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The Making of Legal Rules

- Measuring legal rules is essential because rulemaking is the primary function of apex courts (Hansford and Spriggs 2006; Spriggs and Hansford 2001; Hansford, Spriggs, and Stenger 2013).



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- Scholars have engineered outcome variables that capture specific dimensions of EU judicial politics such as pro- and anti-integration, win–lose against national governments, or the density of caselaw citations (Larsson and Naurin 2016; Hermansen et al. 2025; Cheruvu 2025).



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- Scholars have engineered outcome variables that capture specific dimensions of EU judicial politics such as pro- and anti-integration, win-lose against national governments, or the density of caselaw citations (Larsson and Naurin 2016; Hermansen et al. 2025; Cheruvu 2025).
- **Failed to capture the substantive** meaning of legal rules encoded in the judgment texts.



Proposals & Rules in the EU Setting

Costs

- 72 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

Article 20 and Article 21(1) TFEU, read in the light of Articles 7 and 45 of the Charter of Fundamental Rights of the European Union,

must be interpreted as precluding legislation of a Member State that does not permit recognition and entry in the birth certificate of a national of that Member State of a change of first name and gender identity lawfully acquired in another Member State, when exercising the right to free movement and residence, with the consequence that that person is obliged to initiate, before a court, new proceedings for a change of gender identity in the first Member State, which disregard the change that was previously lawfully acquired in that other Member State.

In that regard, it is irrelevant that the request for recognition and entry of the change of first name and gender identity was made in that first Member State on a date on which the withdrawal from the European Union of the other Member State had already taken effect.

[Signatures]

(^{*1}) Language of the case: Romanian.

(¹) The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

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Proposals & Rules in the EU Setting

4. CONCLUSION

57. Eu égard aux considérations qui précèdent, la Commission propose à la Cour de répondre comme suit à la question posée par la juridiction de renvoi:

Les articles 18, 20 et 21 TFUE, lus en combinaison avec l'article 4, paragraphe 3, de la directive 2004/38/CE du Parlement européen et du Conseil du 29 avril 2004 relative au droit des citoyens de l'Union et des membres de leurs familles de circuler et de séjourner librement sur le territoire des États membres, modifiant le règlement (CEE) n° 1612/68 et abrogeant les directives 64/221/CEE, 68/360/CEE, 72/194/CEE, 73/148/CEE, 75/34/CEE, 75/35/CEE, 90/364/CEE, 90/365/CEE et 93/96/CEE, applicable par analogie, ainsi que les articles 7 et 45 de la charte des droits fondamentaux de l'Union européenne doivent être interprétés en ce sens que, s'agissant d'un citoyen de l'Union qui, selon un certificat délivré par les autorités compétentes de l'État membre d'accueil, est désigné comme ayant un nom et un sexe déterminés, l'État membre dont il est ressortissant est tenu, d'une part, de délivrer au citoyen de l'Union une carte d'identité ou un passeport lui permettant d'exercer son droit de circuler et de séjourner librement sur le territoire des États membres sans avoir obtenu au préalable une décision de justice reconnaissant le changement de sexe et, d'autre part, de reconnaître, comme tout



Proposals & Rules in the EU Setting

III. Conclusion

40. Compte tenu de ce qui précède, le gouvernement néerlandais suggère à la Cour de répondre comme suit aux questions préjudicielles :

"1) L'article 21 du TFUE, lu en combinaison avec les articles 1^{er}, 7, 20 et 21 de la charte, doit être interprété en ce sens qu'un État membre doit reconnaître les changements de sexe et de prénom et les inscrire dans le registre de l'état civil lorsque, conformément à la législation, ces changements ont été inscrits dans le registre de la population d'un autre État membre, dont la personne concernée a également la nationalité. À cette fin, les États membres doivent mettre en œuvre une procédure de reconnaissance accessible et efficace. En outre, l'article 4, paragraphe 3, de la directive 2004/38, en liaison avec l'article 7 de la charte, impose à l'État membre de délivrer à la personne concernée un passeport (ou une carte d'identité) sur lequel figurent le nom et le sexe modifiés ». [Or. 12]

« 2) La circonstance que le Royaume-Uni n'était plus un État membre de l'Union au moment de la demande de reconnaissance ne modifie pas la réponse à la première question préjudicielle ».

Mielle Bulterman

Charlotte Schillemans

Agents

La Haye, le 26 avril 2023



Proposals & Rules in the EU Setting

IV. Conclusion

24. Eu égard à ce qui précède, le gouvernement roumain propose à la Cour de rejeter comme irrecevable la demande de décision préjudicielle présentée par la Judecătoria Sectorului 6 Bucureşti (tribunal de première instance du sixième arrondissement de Bucarest).

