The Choices Courts Make:
Explaining when and why domestic courts express opinions in the preliminary ruling procedure

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Paper prepared for the General ECPR conference in Montréal 26 - 29 August 2015
Draft

Abstract] The development of the European Union (EU) is to a large extent a process of legal integration. Through its verdicts, the European Court of Justice (ECJ) has transformed ambiguous Treaty articles into specific rules that challenge national policy making. National courts are said to be crucial in this process since they supply the ECJ with cases through the preliminary ruling procedure. The role of courts in the process of European integration has been subject to much theoretical debate: Are national courts promoting EU law or protecting Member States’ legislation? However, systematic studies of the behavior of national courts in this context are largely absent: In this paper I shed new light on this issue by conducting a comparative study seeking to explain why the national courts decides to include their own view in the requests for preliminary rulings and what determines the content of those opinions.

Keywords: The preliminary ruling procedure, National courts, the European Court of Justice, Preemptive opinions, Strategic court behavior, European integration
Introduction

Ever since Robert Dahl in 1957 called the U.S Supreme Court a political institution\(^1\) political scientists have acknowledged that court rulings can have consequences in terms of altering public policy.\(^2\) Today, the judicialization of politics or the shift of power from the legislature towards the courts\(^3\) means that legal procedures, and not political negotiations, have become a common way of solving political and societal conflicts.\(^4\) When it comes to the international dimension of judicialization the European Union (EU) is a prime example; nowhere else has the transfer of decision-making power from national representative institutions to a supranational judiciary been as pronounced as in the EU.\(^5\) The Union’s court, the European Court of Justice (ECJ) has a reputation of being a judicially activist court and it has been accused of repeatedly expanding the reach of EU law into policy areas traditionally guarded by national sovereignty.\(^6\)

In order for the ECJ to be able to deliver path-breaking rulings it is dependent on the cooperation of ordinary domestic courts throughout the preliminary ruling procedure\(^7\). Whenever a national court has doubts as to how the EU law should be interpreted in a case at hand, it may send it to the ECJ and ask for a clarification—a preliminary ruling.\(^8\) The ECJ’s answers to such requests can be seen as a form of judicial review\(^9\) since the supranational court may rule that national legislation is incompatible with the EU law and needs to be changed. This means that ordinary domestic courts have an important role to play in the EU political system, yet few studies have focused on their actions and preferences.

One overlooked behavior is when and why national courts choose to express their own view on how the legal question they have referred to the ECJ should be resolved. When the national court is preparing a case for referral it can choose to include a written statement expressing its view on how the legislation should be interpreted in the specific case.\(^10\) By including such opinions the

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\(^2\)Mary I. Volcansek, *Judicial Politics in Europe* (P. Lang, 1986).p.1


\(^8\)Article 267 TFEU

\(^9\)Xavier Groussot et al., *Empowering National Courts in Eu Law* (SIEPS, 2009).pp.16-17

domestic courts can try to influence the final ruling by informing the ECJ about what legal
translations that is acceptable at the domestic level.

In this paper I seek to explain the variation in (1) the occurrence of opinions: When do the
national courts choose include their own opinions in the requests for preliminary rulings, and (2)
the content of those opinions: When are the national courts expressing opinion in support of the
EU law or the national legislation.

The paper is organized as follows; I start out with the theoretical debate and the empirical studies
concerning the role of national courts in the preliminary ruling procedure. Then, I present the
hypotheses that try to explain the variation in national court behavior, followed by a description
of the data and method. Lastly, I present the results from the logistic regression analyses and
compare the results with the claims of the hypotheses.

The preliminary ruling procedure: Cooperation between an
activist supranational court and ordinary domestic courts

It is commonly held that the development of the EU to a large extent is a process of legal
integration in which courts play a significant part. It is also common to view the ECJ as a unitary
actor\(^\text{11}\) with the goal to promote European integration by increasing the scope and effectiveness
of EU law.\(^\text{12}\) However, to what degree the ECJ actually has any political power has been subject
to much debate. In principal, two theoretical approaches can be discerned; the neofunctionalists’
position that the ECJ is largely independent from the Member States and, the
intergovernmentalists’ view of the ECJ as being essentially constrained by the Member States.\(^\text{13}\)

A similar theoretical divide is also present when turning to the question of the role of national
courts in the EU political system. National courts are primarily of interest because of their central
role in the preliminary ruling procedure\(^\text{14}\). This procedure is regulated in Article 267 (TFEU) and
its purpose is to ensure a uniform application of EU law in all member states. The procedure

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\(^{11}\) While this is an almost universally shared theoretical assumption, it has been very difficult to test the proposition
empirically. For example, we do not know how the different judges behave due to the secrecy of the decision-
making process and the non-publication of dissenting opinions. However, see: Michael Malecki, "Do Ecj Judges All
Speak with the Same Voice? Evidence of Divergent Preferences from the Judgments of Chambers," \textit{Journal of
European Public Policy} 19, no. 1 (2012).

\(^{12}\) Mark A Pollack, "The New Eu Legal History: What’s New, What’s Missing?", \textit{American University International Law
Review}, (2013). p.4

\(^{13}\) Ibid.

\(^{14}\) Article 267 TFEU. Also referred to as the \textit{Preliminary reference procedure/process}
comes into play when a national court has doubts as to how the EU law should be understood in connection to a case brought before it. It may then send the case to the ECJ and ask for an interpretation – a preliminary ruling. By its answer, the ECJ has the power to invalidate national legislation that it finds to be in conflict with the EU treaties. This procedure is important for various reasons; to begin with, the references from the national courts constitutes the majority of the cases the ECJ rules on, making it the ECJ’s main tool for influencing the legal development in the EU. Furthermore, not only has the preliminary ruling procedure enabled the ECJ to specify the meaning of specific EU provisions it has also been crucial in the constitutionalization of the Treaty. For example, the ECJ’s landmark decisions, the establishment of direct effect and supremacy of EU law over national provisions both originated as preliminary rulings from national courts.

However, whether a case should be sent to the ECJ or not is a decision that rests exclusively with the national court. The national court may choose to keep the case to itself and make its own interpretation of the relationship between national law and EU law – often resulting in a limited effect of the EU provision. By controlling which legal cases reach the ECJ, national courts can be thought of as gatekeepers in the process of European integration. Thus, the ECJ would not have been able to expand the reach of EU law without the help of national courts.

