. (2013) and own data collection. Standard errors in parentheses. After aggregating the data from the level of legal issues to the level of court cases, the variable CJEU Decision is continuous. In order to fit better the model requirements of the bioprobit regression, CJEU Decision was trichotomized again for this robustness check. That means that values smaller than -.33 were coded as -1, values larger than .33 were coded as 1, and values in between -.33 and .33 were coded as 0.*

Appendix A3 (Paper III)

(Appendix for paper III: CJEU Judgments in the News – Capturing the Public Salience of International Court Decisions)

A3.1 Data Collection

I used the newspaper database Factiva (https://www.dowjones.com/products/factiva/) to code the media coverage of CJEU decisions for 4,357 court cases lodged between 1997 and 2008.[61] These cases were decided between 1997 and 2016. For each day following a day at which the CJEU decided at least one court case, one search per newspaper was conducted. The search combined the identifier for the respective newspaper with a long search string that included the name of the Court in any of its variations or abbreviations in the respective language (including e.g. "ECJ" for English and "EuGH" for German, and including previous names such as "Court of the European Communit*"). Thus, the search results for each individual newspaper included all newspaper articles that mention in their full text or headline any of the names or abbreviations of the Court. Each newspaper article that mentioned the Court was checked individually, whether it concerned a specific court judgment, and if so, whether it concerned one of the judgments delivered the day before the newspaper article was published. If this was the case for at least one newspaper article, the salience variable for the court case and the respective newspaper was coded 1. If none of the newspaper articles mentioned a certain case, the salience variable for the court case and the respective newspaper was coded 0. Since for the period covered here (media reports between 1997-2016) not all the selected newspapers offer comprehensive coverage in their online versions, only print versions were included for matters of reliability and comparability. Not discriminating between different pages makes it easier to

[61] The data collection was constrained to these years due to the availability of data for CJEU cases, building on the three datasets that were combined (Adam, Bauer, and Hartlapp 2015; Naurin et al. 2013; Stone Sweet and Brunell 2007). Moreover, news sources are not consistently digitized before 1997.

potentially combine this measure with values for the online versions of the newspapers in the future, when no page numbers are available.

Coding a dichotomous variable with only 0 and 1 as values leaves no interpretive space and makes coding mistakes relatively unlikely. Nevertheless, a second coder coded about 5% of the court cases by hand. Cohen's Kappa was used for calculating the inter-coder reliability of the double-coded sample and ranged between 0.92 and 1, depending on the newspaper. This is sufficiently high to consider the measure as reliable.

The variable EU-News denotes the number of newspaper articles in the respective newspaper that mention the European Union for each day following a day at which the CJEU decided at least one court case. It was coded in the same way as the salience values with help of the Factiva database. The search combined the identifier for the respective newspaper with a long search string that included the name of the European Union in any of its variations in the respective language (including e.g. for English "European Union", "European and EU", and including previous names such as "European Communit*", "European Economic Communit*").

The variable Press Release was coded with help of the press release list on the Court's website (https://curia.europa.eu) that reaches back to 1997. Based on the author's communication with the CJEU registry, this list includes the entirety of all press releases issued by the Court since 1997. For matters of inter-coder reliability, the web-scraped, automatically coded data for all court cases was compared to a sample of 860 hand-coded cases. The coding strategies showed an agreement in 851/860 coded cases, i.e. inter-coder reliability of 99%. Additionally, the press release data was collected from the website by a co-author with a different web-scraping technique. The inter-instrument reliability test showed 98% agreement in both measures. The disagreement could be identified as stemming from a lack in differentiation between press releases for judgments and press releases for opinions of advocate generals. After adjusting for this factor, the agreement of both instruments reached 100%.

A3.2 Summary Statistics

Table A3.2.1 shows the summary statistics of the variables included in the primary analysis.

Table A3.2.1. Summary statistics (paper 3)

Variable	N	Minimum	Maximum	Mean/Mode	Std. Deviation
Salience (DV)	34794	0	1	0	
Time	34856	1	7228	3012.7	1326.0
Judicial Review	34856	0.4286	1	0.8861	0.1981
Press Release	34856	0	1	0	
EU-News (logged)	34795	0	3.9120	1.8829	0.6904
Procedure	34856	1	3	3	
Chamber Size	28904	0	1	0.2635	0.1749
Domestic Case	12792	0	1	0	
COM-CJEU Conflict	12792	-0.1111	1	-0.3861	0.5763
AG-CJEU Conflict	12792	-0.1111	1	-0.4047	0.5379
MS-CJEU Conflict	12792	-1	1	-0.1113	0.8310
Number of Amici	12792	0	14	1.9271	1.6228

Note: Mean indicated for numerical variables, mode for categorical. The variables Domestic case, COM-CJEU Conflict, AG-CJEU Conflict, MS-CJEU Conflict, Number of Amici, and Chamber Size were only available in one of the three datasets (Naurin et al. 2013). The variable for Chamber Size was supplemented with data from Brekke et al. 2019.

The variable for judicial review stems from the Varieties of Democracy dataset (Coppedge *et al.* 2018). In the project, country experts are asked to evaluate characteristics of the political and judicial system in a country. For the '*v2jureview_mean'* variable I used here, experts were asked to answer with 'Yes' or 'No' to the *"[q]uestion*: Does any court in the judiciary have the legal authority to invalidate governmental policies (*e.g.* statutes, regulations, decrees, administrative actions) on the grounds that they violate a constitutional provision?" (Coppedge *et al.* 2018, 154). The original scale is "[d]ichotomous, converted to interval by the measurement model" (ibid.). The researchers calculated the mean value of all responses they collected for each country and year. An alternative measure for the strength of judicial review is used in robustness checks in Appendix A3.4.2 further below (see Table A3.4.3).