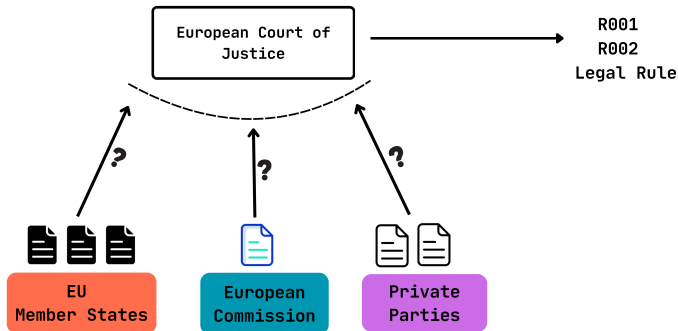
(sê) Emilia GANE, agent du gouvernement roumain pour la Cour de justice de l'Union européenne

(sê) Oana-Cătălina Ichim, conseillère



Information Available to the ECJ

Who's legal exegesis matters most to the ECJ for the making of legal rules?



Research Question

*Under what conditions do private actors and governments
displace the executive as the main source of court rulemaking?*



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- First, the legal service has provided the Commission with key arguments to legitimize legal enforcement of the treaties to great success (Vauchez 2015, pp.24).



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- Second, the Commission's legal service has institutional expertise accumulated over-time and across specialized DGs (Hofmann 2013).



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- Second, the Commission's legal service has institutional expertise accumulated over-time and across specialized DGs (Hofmann 2013).
- Third, the legal service is the 'ultimate repeat player' as it submits its observations in almost every single case referred to the court (Hofmann 2013; Leino-Sandberg 2021).



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- Third, the legal service is the 'ultimate repeat player' as it submits its observations in almost every single case referred to the court (Hofmann 2013; Leino-Sandberg 2021).

Expectation 1 (E1) The Court's legal rule part is closer to the European Commission proposal than to any EU member state or private litigant.



- Legal briefs are not just political threats but plausible legal alternatives that the Court might find more appealing – particularly in cases dealing with primary law (Lindholm et al. 2025; Mandujano Manriquez 2025).



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Expectation 2 (E2) The probability that the Court's legal rule is closer to the European Commission proposal decreases with the number of member states observations, and this heightens when the case deals with primary law.



- Private actors have historically been drivers of European integration despite formal opposition of some member states (Stone Sweet 2000, pp.162; Cichowski 2004, pp.171).



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- Recent studies show how the Court favors individuals' rights claims to build legitimacy as a protector of the weak and cultivate support networks among legal practitioners and citizens (Hermansen et al. 2025).

Expectation 3 (E3) The probability that the Court's legal rule is closer to the European Commission proposal decreases when the case deals with individual rights.



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Data Structure

Rule	Class	Actor	Proposal	Proposal text	ECJ embed- ding	Proposal embedding	Distance
R01	MS	PL	P01	Compensation is included in the tax base...	[-.232, -, .506]	[.107, -, .476]	.348
R01	MS	PL	P02	Compensation must be included...	[-.232, -, .506]	[.050, -, .420]	.290
R01	MS	HU	P03	Compensation is not included in the tax base...	[-.232, -, .506]	[.008, -, .436]	.110
R01	MS	HU	P04	Compensation is not included...	[-.232, -, .506]	[.020, -, .450]	.140
R01	EC	EC	P05	Compensation must be included in the tax base...	[-.232, -, .506]	[.107, -, .476]	.348
R01	EC	EC	P06	Compensation constitutes a subsidy linked to the price...	[-.232, -, .506]	[.091, -, .391]	.401

Note: R01 denotes one ECJ rule paragraph and P01–P06 denote actor proposals. Each embedding is a 1,024-dimensional numerical vector; the table displays only two illustrative coordinates, reported to three decimal places. The ECJ embedding is constant because every proposal is compared with the same rule.



Data Structure

Rule	Class	Actor	Proposal	Selected proposal text	Distance to ECJ
R01	MS	HU	P03	Compensation is not included in the tax base...	.110
R01	EC	EC	P05	Compensation must be included in the tax base...	.348

Note: For each rule and actor class, the selected proposal is the proposal with the smallest distance. Thus, P03 is selected for MS, while P05 is selected for EC.



Data Structure

Rule	MS actor	MS proposal	MS distance to ECJ	EC actor	EC proposal	EC distance to ECJ
R01	HU	P03	.110	EC	P05	.348

Note: After selecting the closest proposal within each actor class, each legal rule contributes one matched row.