The main theoretical question has thus been: what role do the national courts assume in this process? Two answers, based on different assumptions about the courts’ incentive structure and the role of politics are available: National courts are believed to either support the ECJ in its ambition to foster integration or, to shield national legislation from the ECJ’s activism. The former view, henceforth referred to as the ‘judicial empowerment hypothesis’, is closely related to neofunctionalism. Its central claim is that the national courts’ support of the ECJ and their acceptance of EU law can be explained by the professional self-interest of judges. The theory builds on the assumption that judges want to expand their powers vis-à-vis the political branch.

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15 Groussot et al.pp.16-17
16 Alter.p.186
17 Alter and Craig.p.34
The ECJ is believed to offer the national courts precisely that possibility, by letting them rule on the compatibility between national law and the supreme EU law – a form of judicial review.\(^{21}\)

Against the empowerment-hypothesis stands the “sustained resistance-view”\(^{22}\). This position is connected to intergovernmentalism and rejects the assumption that national courts have an interest in supporting the ECJ. Rather, it claims that national judges instead may face a strong incentive to *not* cooperate with the supranational court because of the high political stakes involved in the preliminary ruling procedure.\(^{23}\) By referring cases to the ECJ, there is a risk that the ECJ will issue a ruling contrary to domestic political interests. For example, Blauberger describes the Member State governments as typical supporters of the regulatory status quo, that is, the existing domestic rules.\(^{24}\) Therefore, the governments want to avoid ECJ rulings that demand domestic legislative reform or involve different kinds of financial risks, such as contractual penalties in public procurement or state liability for infringement of EU law.\(^{25}\) According to Golub, this means that national courts can choose to strategically withhold cases from the ECJ and thereby shield national legislation from the EU norms.\(^{26}\)

Empirical studies of national court behavior that tries to assess the validity of either theoretical position have produced mixed results; some find support for the empowerment hypothesis\(^{27}\) while others present evidence in favor of the sustained-resistance view\(^{28}\). The strength of either account is difficult to assess, mainly due to differences in their choice of material and method. The broad comparative studies tend to focus on the number of referred cases, revealing quite


\(^{24}\) Michael Blauberger, "National Responses to European Court Jurisprudence," (2013).p.4

\(^{25}\) Ibid.p.5


substantive differences between courts in different Member States. These studies assume that a high number of requests for preliminary rulings mean that the courts are supportive of the EU legal system and, conversely, that few requests indicate a reluctance towards assisting the ECJ in advancing legal integration. However, this assumption can be criticized, mainly because a high number of references do not necessarily mean that the ECJ is given opportunities to deliver path-breaking rulings. For instance, if most cases only concern trivial issues then the ECJ is not able to expand the reach of EU law. Hence, studies focused only on the aggregated number of references ignore other important court actions and give an incomplete account of the national courts’ role in European integration. On the other hand, in-depth studies investigating the cases behind the numbers and the specific behavior of national courts are often limited to individual countries and cases making it hard to know if the results are valid across Member States. Hence, the discourse on national court behavior is therefore in need of a comparative study of the courts actual behavior in the preliminary rulings procedure. Next, I turn to the few existing studies that have tried to move beyond both aggregated referral rates and the legal scholars’ normative descriptions of case law.

The inclusion of opinions: A strategic tool for the national courts

What is known about the strategic behavior of courts and judges? Most political scientists that has done research on courts has centered on the US legal system in general and its Supreme Court in particular. Their main finding is that courts are acting strategically both when it comes to the substantive rulings they deliver and when applying the procedural rules in the decision making process. Some would argue that the national courts are always, to some extent, driven by their policy preferences when making decisions. For example, to include an opinion and inform the ECJ about the national courts own view on a legal matter is way of reaching the preferred policy outcome in a case. While I do not believe that courts always make decisions in relation to their ideological belief I find it equally unrealistic that the courts never think about the consequences of their choices in political terms. In the EU context such studies of the courts’

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31 For an overview, see: Lee Epstein and Jack Knight, "Toward a Strategic Revolution in Judicial Politics: A Look Back, a Look Ahead," Political Research Quarterly 53, no. 3 (2000).
strategic decisions are uncommon but there are a few exceptions that look closer at what determines the decisions judges make. For example, the actions of the national courts in the preliminary ruling procedure have been explained with reference to that they want to preserve the coherence of the national legal system.\(^{32}\)

In a study of Danish courts Wind finds that the national courts are strategic when it comes to how they frame the cases they refer to the ECJ. Wind claims that when national courts send cases with open-ended questions and questions that are connected to principal matters, such as the direct effect of a directive, they provide the ECJ with an opportunity to develop the EU law in a pro-integration way. According to Wind, we can expect national courts that are suspicious of the ECJ’s style of interpretation to refrain from referring cases to the ECJ or, to frame the legal case in such a way that it limits the ECJ’s opportunities to expand the reach of the EU law.\(^{33}\) The latter action is possible to use with some success since the ECJ, at least formally, only may provide answers to questions explicitly asked by the national courts. Hence, by only asking narrowly defined questions that do not touch upon principle matters, the national courts may limit the impact of EU law when a preliminary ruling is requested.\(^{34}\)

Nyikos has further explored the procedural strategic actions that are available for the national courts in the preliminary ruling procedure, specifically, the possibility for the courts to communicate their own opinions to the ECJ. The choice to include opinions in the request is made by the national court when preparing the legal case for referral to the ECJ. The national court puts together a folder with information about the case, including a description of the factual circumstances as well as the questions it needs the ECJ to answer. It is at this stage that the court has the opportunity to also include a written statement expressing its view on how the referred case should be resolved.\(^{35}\) Nyikos defines it as an act of strategic court interaction, meaning court behavior employed to influence the legal evolution.\(^{36}\) The study by Nyikos indicates that national courts do in fact take advantage of this opportunity to influence the ECJ as preemptive opinions are attached to more than 40 percent of all requests for the preliminary

\(^{32}\) Golub, "The Politics of Judicial Discretion: Rethinking the Interaction between National Courts and the European Court of Justice."