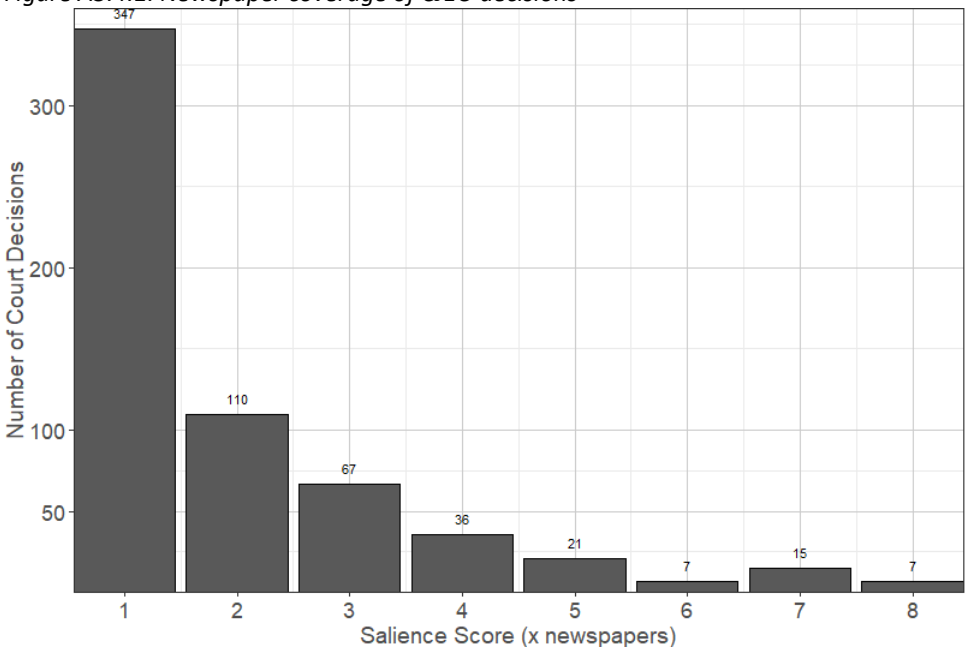
A3.3 Missing Data

For a minor number of 61 observations the variables *Salience* and *EU-News* could not be coded because the online database coverage for the Danish newspaper *Politiken* only starts on 30 July 1998. 61 court cases included in the analysis were decided before that date. For one additional observation, the *Salience* variable was coded missing because it was not possible to determine whether one of the newspaper articles that mentioned the Court in the Austrian *Die Presse* on 14 March 2007 was in fact referring to the court case C-524/04 or not. Observations with missing data were excluded from the analysis. The variables *Domestic case, COM-CJEU Conflict, AG-CJEU Conflict, MS-CJEU Conflict, Number of Amici, and Chamber Size* were only available in one of the three datasets (Naurin et al. 2013). The variable for *Chamber Size* was supplemented with data from Brekke *et al.* (2019). Nevertheless, the data for *Chamber Size* remains somewhat incomplete and requires more data collection for future studies.

A3.4 Robustness Checks and Extended Results

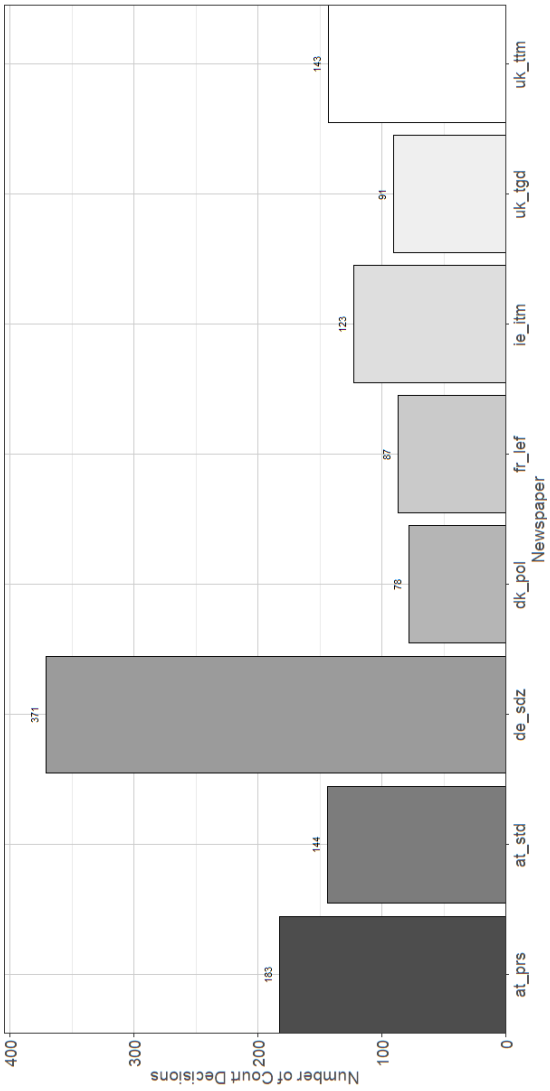
About 14% of judgments are salient to some degree (see Figure A3.4.1 below) and with variation across newspapers (see Figure A3.4.2 below). The differences between newspapers emphasize the need to control for the effects of individual newspapers in the statistical analysis. Since this chapter does not seek to further investigate or explain the differences between newspapers, but instead focuses on other factors, the statistical analysis mainly controls for the effects of individual newspapers or countries. Discovered differences between countries or newspapers can, however, inspire qualitative research designs such as case studies of individual newspapers.

Figure A3.4.1. Newspaper coverage of CJEU decisions



Note: Salience scores for 610 out of 4357 CJEU decisions (decided between 1997-2016) included in three datasets (Adam, Bauer, and Hartlapp 2015; Naurin et al. 2013; Stone Sweet and Brunell 2007).

Figure A3.4.2. Number of covered CJEU decisions per newspaper



Note: 610 out of 4357 CJEU decisions (decided between 1997-2016) included in three datasets (Adam, Bauer, and Hartlapp 2015; Naurin et al. 2013; Stone Sweet and Brunell 2007).

Table A3.4.1 below is the extended Table 2 (page 89) and provides the detailed results of fixed-effect control variables for countries, newspapers, issue areas.