Measuring Difference-in-Distance

ECJ

OJC_2023_0615_00_PAR001

Article 73 of Council Directive 2006/112/EC of 28 November 2006, on the common system of value added tax must be interpreted as meaning that: a lump-sum compensation paid by a local authority to an company providing public transport services, and intended to cover the losses incurred in the provision of those services, is not included in that company's taxable amount.

[-0.2318, -0.4224, ..., 0.0370, 0.2130]

EC

OBS_2023_0615_00_01_PAR001

Article 73 of the VAT Directive must be interpreted as meaning that, in circumstances such as those in the main proceedings, where a local authority organizing a transport service pays compensation to the carrier for the provision of that service, that compensation must be regarded as a subsidy directly linked to the price paid by a third party for that transaction and, consequently, must be included in the taxable amount.

[0.1069, -0.3634, ..., 0.1272, 0.3557]

$$\delta = 0.651$$



Measuring Difference-in-Distance

ECJ

0JC_2023_0615_00_PAR001

Article 73 of Council Directive 2006/112/EC of 28 November 2006, on the common system of value added tax must be interpreted as meaning that: a lump-sum compensation paid by a local authority to a company providing public transport services, and intended to cover the losses incurred in the provision of those services, is not included in that company's taxable amount.

[-0.2318, -0.4224, ..., 0.0370, 0.2130]

HUN

0BS_2023_0615_00_04_PAR001

Article 73 of Directive 2006/112 must be interpreted as meaning that compensation paid by a local authority to a separate entity (an operator) for the provision of public transport services is not included in the taxable amount referred to in that provision.

[0.0077, -0.3365, ..., 0.0197, 0.4035]

$$\delta = 0.109$$



Measuring Difference-in-Distance

Figure 1: Measuring semantic distance between the ECJ, the Commission and Hungary. When delta reaches zero it means that the meaning encoded both paragraphs is the exact same $\delta \rightarrow 0$

ECJ	EC	
<u>OJC_2023_0615_00_PAR001</u>	<u>OBS_2023_0615_00_01_PAR001</u>	
Article 73 of Council Directive 2006/112/EC of 28 November 2006, on the common system of value added tax must be interpreted as meaning that: a lump-sum compensation paid by a local authority to an company providing public transport services, and intended to cover the losses incurred in the provision of those services, is not included in that company's taxable amount.	Article 73 of the VAT Directive must be interpreted as meaning that, in circumstances such as those in the main proceedings, where a local authority organizing a transport service pays compensation to the carrier for the provision of that service, that compensation must be regarded as a subsidy directly linked to the price paid by a third party for that transaction and, consequently, must be included in the taxable amount.	$\delta = 0.651$
[-0.2318, -0.4224, -, 0.0370, 0.2130]	[0.1069, -0.3634, -, 0.1272, 0.3557]	
ECJ	HUN	
<u>OJC_2023_0615_00_PAR001</u>	<u>OBS_2023_0615_00_04_PAR001</u>	
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[-0.2318, -0.4224, -, 0.0370, 0.2130]	[0.0077, -0.3365, -, 0.0197, 0.4035]	

Note: The examples above were originally written in French and have been self-translated into English for illustrative purposes. However, all materials used in the analysis were retained in their original French.



Measuring Difference-in-Distance

$$\Delta = d(A, B) - d(A, C) \quad (1)$$

Equation 1 formalizes this logic as a difference-in-distance estimator. In the present example, A denotes the embedding of the ECJ's rule; B denotes the embedding of the Commission's proposal; and C denotes the embedding of the closest comparator proposal—in this case, Hungary's proposal. The term $d(A, B)$ corresponds to the large ECJ–Commission distance ($\delta = 0.651$), while $d(A, C)$ corresponds to the small ECJ–Hungary distance ($\delta = 0.109$). Their difference is

$$\Delta = d(A, B) - d(A, C) = 0.651 - 0.109 = 0.542.$$



Binarization of Delta Difference

$$f(\Delta) = \begin{cases} 1 & \text{if } \Delta < 0 \\ 0 & \text{if } \Delta \geq 0 \end{cases} \quad (1)$$



Estimation

Model for estimating: ECJ – Commission – Member states

$$\mathbb{P}(y_i = 1) = \eta_i + \kappa_i + \beta \mathbf{X} + \varepsilon_i^c \quad \text{with weights } \omega_i \quad (2)$$

η : count member states briefs.

κ : count member states briefs primary law.



Estimation

Model for Estimating ECJ – Commission – Private actors

$$\mathbb{P}(y_i = 1) = \tau_i + \beta \mathbf{X} + \varepsilon_i \quad \text{with weights } \omega_i \quad (3)$$

τ : Individual litigant before ECJ.