\(^{34}\) Davies, "Activism Relocated. The Self-Restraint of the European Court of Justice in Its National Context." pp.77, 84

\(^{35}\) Nyikos, "Strategic Interaction among Courts within the Preliminary Reference Process–Stage 1: National Court Preemptive Opinions." p.529

\(^{36}\) Ibid.p.527
rulings. There are also a few examples of cases in which the ECJ appears to have listened to the opinions of the national courts before ruling on the matter.\(^\text{37}\)

When it comes to the content of the opinions a study of the Swedish courts’ behavior\(^\text{38}\) suggest that the substantive content of the preemptive opinions can be divided into three categories: opinions supporting national law, supporting EU law or, an opinion not related to the dimension of integration.\(^\text{39}\) An example of a preemptive opinion supporting national law can be found in the case *DaimlerChrysler AG v Land Baden-Württemberg* (C-324/99) referred from the German Federal Administrative Court (Bundesverwaltungsgericht). The legal issue concerns the legality of a decree of the government and the Minister for the Environment and Transport of that Land. This decree made it compulsory for DaimlerChrysler to deposit its production waste in Hamburg. The company claimed that this would be more costly than its current arrangement, to ship the waste to Belgium. In DaimlerChrysler’s view the national law could be seen as a quantitative restriction on exports and thus prohibited under EU law. In the request for a preliminary ruling the national court included the following preemptive opinion:

The Bundesverwaltungsgericht considers that the prohibition on exporting hazardous waste for disposal imposed by the contested decree must be considered to be an imperative requirement of environmental protection, within the meaning of the Court’s case-law. It concludes that the prohibition is not contrary to Article 28 EC (now Article 34 TFEU).

As becomes clear in the passage above, the national court not only makes an interpretation of the ECJ’s case law but it also makes the claim that the national law (the prohibition) is in fact not contrary to the EU legislation (Article 28 EC). This preemptive opinion thus supports the existing national legislation while dismissing the claim of DaimlerChrysler.

To summarize, national courts have to decide whether or not to take the time and effort to include opinions in the requests for preliminary rulings and what view to express in that opinion. The opinions may support the EU law, the national legislation or, a position that is not strictly related to either national legislation or the EU law.

\(^{37}\) Ibid.p.528


\(^{39}\) Ibid.p.27
Hypotheses about what explains the occurrence of opinions and their content

This paper is seeking to explain the variation in two dependent variables. First, “the occurrence of opinions” - when are the national courts including opinions? Second, “the content of the opinions” – when are the national courts expressing support for the EU law instead of for the national law? Previous research has put forward several theories about what could account for the differences in domestic court behavior when it comes to their interaction with the ECJ. In this section I will present five hypotheses that try to explain what makes some courts more likely than others to express opinions in their requests for preliminary rulings and five hypotheses that try to explain what can influence the content of those opinions.

The political sensitivity of the legal cases

It has been argued in the literature that the national courts write and include opinions in their requests since it enables them to show the ECJ the boundaries for acceptable legal interpretation on a specific issue in the domestic context.40 Furthermore, previous research shows that the national courts behave differently in the preliminary ruling procedure depending on the type of case at hand.41 For instance, Wind’s study on Danish and Swedish courts suggests that they are reluctant to send sensitive or politically controversial cases to the ECJ because they fear that ECJ will find Danish law incompatible with EU law.42

In the previously mentioned study by Nyikos the policy area of which a case belongs to proved to be important; opinions are more common in cases that concern the policy area equal treatment between men and women compared to the free movement of goods.43 The explanation for this behavior is that writing an opinion or, “(…) interpreting the very law wherein lies uncertainty”44 is difficult and takes both time and resources. Therefore, the national courts will mainly take the time to formulate opinions in those cases were they believe that the ECJ will be sympathetic to the domestic views. It has been argued that the ECJ will be more likely to listen and take into

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42 Wind, “The Nordics, the Eu and the Reluctance Towards Supranational Judicial Review.”p.1052
44 Ibid.quote p.533
account the views of the domestic courts when a case belongs to a policy area where the ECJ’s intervention is “less accepted”\textsuperscript{45} – such as in the legal area of equal treatment between men and women – or, more generally if a case is politically controversial\textsuperscript{46} and belongs to sensitive policy area.\textsuperscript{47}

The occurrence of opinions:

Here I will distinguish between two types of cases, the less politically sensitive cases and the more politically sensitive cases. I define a politically sensitive case in the following way: It is a case that inflicts political or economical costs on the member state. Such costs are believed to occur when national legislation or provisions has to be changed, when a ruling goes against the decision of a public agency or, against the views of public opinion. For more information on the coding of this variable see the appendix.

- Hypothesis 1: The courts will be more likely to include opinions in their requests if the cases are more politically sensitive

The content of the opinions:

There are no previous empirical studies that have tried to explain the variation in the type of opinion included in the requests for preliminary rulings. However, following the general theoretical arguments concerning court behavior it can be hypothesized that the national courts will be more likely to express support for the national legislation when a case is more politically sensitive compared to less politically sensitive.

- Hypothesis 1: The courts will be more likely to express support for the national legislation in the more politically sensitive cases compared to the less sensitive cases

The court's place in the judicial hierarchy

\textsuperscript{45} Ibid.p.532  
\textsuperscript{46} Golub, "The Politics of Judicial Discretion: Rethinking the Interaction between National Courts and the European Court of Justice."  
\textsuperscript{47} Wind, "The Nordics, the Eu and the Reluctance Towards Supranational Judicial Review."p.1052
The judicial empowerment position assumes that national courts are participating in the preliminary ruling procedure because it strengthens their power and influence. However, it has been suggested by Alter that this is not true for all courts. Specifically, lower courts are more likely to refer cases to the ECJ than courts of final instance. This is because the preliminary ruling procedure gives lower national courts new powers such as the opportunity to review the validity of laws – a task previously reserved for courts of final instance. Furthermore, it also means that a lower national court can turn to the ECJ and ask it to overrule a previous decision made by the highest national court. Thus, the ECJ and the preliminary ruling procedure pose a threat to the finality of the rulings from the highest national courts, making them less likely to refer cases to the supranational court compared to lower courts.

The occurrence of opinions:

It has been theoretically argued and empirically supported that the inclusion of opinions in the requests for preliminary ruling is a more common behavior among lower courts compared to courts of appeal and courts of final instance. By issuing preemptive opinions, the lower courts can specify their preferred policy position, which they are trying to shield against the revision of higher courts. In a previous study including request for preliminary rulings from 1961-1994 it was found that the likelihood that a court of first instance would submit an opinion was 23 percentage points higher than for a court of last instance.

- Hypothesis 2: Lower courts will be more likely to include preemptive opinions in their requests for preliminary rulings compared to courts of final instance.