Table A3.4.1. (Extended Table 2 page 89): Detailed results of fixed effects

	Dependent variable: Salience (0 / 1) GLM multi-level models					
Odds ratios reported	(1)	(2)	(3)	(4)	(5)	(6)
CJEU press release	33.245***	41.805***	42.260***	24.034***	24.232***	19.500***
	(0.169)	(0.188)	(0.189)	(0.173)	(0.226)	(0.219)
Str.Judicial Review	1.262***				1.565***	1.569***
	(0.041)				(0.072)	(0.072)
Infringement	0.812	0.830	0.829	1.126		
	(0.211)	(0.232)	(0.233)	(0.211)		
Annulment	1.045	1.024	1.021	1.848***		
	(0.169)	(0.186)	(0.187)	(0.182)		
EU-News	2.260***	1.885***	1.897***	1.861***	2.013***	2.015***
	(0.051)	(0.059)	(0.059)	(0.059)	(0.076)	(0.075)
Danish news		0.736				
		(0.168)				
German news		5.808***				
		(0.127)				
French news		0.584***				
		(0.162)				
Irish news		0.906				
		(0.145)				
Austrian news		2.136***				
		(0.115)				
Newspaper at.prs			3.868***	3.807***		
			(0.170)	(0.171)		
Newsp at.std			2.872***	2.775***		
			(0.177)	(0.178)		
Newsp de.sdz			9.172***	8.473***		
			(0.165)	(0.165)		
Newsp dk.pol			1.155	1.073		
			(0.198)	(0.202)		
Newsp fr.lef			0.912	0.896		
			(0.191)	(0.195)		

Newsp ie.itm	1.418	1.405		
	(0.178)	(0.180)		
Newsp uk.ttm	2.289***	2.305***		
	(0.175)	(0.176)		
Chamber size		1.675***	1.365***	1.351***
		(0.070)	(0.086)	(0.084)
Domestic Case			25.979***	25.013***
			(0.163)	(0.161)
MS-CJEU Conflict			1.230*	1.248*
			(0.092)	(0.089)
COM-CJEU Conflict			1.039	1.067
			(0.096)	(0.092)
AG-CJEU Conflict			0.998	1.009
			(0.097)	(0.093)
Number of Amici			1.310***	1.248**
			(0.082)	(0.080)
Free movement of goods				1.405
				(0.343)
Agriculture				0.297**
				(0.388)
Free movement of workers				0.322***
				(0.329)
Right of establishment				1.634
				(0.282)
Services				0.757
				(0.309)
Capital and payments				0.683
				(0.455)
Transport				2.758*
				(0.467)
Competition				0.560

						(0.404)
Tax provisions						1.260
						(0.306)
Approximation of laws						0.676
						(0.240)
Customs cooperation						0.223*
						(0.741)
Social provisions						1.690
						(0.297)
Consumer protection						1.515
						(0.394)
Environment						0.341
						(0.582)
Institutional provisions						1.184
						(0.235)
Constant	0.001***	0.0003***	0.0002***	0.0003***	0.001***	0.001***
	(0.211)	(0.257)	(0.283)	(0.269)	(0.274)	(0.305)
Observations	34,794	34,794	34,794	28,868	12,780	12,780
Log Likelihood	-3,588.349	-3,418.796	-3,405.231	-3,187.778	-1,393.017	-1,367.682
Akaike Inf. Crit.	7,190.699	6,859.591	6,836.461	6,403.556	2,808.033	2,787.364
Bayesian Inf. Crit.	7,249.899	6,952.621	6,946.405	6,519.343	2,890.045	2,981.210

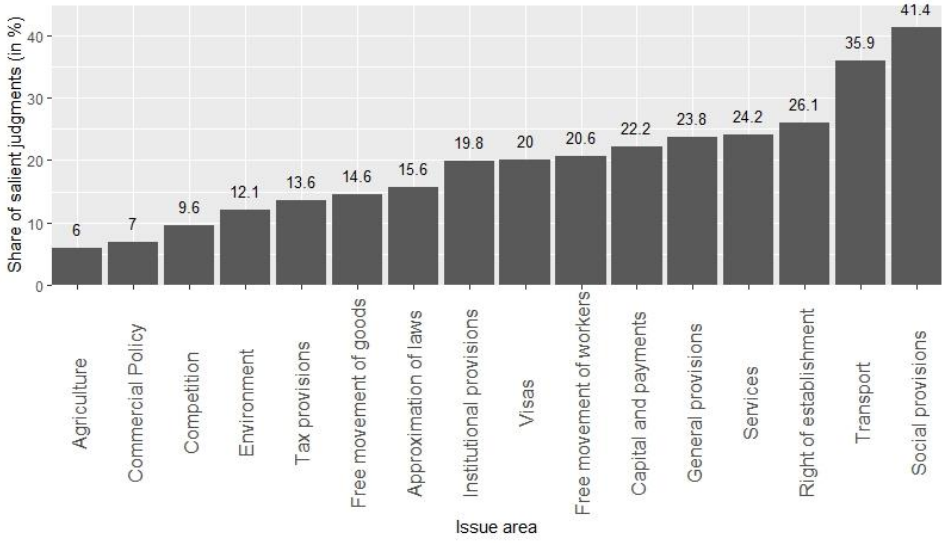
*Note: * p<0.05; ** p<0.01; *** p<0.001; Two-level generalized linear regression models (logit) with newspapers nested per court decision, for overall population (models 1-4) and subsample (models 5-6). Cell entries are odds ratios, cluster-robust standard errors in parentheses. Reference categories for the fixed-effect control variables are UK Guardian for newspapers, British news for country-variables.*

Model 3 indicates that the Austrian *Presse* and *Standard*, the German *Süddeutsche*, and the *UK Times* have a significantly higher probability of reporting about a court decision (the British *Guardian* is the reference category). Model 2 indicates a similar pattern, but also shows a significantly lower probability of reports in *French* news (compared to *British* news as reference category). In substantive

terms, the German Süddeutsche has the strongest effect with the odds ratio of case salience being more than nine times larger for reports in the Süddeutsche (almost six times larger for German news in model 3).