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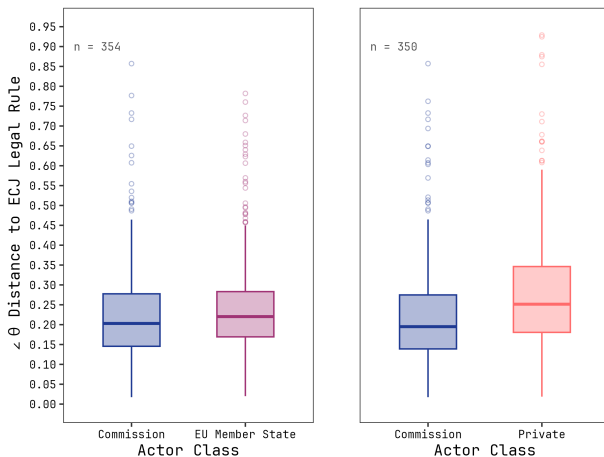
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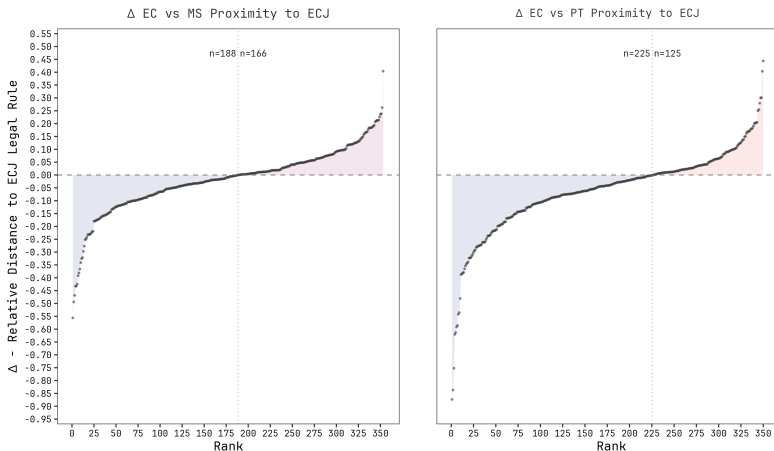
Median Distance to the ECJ's Rule



EC: Median 0.20 ; MS: Median 0.22 ; PT: Median 0.26



Distribution of ECJ closeness to Commission *vis-à-vis* member states and private actors respectively

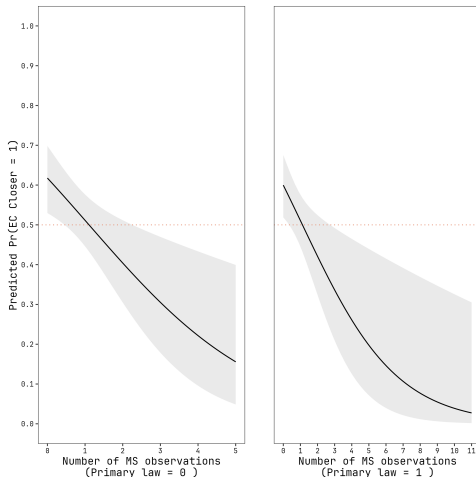


(Left) The Commission being closer than member states is 0.555 (SE = 0.0301)

(Right) The Commission being closer than private actors is 0.689 (SE = 0.0276)



Predicted probability of the Commission being closer than member states

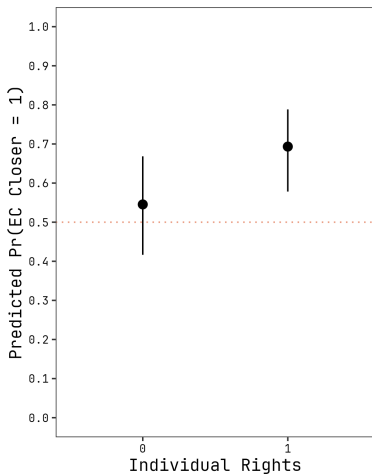


(Left) 9 percentage points (95% CI : 0.140, 0.035, $p < 0.001$).

(Right) 6 percentage points (95% CI : 0.102, 0.022, $p < 0.002$)



Predicted probability of the Commission being closer than private actors



0.545 to 0.693 = 14.8 percentage point increase.



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Main Lessons

- 1 Commission primacy is empirically overstated — success in litigation $\neq$ success in rulemaking. (Salomonic split 235 to 229 rulemaking instances).