The content of the opinions:

According to Alter the domestic courts of final instance have been more skeptical towards the ECJ’s rulings and the preliminary ruling procedure compared to the lower national courts. The constitutional courts in Germany and Italy as well as the French Conseil d’État have heavily criticized the ECJ’s rulings for distorting the national legal systems. The national high courts can

49 Alter and Craig, pp.48-49
51 Nyikos 2006 542.
52 Alter p.97
thus be expected to more often than lower courts, express opinions in favor of the national legal system.

- Hypothesis 2: Courts of final instance will be more likely to include opinions supporting national law than lower courts (courts of appeal and courts of first instance.)

**The presence of judicial review**

One of the main claims of legal scholars has been that a lot of the differences between courts when it comes to their behavior in the preliminary ruling procedure can be attributed to structural factors in the domestic legal system. One such aspect of the domestic system that has been highlighted by previous research is the presence or absence of judicial review.\(^{53}\) There are different forms of judicial review but its core feature is that courts review whether a legislative provision is consistent with a higher legal norm, such as a national constitution or the EU treaties. The exercise of judicial review in a domestic political system is similar to the logic in the preliminary ruling procedure. Therefore, courts that are used to reviewing the constitutionality of legislative acts are more comfortable with requesting preliminary rulings from the ECJ while courts with no previous experience of judicial review will be skeptical towards the preliminary ruling procedure.\(^{54}\)

**The occurrence of opinions:**

Applying this logic to the inclusion of opinions, it can be expected that courts from member states with a tradition of judicial review will face lower cost in terms of time and resources than courts from countries without such tradition when it comes to formulating opinions since they are used to resolve disputes by interpreting constitutional norms. A previous study found that the likelihood that a national court would include an opinion increased with 30 percentage points if the court came from a member state with judicial review compared to a member state without.\(^{55}\)

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\(^{53}\) Mattli and Slaughter, "Revisiting the European Court of Justice."p.194, 201

\(^{54}\) Sweet and Brunell, "The European Court and the National Courts: A Statistical Analysis of Preliminary References, 1961–95."p.68

• Courts in member states with judicial review are more likely than courts in member states without judicial review to include opinions in their requests for preliminary rulings.

The content of the opinions:

Previous research does not offer any specific hypothesis concerning the relationship between the judicial system and the content of the opinions included in the requests. However, based on the knowledge that courts from systems with judicial review seem to have a more positive attitude towards the ECJ it is plausible to assume that they are more likely than courts from systems without judicial review to include opinions supporting EU law.

• Hypothesis 3: Courts in member states without judicial review are more likely to express support for the national legislation compared to courts in member state with judicial review.

The public support for EU integration

The literature on strategic court decisions has also put forward public opinion towards the EU as a factor that influences the courts’ behavior. It has been suggested that a low public support for EU integration makes the national courts less likely to refer cases to the ECJ. The central claim is that courts are believed to act under a sort of “legitimacy constraint” when making their decisions. If the citizens are highly opposed to a certain decision (for example, giving a ECJ the possibility to overrule national legislation) the domestic court deciding the matter faces the risk of losing its legitimacy if it makes what is believed to be the “wrong” choice in the eyes of the public. If the courts’ rulings consistently contradict the policy preferences of the majority it may undermine the courts’ legitimacy and possibly result in legislative restrictions of the courts’ power.

The occurrence of opinions:

It can be argued that the courts in a member state with an EU skeptic public will be more likely to include opinions in their request for preliminary rulings since the purpose of the opinions is to

inform the supranational court about the acceptable legal interpretation in a domestic context. Hence, the courts can use the opinions to influence the ECJ and moderate the effect of the ECJ rulings on the national legal system.

- Hypothesis 4: Courts in member states with an EU skeptical public will be more likely to include opinions in their request for preliminary rulings than courts from member states were the public is more positive towards the EU.

The content of the opinions:

If public opinion is critical of the EU and the ECJ’s rulings it would be expected that this is somehow reflected by the actions of the national courts. One way of addressing such issues is for the national court to include an opinion expressing these concerns and explain the rationale behind the disputed national legislation. For example, the export of live calves from the UK to other Member States with less rigid animal protection controls became, according to the national court, “a topic of considerable public concern” in the UK. Hence, when the national courts express opinions, those opinions will be more likely to support the national legislation if the court comes from a member state with a negative view of the EU.

- Hypothesis 4: Courts in member states with an EU skeptical public will be more likely to include opinions in support of the national legislation compared to courts in member states with an EU friendly public.

The member state as a party

It is suggested that national courts will refer fewer cases in which the member state (in any capacity) is a litigant compared to the cases involving private parties. This hypothesis is said to capture the influence that the Member State government has on the national court’s choice to write a preemptive opinion or not. When the national government is involved in a case, it will generally mean that greater costs are involved. For example, the outcome of the case may force

58 Alter, "Who Are the" Masters of the Treaty": European Governments and the European Court of Justice."quote p.130
59 See: The Queen v Minister of Agriculture, Fisheries and Food, ex parte Compassion in World Farming Ltd. ” It is also apparent from the order for reference that the export of live calves to other Member States using the veal crate system is a topic of considerable public concern in the United Kingdom.”
the Member State to change a policy which can create both political and economic costs. In the view of the national court, it is therefore important to show the ECJ the boundaries of acceptable and enforceable legal interpretation in the specific country.

The occurrence of opinions:

- Hypothesis 5: If the government (in any capacity) is a litigant in the referred case, then the national court will be more likely to include an opinion in the request.

The content of the opinions:

- Hypothesis 5: If the government (in any capacity) is a litigant in the referred case, then the national court will be more likely to include an opinion supporting the national law in the request.

Control variables

In the literature that has tried to explain various aspects of the courts’ behavior in the preliminary ruling procedure a few factors are reoccurring, either as the main explanatory variables or as important control variables. Here, I have included two of them: The level of intra-EU trade and the years of EU membership.

- Intra EU trade
  Most comparative studies of the preliminary ruling procedure aimed at explaining the variation in the number of cases referred have incorporated some measure of trade in their analysis. It follows from the logic of functionalism that high levels of intra EU trade in a member state will result in a high the number of legal conflicts related to trade and EU law. Consequently, there will be a need for supranational dispute resolution and hence a greater number of referrals to the ECJ.