With dummy variables model 6 also controls for whether issue areas affected by the court decisions have a significant influence on their salience. Some issue areas have a positive effect on the salience of court decisions, with *Transport* being the only significant one. Others show a significant negative effect (model 6). Figure A3.4.3 below visualizes the share of salient preliminary reference procedures per legal issue area. In lack of clear patterns or unequivocal theoretical expectations, I refrain from a more detailed interpretation.

Figure A3.4.3. Share of covered preliminary reference procedures per legal issue area



Note: Own illustration. Data source is Naurin et al. (2013). Numbers and bars are not mutually exclusive, since a court case can always affect several legal issue areas; example: Of all preliminary reference procedures that affect Tax Provisions, 13.6% received media attention the day after the judgment.

A3.4.1 Alternative operationalization of Legal Importance and Conflict Variables

Table A3.4.2 below documents the models that control for the legal importance a court case carries with two alternative proxies that replace the *Chamber Size* variable (models 1-2). One is the network *Authority* score of each case and the other captures whether the case affects any of the legal doctrines supremacy, direct effect, state liability, non-discrimination, or loyal cooperation (*Doctrine*) (also see Dederke and Naurin 2018, 873). Following Fowler (2007) and Derlén and Lindholm (2014), the authority score of a court case depends on the quantity of other court cases citing it (indegree centrality) and those citing cases' centrality in the citation network. I use the authority scores from Derlén and Lindholm (2014). Since the Authority variable is only determined post-hoc (after a case has been decided), it can be only a proxy(!) for the legal importance a case carries. The values of the original variable are very small (ranging from 0 up to 0.24 with a mean of 0.004) and show positive skew. Therefore, I log-transformed the variable and added a constant (c=[lowest non-zero value]/2) since zero-values were represented. For readability, I multiplied the authority values by 1000. Both, *Doctrine* and *Authority* show a positive coefficient as expected, but neither of them is significant, in contrast to *Chamber size*. This is most likely the case because Chamber size is the variable that captures best the relevance of the case from the point of view of the Court.

Table A3.4.2 also includes a model 3 that adds additional conflict variables in the original model, in line with paper 2 of this dissertation, where *"[w]e adapt the variables MS Pro and MS Anti from Larsson and Naurin's dataset (Larsson and Naurin 2016, 397). Based on member state observations submitted in the case, the variables summarize the weighted share of the EU Council votes supporting More (MS Pro) and Less Europe (MS Anti), respectively. Both are continuous variables ranging between 0 and 1, 'denoting the share of Council votes supporting more Europe and preserved national sovereignty, respectively' (ibid.). For example, if MS Anti equals 0, no states supported Less Europe, and if it equals 0.2, states with 20 percent of the voting power in the Council supported Less Europe"* (Dederke and Larsson, page 59 in this dissertation).

However, none of these variables shows a significant effect.

Table A3.4.2. Alternative operationalization of legal importance and conflict variables

	Dependent variable: Salience (0 / 1)		
	GLM multi-level models		
Odds ratios reported	(1)	(2)	(3)
CJEU press release	22.779***	23.551***	20.491***
	(0.220)	(0.220)	(0.218)
Str.Judicial Review	1.560***	1.564***	1.566***
	(0.072)	(0.072)	(0.072)
EU-News	2.023***	2.030***	2.023***
	(0.075)	(0.076)	(0.075)
Domestic Case	25.436***	24.865***	24.801***
	(0.162)	(0.162)	(0.162)
MS-CJEU Conflict	1.244*	1.245*	1.209*
	(0.091)	(0.091)	(0.092)
COM-CJEU Conflict	1.089	1.086	1.086
	(0.093)	(0.093)	(0.093)
AG-CJEU Conflict	1.011	1.006	1.049
	(0.095)	(0.094)	(0.094)
Number of Amici	1.265**	1.276**	
	(0.082)	(0.082)	
Doctrine	1.313		
	(0.213)		
Authority		1.082	
		(0.083)	
Chamber size			1.318**
			(0.085)
MS Pro			1.071
			(0.105)
MS Anti			1.177
			(0.090)
MS Pro * MS Anti			1.071
			(0.087)
Constant	0.001***	0.001***	0. 001***
	(0.318)	(0.308)	(0.306)
Country FE	NO	NO	NO
Newspaper FE	NO	NO	NO
Issue area FE	*YES*	*YES*	*YES*

Observations	12,780	12,535	12,764
Log Likelihood	-1,373.139	-1,359.999	-1,364.186
Akaike Inf. Crit.	2,798.277	2,771.998	2,784.372
Bayesian Inf. Crit.	2,992.124	2,965.342	2,993.095

*Note: * p<0.05; ** p<0.01; *** p<0.001; Two-level generalized linear regression models (logit) with newspapers nested per court decision.*

A3.4.2 Alternative operationalization of EU-News and Strength of Judicial Review

Table A3.4.3 below also includes models that use alternative operationalizations for the amount of *EU-News* and the strength of judicial review. The amount of EU-news is operationalized with help of Rauh's monthly data for visibility of the EU in five European newspapers (Rauh 2016, 14). The strength of judicial review is operationalized as a dichotomous country-level variable based on Lijphart's scale (2012, 215), grouping strong or medium-strength judicial review (*Strong Judicial Review*= 1) and weak or no judicial review (0). The results remain essentially the same compared to results Table 2 in the main text and Table A2 above, except for the insignificance of the new variable for EU-News. Since Rauh's data (2016) captures monthly average values for five newspapers, it is less precise than the daily, newspaper-specific data I used in the main article. This could explain the worse fit of the variable. The positive effect still points in the expected direction.