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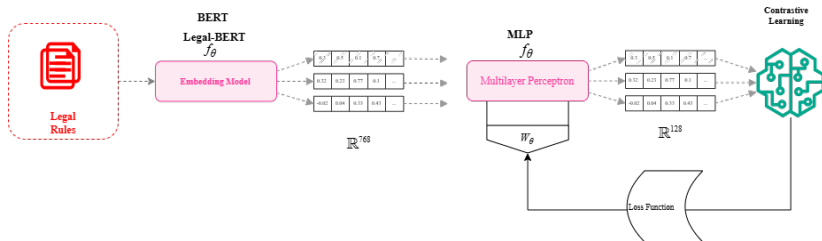


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- 2 This divergence varies by institutionally actor (member states matter regardless of primary/secondary law; individual-rights leveling doesn't extend to rules).
- 3 The semantic-distance method generalizes beyond the EU, with the Office of the Solicitor General and the U.S. Supreme Court as the clearest test case.



Next Research



⇒ TRAIN MLP using contrastive learning after data augmentation.

Feedback or Questions

Thank you for your time!!!

Contact

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References I

-  Cheruvu, Sivaram (2025). “Are European Court of Justice Judges Biased towards Their Member States?” In: *European Union Politics*, pp. 81–295. ISSN: 1465-1165. DOI: 10.1177/14651165251320841.
-  Cichowski, Rachel A. (2004). “Women’s Rights, the European Court, and Supranational Constitutionalism”. In: *Law & Society Review* 38.3, pp. 489–512. ISSN: 0023-9216. JSTOR: 1555142.
-  Hansford, Thomas G. and James F. Spriggs (2006). “Introduction”. In: *The Politics of Precedent on the U.S. Supreme Court*. Princeton University Press, pp. 1–15. ISBN: null. JSTOR: j.ctv36zrs3.5.



References II

-  Hansford, Thomas G., James F. Spriggs, and Anthony A. Stenger (2013). “The Information Dynamics of Vertical Stare Decisis”. In: *The Journal of Politics* 75.4, pp. 894–906. ISSN: 0022-3816. DOI: 10.1017/S0022381613000686.
-  Hermansen, Silje Synnøve Lyder, Tommaso Pavone, and Louisa Boulaziz (2025). “Leveling and Spotlighting: How the European Court of Justice Favors the Weak to Promote Its Legitimacy”. In: *British Journal of Political Science* 55, e158. ISSN: 0007-1234, 1469-2112. DOI: 10.1017/S0007123425100987.
-  Hofmann, Andreas (2013). *Strategies of the Repeat Player. The European Commission between Courtroom and Legislature*. ISBN: 978-3-8442-6195-0.



References III



Larsson, Olof and Daniel Naurin (2016). “Judicial Independence and Political Uncertainty: How the Risk of Override Affects the Court of Justice of the EU”. In: *International Organization* 70.2, pp. 377–408. ISSN: 0020-8183, 1531-5088. DOI: 10.1017/S0020818316000047.



Leino-Sandberg, Päivi (2021). “The Commission Legal Service”. In: *The Politics of Legal Expertise in EU Policy-Making*. Cambridge Studies in European Law and Policy. Cambridge: Cambridge University Press, pp. 137–196. ISBN: 978-1-108-83005-8. DOI: 10.1017/9781108908757.006.



Lindholm, Johan, Daniel Naurin, and Philipp Schroeder (2025). “Negative References to Amicus Briefs in Judicial Reasoning”. In: *Journal of Law and Courts* 13.2, pp. 616–641. ISSN: 2164-6570, 2164-6589. DOI: 10.1017/jlc.2025.4.



References IV

-  Mandujano Manriquez, Mauricio (2025). *The Apex Court's Dilemma: Rulemaking Alignment Under Hierarchical and Political Constraints*. DOI: 10.33774/apsa-2025-d4nld-v2.
-  Spriggs, James F. and Thomas G. Hansford (2001). “Explaining the Overruling of U.S. Supreme Court Precedent”. In: *Journal of Politics* 63.4, pp. 1091–1111. ISSN: 1468-2508. DOI: 10.1111/0022-3816.00102.
-  Stone Sweet, Alec (2000). “Constructing a Supranational Constitution”. In: *Governing with Judges: Constitutional Politics in Europe*. Ed. by Alec Stone Sweet. Oxford University Press, p. 0. ISBN: 978-0-19-829771-0. DOI: 10.1093/0198297718.003.0006.



References V



Vauchez, Antoine (2015). *Brokering Europe: Euro-Lawyers and the Making of a Transnational Polity*. Cambridge Studies in European Law and Policy. Cambridge: Cambridge University Press. ISBN: 978-1-107-04236-0. DOI: 10.1017/CB09781107326323.