60 Alter, "Who Are the" Masters of the Treaty": European Governments and the European Court of Justice."p.130  
61 Nyikos, "Strategic Interaction among Courts within the Preliminary Reference Process–Stage 1: National Court Preemptive Opinions."p.535 However, it is not possible to separate political needs and preferred court policy objective according to Nyikos.
from the courts in those countries. Even though this logic has been criticized for including spurious relationships, it is possible that high levels of intra EU trade also is related to the occurrence and content of the opinions included in the request for preliminary rulings. Therefore the variable is included in the analysis as a control variable.

- Years of EU membership

This variable is also a reoccurring explanatory factor in many analyses of national courts. The idea is that over the years the courts are socialized into accepting the European legal order and shift their loyalties to the supranational system. Hence, courts in countries that have been EU members for a long time might behave differently than courts in the newer member states. One reason for this could be that a court in one of the founding member state is has more experience with referral process and EU law and hence the cost for national courts to write opinions, in terms of recourse, will decrease.

**Method and material**

The aim of this study is to explain variation in the behavior of national courts from around the EU Member States. For this reason, I use statistical methods to analyze the occurrence and content of the opinions. The case selection is a simple random sample of 359 cases drawn from all requests for preliminary rulings (5590 cases) from the years 1992-2012.

The empirical material used in this study is found in two types of documents, which have been frequently used in previous studies of court behavior. Both documents - “Judgment of the Court” and “Opinion of the advocate general” can be accessed from the online database EUR-LEX, and are available in all official EU languages. The “Judgment of the court” is the official

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64 Wind et al., "The Uneven Legal Push for Europe Questioning Variation When National Courts Go to Europe."p.79


ruling from the ECJ and it begins with a description of the legal issue at hand, which is then followed by the questions posed by the national courts and a presentation of the official views of the Commission and the Member States. 68 Finally, the ECJ makes a legal analysis and answers the national court’s questions. The documents range between 5-50 pages depending on the complexity of the legal issue to be dealt with. The document “Opinion of the advocate general” follows a similar outline but discusses in greater detail the legal questions present in the case. Both documents contain information about the character of the legal case as well as which kind of opinion that is included in the request for a preliminary ruling.

The method for finding and classifying the opinions is fairly straightforward. The national court describes the legal issues that are present in the case and sometime it includes an opinion on how to resolve the dispute. The analytical task is to determine whether the national court argues that the national position is in breach with the EU law, or conversely, whether the court makes the case that the national position is compatible with the EU law. The preemptive opinions are usually placed in the “fact section” of the documents together with the legal questions 69.

Results

When are opinions included: explaining variation in the occurrence of opinions

In table 1 below I present the number of opinions that the national courts have referred to the ECJ for each member state and for the entire sample. It also includes separate figures for the occurrence of opinions in the founding member states (EU 6: Belgium, France, Germany, Italy, Luxembourg, the Netherlands,) and in the more recent ones (EU 9: Austria, Denmark, Finland, Greece, Ireland, Portugal, Spain, Sweden, the UK). It is not possible to make a separate analysis of the countries that joined the EU most recently (2004 and later) due to the small share of cases referred from the courts in those countries.

68 For further discussions on the positions of the Member States and the Commission see: Carrubba et al., "Judicial Behavior under Political Constraints: Evidence from the European Court of Justice."

69 To make sure that none of the opinions are left out in the analysis, I use the search tool in the PDF-document to find phrases such as “according to the national court”, “order of the reference” or “in the view of the national court.”
Table 1: The distribution of cases with opinions in different member states 1992-2012

<table>
<thead>
<tr>
<th>Member State</th>
<th>Number of cases with opinions</th>
<th>Total number of cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>20 (54 %)</td>
<td>37</td>
</tr>
<tr>
<td>Belgium</td>
<td>14 (40 %)</td>
<td>35</td>
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<tr>
<td>Bulgaria</td>
<td>1 (25 %)</td>
<td>4</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>1 (100 %)</td>
<td>1</td>
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<tr>
<td>Denmark</td>
<td>1 (10 %)</td>
<td>10</td>
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<tr>
<td>Estonia</td>
<td>0 (0 %)</td>
<td>1</td>
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<tr>
<td>Finland</td>
<td>2 (40 %)</td>
<td>5</td>
</tr>
<tr>
<td>France</td>
<td>6 (26 %)</td>
<td>23</td>
</tr>
<tr>
<td>Germany</td>
<td>43 (65 %)</td>
<td>66</td>
</tr>
<tr>
<td>Greece</td>
<td>6 (60 %)</td>
<td>10</td>
</tr>
<tr>
<td>Hungary</td>
<td>0 (%)</td>
<td>1</td>
</tr>
<tr>
<td>Ireland</td>
<td>1 (50 %)</td>
<td>2</td>
</tr>
<tr>
<td>Italy</td>
<td>33 (63 %)</td>
<td>52</td>
</tr>
<tr>
<td>Latvia</td>
<td>1 (50 %)</td>
<td>2</td>
</tr>
<tr>
<td>Lithuania</td>
<td>0 (0 %)</td>
<td>1</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>2 (29 %)</td>
<td>7</td>
</tr>
<tr>
<td>Netherlands</td>
<td>18 (51 %)</td>
<td>35</td>
</tr>
<tr>
<td>Poland</td>
<td>2 (33 %)</td>
<td>6</td>
</tr>
<tr>
<td>Portugal</td>
<td>1 (25 %)</td>
<td>4</td>
</tr>
<tr>
<td>Romania</td>
<td>0 (0 %)</td>
<td>1</td>
</tr>
<tr>
<td>Spain</td>
<td>11 (69 %)</td>
<td>16</td>
</tr>
<tr>
<td>Sweden</td>
<td>1 (20 %)</td>
<td>5</td>
</tr>
<tr>
<td>UK</td>
<td>14 (40 %)</td>
<td>35</td>
</tr>
<tr>
<td><strong>All</strong></td>
<td>181 (50.4 %)</td>
<td>359</td>
</tr>
<tr>
<td><strong>EU 6</strong></td>
<td>117 (54 %)</td>
<td>218</td>
</tr>
<tr>
<td><strong>EU 9</strong></td>
<td>57 (46 %)</td>
<td>124</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>178</td>
<td>359</td>
</tr>
</tbody>
</table>