Table A3.4.3. Alternative operationalization of EU-news and strength of judicial review

	Dependent variable: Salience (0 / 1)					
	GLM multi-level models					
Odds ratios reported	(1)	(2)	(3)	(4)	(5)	(6)
CJEU press release	35.676***	41.207***	41.637***	24.024***	25.267***	20.576***
	(0.173)	(0.184)	(0.185)	(0.170)	(0.229)	(0.221)
Str.Judicial Review (0/1)	3.591***				4.366***	4.313***
	(0.079)				(0.128)	(0.127)
Infringement	0.850	0.833	0.833	1.165		
	(0.216)	(0.228)	(0.229)	(0.208)		
Annulment	0.999	0.990	0.990	1.710**		
	(0.176)	(0.186)	(0.187)	(0.183)		
Visibility (EU-News)	1.095	1.099	1.100	1.014	1.099	1.078
	(0.077)	(0.081)	(0.082)	(0.078)	(0.093)	(0.090)
Danish news		0.540***				
		(0.164)				
German news		7.709***				
		(0.122)				
French news		0.638**				
		(0.158)				
Irish news		1.108				
		(0.143)				
Austrian news		1.759***				
		(0.112)				
Newspaper at.prs			3.220***	3.217***		
			(0.167)	(0.168)		
Newsp at.std			2.103***	2.072***		
			(0.172)	(0.174)		
Newsp de.sdz			11.600***	10.611***		
			(0.161)	(0.162)		
Newsp dk.pol			0.803	0.750		
			(0.193)	(0.197)		
Newsp fr.lef			0.948	0.913		

	(0.188)	(0.191)		
Newsp ie.itm	1.653**	1.621**		
	(0.176)	(0.178)		
Newsp uk.ttm	2.078***	2.098***		
	(0.172)	(0.173)		
Chamber size		1.673***	1.372***	1.367***
		(0.069)	(0.088)	(0.086)
Domestic Case			21.763***	20.742***
			(0.161)	(0.158)
MS-CJEU Conflict			1.206*	1.230*
			(0.094)	(0.091)
COM-CJEU Conflict			1.047	1.081
			(0.098)	(0.093)
AG-CJEU Conflict			1.005	1.013
			(0.098)	(0.094)
Number of Amici			1.306**	1.245**
			(0.084)	(0.082)
Free movement of goods				1.403
				(0.350)
Agriculture				0.302**
				(0.394)
Free movem. of workers				0.324***
				(0.335)
Right of establishment				1.643
				(0.288)
Services				0.750
				(0.316)
Capital and payments				0.637
				(0.462)
Transport				2.679*
				(0.476)

Competition						0.600
						(0.412)
Tax provisions						1.332
						(0.309)
Approximation of laws						0.695
						(0.243)
Customs cooperation						0.222
						(0.768)
Social provisions						1.663
						(0.302)
Consumer protection						1.503
						(0.399)
Environment						0.404
						(0.587)
Institutional provisions						1.201
						(0.238)
Constant	0.0005***	0.0004***	0.0002***	0.0004***	0.0004***	0.001***
	(0.221)	(0.246)	(0.270)	(0.256)	(0.302)	(0.326)
Observations	33,690	33,690	33,690	28,060	12,780	12,780
Log Likelihood	-3,490.751	-3,386.913	-3,373.519	-3,162.237	-1,392.489	-1,369.163
Akaike Inf. Crit.	6,995.502	6,795.825	6,773.038	6,352.474	2,806.978	2,790.325
Bayesian Inf. Crit.	7,054.477	6,888.500	6,882.563	6,467.863	2,888.990	2,984.172

*Note: * p<0.05; ** p<0.01; *** p<0.001; Two-level generalized linear regression models (logit) with newspapers nested per court decision, for overall population (models 1-4) and subsample (models 5-6). Cell entries are odds ratios, cluster-robust standard errors in parentheses. Reference categories for the fixed-effect control variables are UK Guardian for newspapers, British news for country-variables.*

Appendix A4 (Paper IV)

(Appendix for paper IV: Upgrading the CJEU's Public Relations Toolbox – The effects of CJEU public communication)

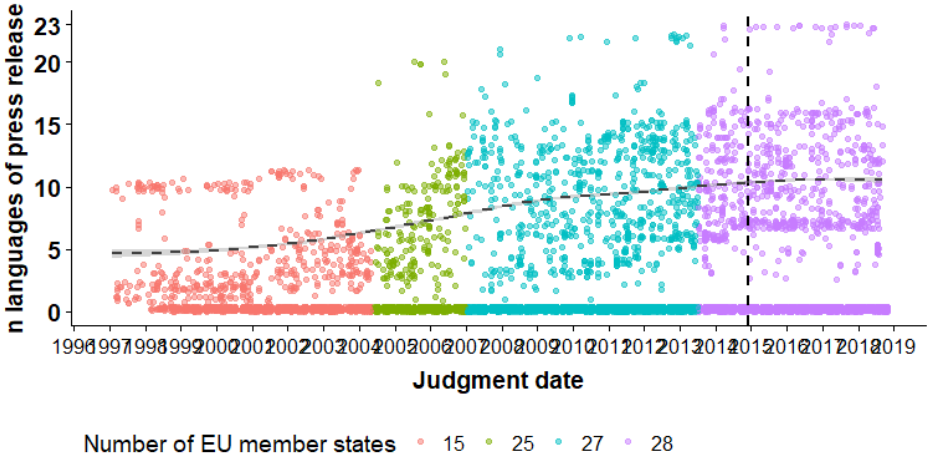
A4.1 Biography of William Valasidis, Director of Communications, CJEU

"William Valasidis is the Director of Communications of the Court of Justice of the European Union (CJEU). Previously he has held the position of Director of Protocol and Information of the CJEU and he served as référendaire in the Chambers of the President of the CJEU, Prof. Dr. Vassilios Skouris (1999-2014) and in the Chambers of the Judge Krateros Ioannou (1998-1999). Mr. Valasidis holds a Degree in Law summa cum laude from the Aristotelian University of Thessaloniki School of Law and a Master of Laws (LL.M.) degree from Harvard Law School." (Source: http://courtsandcommunication.hu/; accessed 21.12.2018)

A4.2 CJEU Press Release Data

One of the signs of expanding the CJEU's public communication policy is the number of languages in which the Court operates and in which it issues information to external audiences. In line with the multilingualism lived at the Court, and with new countries joining the EU, the press releases issued by the Court ever since the 1950s are nowadays published in up to 23 languages (Figure A4.2.1). For details on how the data was collected, see Appendix A3.1 for paper 3 of this dissertation.

Figure A4.2.1. CJEU press release languages over time



Note: Own illustration showing number of languages (0-23) in which the CJEU issued press releases over time since 1997 (press releases for judgments only). Figure visualizes all CJEU judgments, including those without press release (nlanguages=0). Press release data retrieved from CJEU website (https://curia.europa.eu/jcms/jcms/Jo2_7052/en/), including all press releases until 10/2018. Gaps are Augusts, when there are no judgments delivered. Vertical line is date of creation of current communications department (01-12-2014). Line graph is loess curve of the 90-days moving average of languages. Jittered data points.

For details on how press release data was matched to Twitter data and how the timing of press releases during the day was determined, see Appendix A4.3 (CJEU Twitter data) below.

A4.3 CJEU Twitter data

The time stamps of tweets open up a unique opportunity to situate a certain stimulus very precisely on a time axis. This enabled me to determine the timing of each stimulus by a tweet and thus allowed me to measure the effect of CJEU messages. While Twitter data offers exact time stamps (exact to seconds), data on the timing of judgments and press releases are not equally precise. However, information from press officers at the CJEU's communications department allowed me to limit the time of a judgment or press release rather precisely. The reading of the judgments of the Court most of the time starts between 9:40 CET and 10:10 CET (Luxembourg time). Simultaneously, the press release is uploaded to the website and sent out to press contacts (H. Ost, email communication, October 2019).[62] This equals 8:40 Coordinated Universal Time (UTC) to 9:10 UTC in winter, and 7:40 UTC to 8:10 UTC in summer, so that an exact time can be matched to the Twitter data (retrieved in UTC time). Thus, the stimulus of a judgment and/or press release usually occurs in the 10th hour of a day (after 9:00 UTC) in winter and in the 9th hour (after 8:00 UTC) in summer. For matters of simplification, I coded the treatment by a judgment or press release as always occurring in the 10th hour of a day. This does not only go in line with the assumption that the effect of a judgment or press release without tweet should take longer to surface on Twitter, but is also a harder test for the method I use.

[62] For a list of the CJEU press officers, see https://curia.europa.eu/jcms/jcms/Jo2_25870/.

Table A4.3.1 illustrates in which hours of the day the CJEU tweets about judgments. For the analysis, I excluded the 29 cases when the CJEU tweeted in the 8th hour of the day, because these would have meant only seven pre-treatment periods (i.e. hours).

Table A4.3.1. CJEU Twitter activity per hour

Hour of Day	Frequency
8	29
9	260
10	244
11	74
12	38
13	9
14	23
15	15
16	7

Note: Tweets by CJEU @EUCourtPress 2013-04-15 until 2019-09-30 that announce or communicate judgments; other types of CJEU tweets were excluded (see Table A3.4.2). Own data collection with Twitter API.

Figure A4.3.1 below illustrates the monthly number of tweets published on the CJEU's English Twitter account (@EUCourtPress). While the available data does not indicate a clear time trend, there seems to be an increase in monthly tweets since the beginning of 2016, with a peak in late 2018.

Figure A4.3.1. CJEU Twitter activity over time

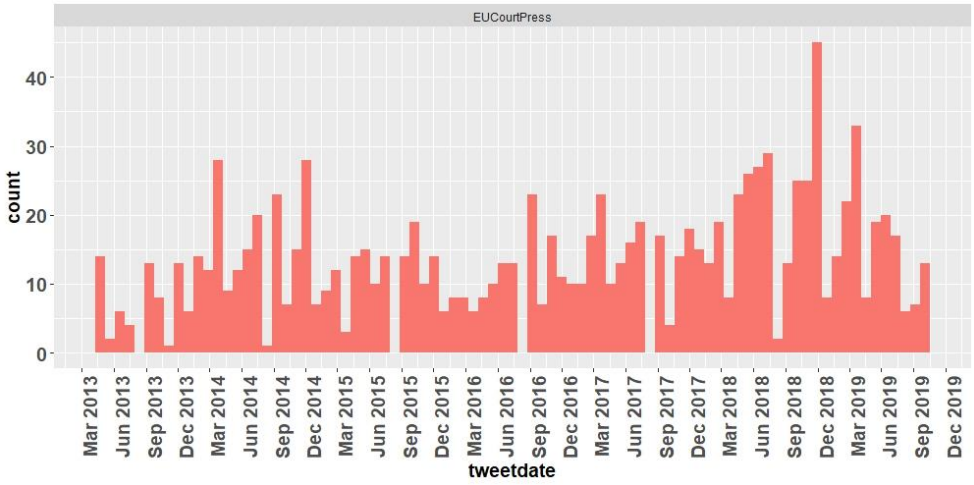


Table A4.3.2 tabulates the frequencies of the types of CJEU tweets.