As can be seen in table 1, the national courts express opinions in 181 cases (50.4 %) of the 359 requests for preliminary rulings. This is a higher figure compared to a previous study, which found opinions in 41 percent of the 574 cases investigated.\(^70\) The number of cases with opinions from each member states is rather small which means that it is not possible to make general comparisons between the behaviors of courts in specific countries based on this sample alone. However, cases from courts in a few of the member states are quite well represented. First, the courts in the founding member states (EU 6) seems to be more likely to include opinions in their requests (54 %) compared to the courts in the newer member states (EU 9: 46 %), but this result is not statistically significant at the 95 % level (p-value 0.17). Furthermore, the behavior of the

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\(^{70}\) Nyikos, "Strategic Interaction among Courts within the Preliminary Reference Process–Stage 1: National Court Preemptive Opinions." p.539 The study included cases sent from courts in Belgium, France, Germany, Italy, The Netherlands and the UK over the years 1966-1994.
courts from Austria (54%) and the Netherlands (51%) comes close to the average share of opinions included in the requests for preliminary rulings (50.4%) while the German and Italian courts are more likely than the average to include opinions, with a share of 65 percent cases with opinions originating from German courts and 63 percent from the Italian courts. The courts in Belgium (40%), the UK (40%) and, especially France (26%) are on the other hand less likely than the average to include opinions.

Turning to the first analysis, the occurrence of opinions is the dependent variable. Since it is a binary variable (opinions vs. no opinion) I use a logistic regression model. The result is presented in table 2 below.

Table 2 – Occurrence of opinions (Logit model)

<table>
<thead>
<tr>
<th>Independent variables</th>
<th>Model 1: All cases</th>
<th>Model 2: EU 6</th>
<th>Model 3: EU 9</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N: 359</td>
<td>N: 203</td>
<td>N: 122</td>
</tr>
<tr>
<td>Type of case: Sensitive</td>
<td>0.47** (0.24)</td>
<td>-0.07 (0.309)</td>
<td>1.16 *** (0.43)</td>
</tr>
<tr>
<td>Public support</td>
<td>0.69 (1.59)</td>
<td>-7.26 (10.24)</td>
<td>0.88 (3.52)</td>
</tr>
<tr>
<td>Court level: final instance</td>
<td>0.08 (0.24)</td>
<td>0.09 (0.31)</td>
<td>0.15 (0.48)</td>
</tr>
<tr>
<td>Judicial review</td>
<td>-0.13 (0.28)</td>
<td>0.23 (0.46)</td>
<td>-0.23 (0.76)</td>
</tr>
<tr>
<td>Intra EU-trade (in 1000 Euros)</td>
<td>0.0004 (0.0004)</td>
<td>0.0006 (0.0007)</td>
<td>0.001 (0.0027)</td>
</tr>
<tr>
<td>Member state party</td>
<td>-0.09 (0.27)</td>
<td>0.32 (0.35)</td>
<td>-0.74 (0.48)</td>
</tr>
<tr>
<td>Constant</td>
<td>-0.76 (0.49)</td>
<td>-0.51 (0.64)</td>
<td>-0.83 (1.44)</td>
</tr>
<tr>
<td>Pseudo R2</td>
<td>0.0111</td>
<td>0.0050</td>
<td>0.0626</td>
</tr>
</tbody>
</table>

Note: number in parentheses are standard errors, * p < 0.10; * p < 0.05; *** p< 0.01.
The first thing to note in table 2 and model 1 is that the “type of case”- variable is statistically significant at the 95% confidence level. The sign of the coefficient is positive which means that a “more politically sensitive case” (compared to a “less political sensitive case”) has a positive impact on the occurrence of opinions. This is in line with the theoretical expectations and hypothesis 1. Calculating the marginal change in probabilities of one unit increase in the variable “type of case” while holding the other variables constant at their means shows that the likelihood that a court would include an opinion when a case is more politically sensitive is 11.3 percentage points higher than if the case is less politically sensitive.

However, as can be seen in table 2 none of the other independent variables reach statistical significance in this model. This is rather surprising since a previous study of the years 1966-1994 found that court levels, weather the member state is a party or not and the judicial system had a statistically significant impact on the occurrence of opinions. The main difference between the studies is that the current study includes cases from all policy areas and from (almost) all member states. The previous study only included the founding member states plus the UK and cases from three policy areas.

To investigate this difference in results I ran a logit model for two different subsamples; one for the courts in EU 6 (model 2) and one for the courts in EU 9 (model 3). The result in table 2 shows that for EU 6, none of the variables are statistically significant at the 95% confidence level. In the EU 9 model, on the other hand, type of case remains significant and the coefficients for all the other variables increase compared to model 1 although none of them reach statistical significance. Calculating the marginal change for the EU 9 group I find that the likelihood that a court would include an opinion is 27 percentage points higher in a more politically sensitive case compared to a less sensitive case when holding the other variables constant at their means. For a court in EU 6, the corresponding figure is only 2 percentage points.

Because the logistic model is non-linear, no approach can fully describe the relationship between the independent variable and the dependent variable. Each estimated b-coefficient is the expected change in the log odds of the dependent variable for a unit increase in the corresponding independent variable holding the other independent variables constant at certain value. Hence, I have calculated the marginal change in the predicted probabilities in order to facilitate the interpretation of the results.

The impact of type of case on the occurrence of opinions can also be described by calculating the likelihood given certain values on the independent variables. For example, the likelihood that a court of final instance in a system with judicial review would include an opinion if the member state is a party and public support for EU and intra-EU trade is held at their means is 11 percentage points higher if the case at hand is more politically sensitive compared to if it is less politically sensitive.
How can the difference in behavior between the courts in EU 6 and EU 9 be understood? One possible explanation is that the courts in EU 6 have more experience with cooperating with the ECJ. The courts in EU 9, on the other hand, are still quite new to the procedure. In fact, during the time period covered in this study (1992-2012), most countries in the EU 9 group had only been EU members for a few years. It is reasonable to assume that during their initial contact with the ECJ, the national courts take the opportunity to inform the supranational court about the domestic legislation - especially in politically sensitive case that has the potential to create high political and economic costs for the member states. The legal context in the founding member states, on the other hand, is already well know to the ECJ and that could be the reason why the variable “type of case” has no significant impact on the inclusion of opinions in EU 6.

**When are what opinions included: explaining variation in the content of opinions**

In table 3 below I present the share of different types of opinions that the national courts have referred to the ECJ. It also includes separate figures for the share of different type of opinions in EU 6 and EU 9. The opinions are divided into three categories; opinions in support of the national legislation, opinions in support of the EU law or, any other opinion.