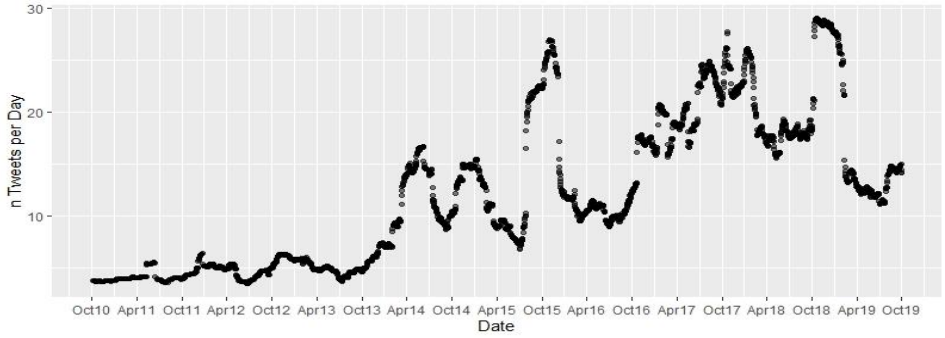
Table A4.3.2 Types of CJEU tweets

Type of CJEU Tweet	Frequency	Example
Informational or Service Tweet	230	"Did you know that the library at the #ECJ has 10.5 km of books on its shelves? That's over a quarter of a million books - the height of 33 Eiffel Towers! #WorldBookDay" (CJEU 07.03.2019).
AG Opinion Tweet	173	"AG Wahl Opinion : the #ECJ should dismiss Austria's action against the new German motorway charge https://curia.europa.eu/jcms/jcms/Jo2_7052" (CJEU 06.02.2019)
Judgment Tweet	699	"#ECJ declares EU-US Safe Harbour Decision invalid #SafeHarbor #Schrems http://curia.europa.eu/jcms/jcms/Jo2_16799" (CJEU 06.10.2015)
Order Tweet	19	"#EUGeneralCourt dismisses interim measures request by Carles Puigdemont and Antoni Comín whereby they requested that the #EuropeanParliament be obliged to suspend its decisions concerning their election to the next #EP @Europarl_EN @KRLS" (CJEU 01.07.2019)
Court Opinion	2	"#ECJ: EU can on its own conclude Marrakesh Treaty on access to published works for the visually impaired http://curia.europa.eu/jcms/jcms/Jo2_16799" (CJEU 14.02.2017)
Others	13	"@ProfPech it's the @EUCouncil that appoints judges. Not the Court. Not all countries have put forward nominations yet. @alemannoEU" (CJEU 08.01.2017)

Note: Tweets by @EUCourtPress 2013-04-15 until 2019-09-30. Own data collection with Twitter API. Hand-coded variable.

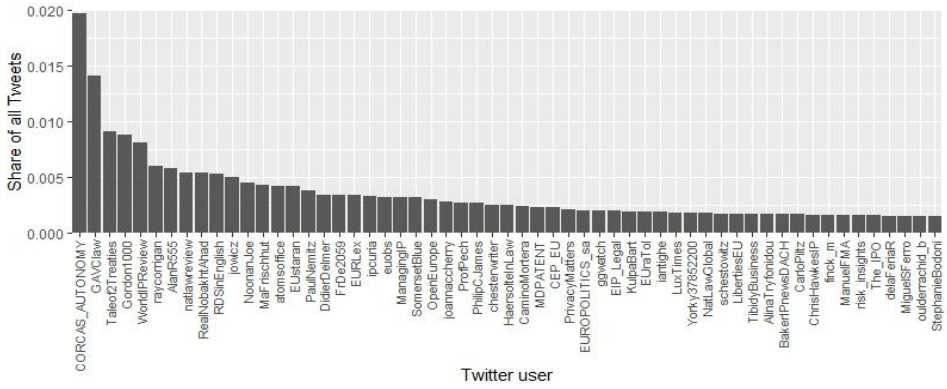
Figure A4.3.2 shows the four-month moving average of the amount of tweets in the Twitter debate about the CJEU.

Figure A4.3.2 Four-month moving average of Twitter debate about CJEU (amount of tweets)



Note: Tweets mentioning #ecj, #cjeu, #EUGeneralCourt October 2010 to September 2019. Own data collection with Twitter API.

Figure A4.3.3 Influencers in the Twitter debate



Note: Influencers are those accounts in the data with the highest amount of tweets of all 37,107 that mention the hashtags #ecj, #cjeu, #EUGeneralCourt between 2010-10-03 and 2019-09-30. Own data collection with Twitter API. Bar chart was shortened to most active accounts for readability.

A4.4 Analysis and Model Documentation

Table A4.4.1 delivers the descriptive statistics for all hours included in the analysis.

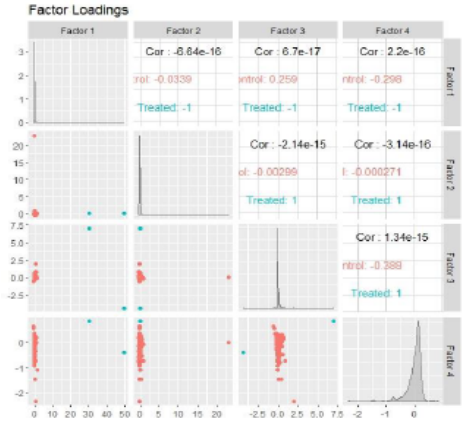
Table A4.4.1. Summary statistics (paper 4)

Variable	N	Minimum	Maximum	Mean/Mode	Std. Deviation
nTweets (per hour)	78840	0	261	0.471	2.080
nAccounts (per hour)	78840	0	224	0.429	1.787
Polarization (per hour)	78840	0	626.582	0.444	4.359
Treatment Judgment	78840	0	1	0	0.126
Treatment Judgment PR	78840	0	1	0	0.088
Treatm. Judgm. Tweet	78840	-1	1	0	0.457
Case Importance	76248	-1	1	-1	0.615

*Note: 3,285 days * 24 hours = 78,840 hours; Mean indicated for numerical variables, mode for categorical. The data for case importance is based on the variable for the number of judges from Brekke et al. (2019) and is coded -1 for each day when there was no judgment, 0 for days with judgments on only less important cases and 1 for days with judgments on important cases.*

Figure A4.4.1 Unobserved factors of GSC analysis (Table 2): Unobserved factors of the GSC analysis presented in Table 2 (page 122).

Model 1 in Table 2:



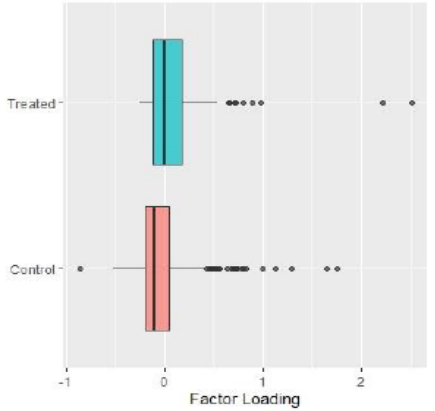
Model 2 in Table 2:

[no unobserved factors determined]

Model 3 in Table 2:

[no unobserved factors determined]

Model 4 in Table 2:



Model 5 in Table 2:

Model 6 in Table 2:

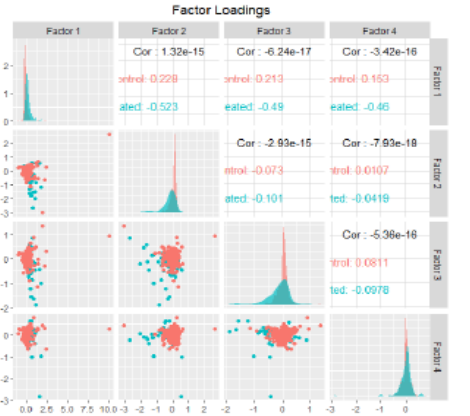
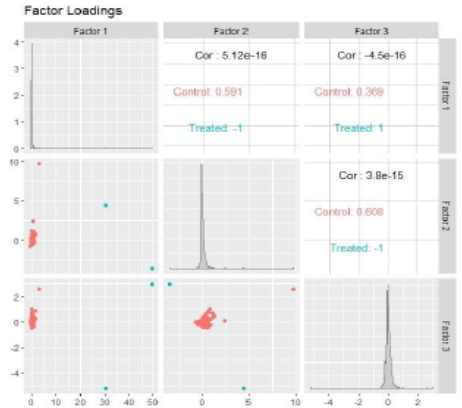


Figure A4.4.2 Unobserved factors of GSC analysis (Table 3): Unobserved factors of the GSC analysis presented in Table 3 (page 125)

Model 1 in Table 3:



Model 2 in Table 3:

[no unobserved factors determined]

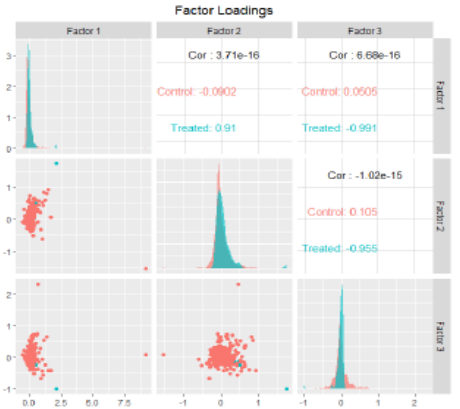
Model 3 in Table 3:

[no unobserved factors determined]

Model 4 in Table 3:

[no unobserved factors determined]

Model 5 in Table 3:



Model 6 in Table 3:

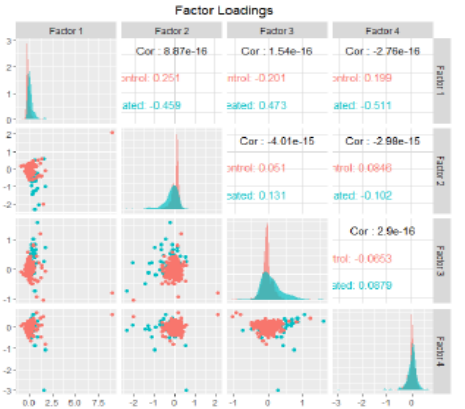
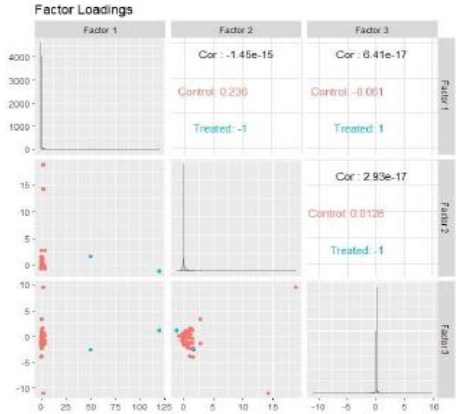


Figure A4.4.3 Unobserved factors of GSC analysis (Table 4): Unobserved factors of the GSC analysis presented in Table 4 (page 127).

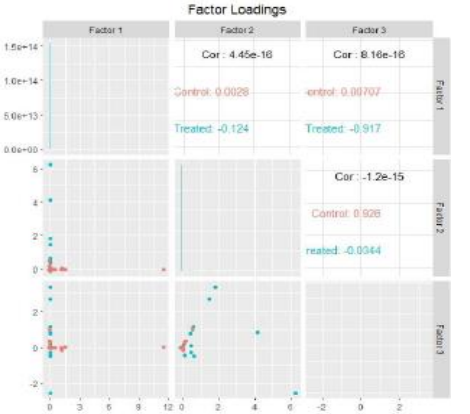
Model 1 in Table 4:



Model 2 in Table 4:

[no unobserved factors determined]

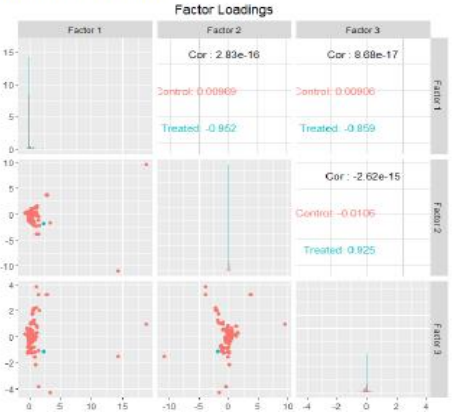
Model 3 in Table 4:



Model 4 in Table 4:

[no unobserved factors determined]

Model 5 in Table 4:



Model 6 in Table 4:

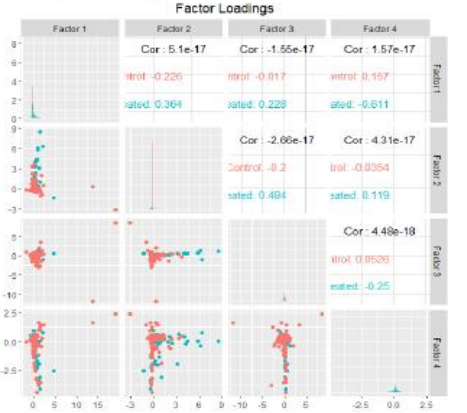


Table A4.4.2 Number of judges per case

Number of judges	Frequency
NA	56
3	4,929
4	2
5	2,482
9	2
11	51
12	1
13	213
15	154
25	3
27	1

Note: Number of judges signing the judgments in the period 2010-10-03 to 2019-09-30, data from Brekke et al. (2019).

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