<table>
<thead>
<tr>
<th>Type of opinion</th>
<th>All</th>
<th>EU 9</th>
<th>EU 6</th>
</tr>
</thead>
<tbody>
<tr>
<td>Supporting EU law</td>
<td>50.8 % (92)</td>
<td>47.4 % (27)</td>
<td>55.6 % (65)</td>
</tr>
<tr>
<td>Supporting national law</td>
<td>29.3 % (53)</td>
<td>28.0 % (16)</td>
<td>29.0 % (34)</td>
</tr>
<tr>
<td>Other opinion</td>
<td>19.9 % (36)</td>
<td>24.6 % (14)</td>
<td>15.4 % (18)</td>
</tr>
<tr>
<td>Total</td>
<td>100 (181)</td>
<td>100 (57)</td>
<td>100 (117)</td>
</tr>
</tbody>
</table>

Table 3 shows that to the extent courts express opinions, they support the EU law in 50.8 percent of the cases while opinions in favor of the national legislation only occur in 29.3 percent
of the requests for preliminary rulings. Furthermore, courts in the founding Member States (EU 6) appear to support the EU law to a slightly higher extent than the courts in EU 9 (55.6 % vs. 47.4 %) but this difference is not statistically significant.

In the second analysis the content of the opinions functions as the dependent variable. Since I am mainly interested in explaining the occurrence of opinions that either support national legislation or EU law I have excluded “other opinions”. Hence, I use the variable content of opinion as a binary dependent variable (support of national legislation vs. support for EU law) to estimate the logit models that are presented in table 3 below.

Table 4: Content of opinion – support for national legislation (Logit model)

<table>
<thead>
<tr>
<th>Independent variables</th>
<th>Model 1: All cases</th>
<th>Model 2: EU 6</th>
<th>Model 3: EU 9</th>
</tr>
</thead>
<tbody>
<tr>
<td>N: 145</td>
<td>N: 99</td>
<td>N: 43</td>
<td></td>
</tr>
<tr>
<td>Type of case: Sensitive</td>
<td>0.06 (0.38)</td>
<td>0.18 (0.49)</td>
<td>-0.17 (0.72)</td>
</tr>
<tr>
<td>Public support</td>
<td>2.27 (2.62)</td>
<td>15.43 (19.36)</td>
<td>9.98 (6.69)</td>
</tr>
<tr>
<td>Court level: final instance</td>
<td>1.14*** (0.39)</td>
<td>1.02*** (0.51)</td>
<td>0.33 (0.85)</td>
</tr>
<tr>
<td>Judicial review</td>
<td>-0.03 (0.46)</td>
<td>-0.46 (0.81)</td>
<td>1.20 (1.48)</td>
</tr>
<tr>
<td>Intra EU-trade (in 1000 euros)</td>
<td>0.0012 (0.0007)</td>
<td>0.0005 (0.001)</td>
<td>0.002 (0.005)</td>
</tr>
<tr>
<td>Member state party</td>
<td>-0.88*** (0.43)</td>
<td>-1.42** (0.58)</td>
<td>0.17 (0.79)</td>
</tr>
<tr>
<td>Constant</td>
<td>-1.12 (0.81)</td>
<td>-0.91 (1.11)</td>
<td>-4.32 (2.94)</td>
</tr>
<tr>
<td>Pseudo R2</td>
<td>0.0714</td>
<td>0.1281</td>
<td>0.0461</td>
</tr>
</tbody>
</table>

Note: number in parentheses are standard errors, * p < 0.10; * p < 0.05; *** p< 0.01.

73 The confidence intervals (95 % level) are 44.6-59.1 % for the opinions supporting EU law and 22.7-35.9 % for the opinions in support of national legislation and 13.1-24.6 % for the other opinions.
As can be seen in table 4 model 1 two variables are statistically significant at the 99 % confidence level. First, court level has a statistically significant impact on the type of opinions included; specifically, being a court of final instance (compared to lower courts) has a positive impact on the inclusion of opinions supporting national legislation. Once again calculating the marginal change in predicted probabilities, the likelihood that a court of final instance would include an opinion supporting national legislation is 26 percentage points higher compared to lower courts when holding the other independent variables constant at their means. This result is in line with hypothesis 2.

Furthermore, if the member state is a litigant in the case this has a negative impact on the inclusion of opinions supporting the national legislation. The likelihood that a court would include an opinion supporting national legislation when the member state is a party to the case is 21 percentage point lower compared to cases in which the member state is not a litigant when holding the other independent variables constant at their means. This behavior contradicts the hypothesis 5 which expected the national courts to express support for the national legislation when the member state was a party to the case. How can this result be understood theoretically? While this is something that needs to be further investigated, a suggestion is that when the national courts see that a member state (in any capacity) is party to the case it knows that the member state most likely will defend the national legislation in its written observation to the ECJ. Hence, there is no need for the national court to express an opinion in support of the national legislation if it is highly likely that the member state will express the exact same opinion.

When turning to the difference between courts in different member states model 2 shows that the courts in EU 6 are behaving in a similar way as suggested by model 1. Both the variables court level and member states as a party are statistically significant at the 95 % level. The likelihood that a court in the EU 6 would include an opinion supporting national legislation is 24 percentage points higher if it is a last instance court (compared to a lower court) when holding the other variables constant at their means. If a member state is a party to the case the likelihood

74 The results can also be illustrated by calculating the likelihood that a court would include an opinion supporting the national legislation given certain values on the other independent variables. For example, the likelihood the a court would express support for the national legislation if it is a last instance court in a legal system with judicial review and the case is politically sensitive but without the member state as party and the level of trade and public support are held at their means is 28 percentage point higher compared to a court that is not a court of final instance (but shares all the other characteristics
for a court to include an opinion supporting national legislation is 33 percentage points lower compared to if the member state is not a party. However, model 3 shows that in the group of court in EU 9 none of the independent variables reach statistical significance. The development of new hypotheses about what may explain the courts choice of opinion in these countries is therefore necessary.

**Conclusion**

This paper has taken the first steps towards testing the theoretical expectations underlying previous studies and developing a method for how to investigate two strategic decisions made by national courts in the preliminary ruling procedure. The empirical analyses presented in this paper are preliminary but the results are worth highlighting. Since the inclusion of opinions is by no means required by the procedural rules the fact that national courts choose to spend time on formulating opinions in a little more than 50 % of all the cases they refer to the ECJ support the idea that the national courts act strategically when interacting with the ECJ.

When turning to the statistical analysis of the occurrence of opinions only hypothesis 1 (that national courts are more likely to include opinions when the legal case is politically sensitive) proved to be statistically significant. Moreover, in the subsample of EU 6 none of the variables reached statistical significance. This is rather unexpected since a previous study of the courts in the group of EU 6 found that several of the hypotheses tested in this analysis had a significant impact on the occurrence of opinions. The reason for the different result should be investigated further in future studies but may be attribute to variations in the design of the studies or, changes in the court’s behavior over time.

The result of the second analysis, the content of the opinions, shows that the national courts are more inclined to support EU law (50.8 %) than the national legislation (29.3 %). When it comes to explaining the variation in type of opinion hypothesis two, court level, had a statistically significant impact. Specifically, the courts of last instance are more likely to include opinions supporting the national legislation than lower courts. Whether the member state is a party to the case also had a significant impact but not as predicted by hypothesis 5. Instead, having the member state present as one of the litigants decreased the likelihood that the national courts would include opinions supporting the national legislation.
There is no doubt that national courts are entrusted with an important and demanding task in the EU political system; formally they are requested to cooperate with a supranational court with a track record of challenging national legislation and fundamentally alter domestic policies. This raises the question of how national courts balance the demands from, on the one hand, the ECJ and its wish to further European integration and, on the other hand, the member states’ governments and their desire to maintain control over national policy. In relation to the general theories of judicial behavior in the EU, the views of judicial empowerment and sustained resistance, this study finds that although the national courts are including opinions supporting the national legislation the majority of the opinions express support for the EU law in line with the judicial empowerment view. However, the courts of final instance have a higher likelihood to include opinions supporting national legislation than lower courts and thus appear to be acting as expected by the sustained resistance perspective.

The results presented in this paper give support to the idea that the national courts act strategically when interacting with the supranational court in the preliminary ruling procedure. Future studies should focus on identifying and developing new hypotheses that can explain these strategic decisions, for example; why there appears to be a difference between the “old” and the “new” member states – perhaps by interviewing national judges with experience from the preliminary ruling procedure.
Appendix - The coding of the variables

Dependent variables

- Occurrence of opinion

0 = no opinion, 1 = opinion

The opinions were easily found by scanning the pdf document for keywords such as “according to the national court”, “referring court” or the name of the court in question, for instance, Bundesfinanzhof.

- Type of opinion

0 = opinion in support for EU law, 1 = opinion in support of national legislation

Independent variables

- Type of case

0 = less politically sensitive cases, 1 = more politically sensitive cases

A summary of the typical features of each type of case is described below.

A less politically sensitive case: The nature of the legal dispute is an interpretation of EU law or the nature of the legal dispute is two conflicting interpretations of EU law.

An example of a less politically sensitive case: An illustrative example is the dispute\textsuperscript{75} between two companies, Robeco Groep NV and Robelco NV, concerning the similarity of their company names. Robeco brought an action against Robleco before the national court claiming an order restraining Robelco from making use of the name Robelco or of any sign similar to Robeco as a trade name or company name. The legal question that arose in this dispute was how the word ‘sign’ as used in Article 5(5) of the Trademark Directive should be interpreted: Does it refer both to identical and similar signs? In a case like this and in others belonging to the category of

\textsuperscript{75} Case C-23/01
non-sensitive cases, the political cost for the Member State - the risk for a ruling contrary to the political preferences of the national government or, in other words, the risk of a ruling invalidating existing legislation, is negligible. The same goes for the potential economic cost. It is hard to imagine any outcome of this and similar cases where the Member State in question would suffer any noticeable economic costs.

*A more politically sensitive case:* The nature of the legal dispute is a conflict of laws (between EU law and national legislation) and the legal case is of high political salience (for example cases belonging to policy areas such social policy, welfare and immigration).

**Example of a politically sensitive case:** An example of a politically sensitive case is the dispute\(^\text{76}\) between a British citizen, Cyril Richardson, and the Secretary of State for health in United Kingdom concerning equal treatment of men and women. Mr. Richardson claimed that the national regulation, according to which women are exempt from prescription charges in connection with the provision of free medicine when they attain the age of 60, whereas men are only exempt from prescription charges when they attain the age of 65, was incompatible with EU law. This required an interpretation of Council Directive on the progressive implementation of the principle of equal treatment for men and women in relation to national regulations. In a case like this and in the other cases belonging in the politically sensitive category, the political cost for the Member State - i.e. the risk of a ruling contrary to the political preferences of the national government clearly exists. The Member State may be required to initiate legislative reforms. Also, if men would be exempt from prescription charges at the same age as women it would mean increased economic costs for the Member State.

To ensure the reliability of the analysis a researcher\(^\text{77}\) with judicial training performed an inter-coder reliability test on parts of the material. The result showed a high degree of inter-coder agreement. In around 80 percent of the cases there was an agreement between the two separate classifications.

- **Judicial procedure**

  0 = no judicial review, 1= Full or limited judicial review

- **Member state as a party**

\(^{76}\) Case C-137/94

\(^{77}\) The author is very grateful for the help provided by Lars Karlander, doctoral candidate at the Faculty of Law, Uppsala University.
0 = the Member State is not a litigant and 1 = the Member State is a litigant.

- **National court level**
  
  0 = lower courts (first instance courts and courts of appeal), 1 = Higher courts (courts of final instance)

- **Public support for the EU**

  A continuous variable measured as the difference in percentage between the respondents in a member state that consider the EU membership to be a “good thing” and the respondents that consider it to be a “bad thing”. The data comes from the Eurobarometer and is calculated as the average net support over the years 1992-2012.

**Control variables**

- **Intra EU Trade**

  A continuous variable measured as the level of intra EU trade (exports plus imports) for each Member State measured as an average in 1000 of euros for the years 1992-2011. Data source: Eurostat and OECD.

- **Years of membership**

  EU9 (Austria, Denmark, Finland, Greece, Ireland, Portugal, Spain, Sweden and the United Kingdom) = 0

  EU6 (Belgium, France, Germany, Italy, Luxembourg and the Netherlands) = 1
List of references


Volcansek, Mary L. Judicial Politics in Europe: P. Lang, 1986.