

Finding Law

Organized Interests and the Erosion of Executive Primacy

M. Mandujano Manriquez[†]

[†]ARENA Centre for European Studies
Department of Political Science
University of Oslo

13th Biennial Conference of the SGEU
Università di Catania, Catania, Italy. 1st – 3rd July 2026.



AGENDA

Puzzle

Theoretical Expectations

Research Design

Results

Conclusion



The Making of EU Legal Rules

- 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).



The Making of EU Legal Rules

- 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).
- 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).



Rules and Proposals

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.

[Top](#)



Rules and Proposals

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



Rules and Proposals

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



Rules and Proposals

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).

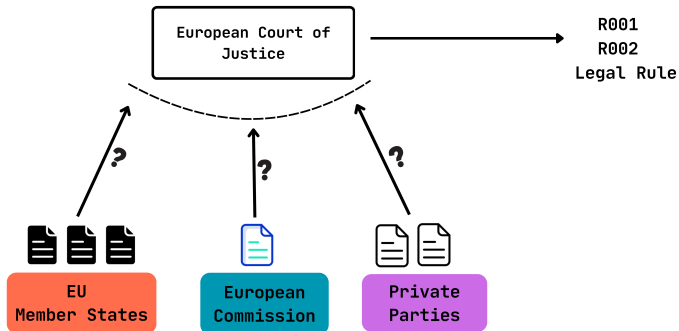
(sê) Emilia GANE, agent du gouvernement roumain pour la Cour de justice de l'Union européenne

(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?



AGENDA

Puzzle

Theoretical Expectations

Research Design

Results

Conclusion



- 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).



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



- 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).
- 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).



- 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).
- 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).



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).



- 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).



- 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).

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).



- 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).
- 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).



- 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).
- 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).



- 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).
- 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.



AGENDA

Puzzle

Theoretical Expectations

Research Design

Results

Conclusion



Measurement

ECJ		EC
JC_2024_0236_00_PAR001		OBS_2024_0236_00_02_PAR001
L'article 9 bis de la directive 2011/92/UE du Parlement européen et du Conseil, du 13 décembre 2011, concernant l'évaluation des incidences de certains projets publics et privés sur l'environnement, telle que modifiée par la directive 2014/52/UE du Parlement européen et du Conseil, du 16 avril 2014, doit être interprété en ce sens que: lorsque l'autorité compétente pour déterminer si un projet vis...	—	« L'article 9 bis de la directive 2011/92/UE du Parlement européen et du Conseil, du 13 décembre 2011, concernant l'évaluation des incidences de certains projets publics et privés sur l'environnement [(JO 2012, L 26, p. 1)]. inséré par la directive 2014/52/UE [du Parlement européen et du Conseil], du 16 avril 2014, [modifiant la directive 2011/92/UE concernant l'évaluation des incidences de certai...
[-0.0429, -0.1963, ..., 0.5030, -0.0226]		[-0.0790, -0.1408, ..., 0.5308, 0.0077]

 $\delta = 0.0480$

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



Measurement

ECJ

OJC_2024_0236_00_PAR001

L'article 9 bis de la directive 2011/92/UE du Parlement européen et du Conseil, du 13 décembre 2011, concernant l'évaluation des incidences de certains projets publics et privés sur l'environnement, telle que modifiée par la directive 2014/52/UE du Parlement européen et du Conseil, du 16 avril 2014, doit être interprété en ce sens que: lorsque l'autorité compétente pour déterminer si un projet vis...

[-0.0429, -0.1963, ..., 0.5030, -0.0226]

ECJ

OJC_2024_0236_00_PAR001

L'article 9 bis de la directive 2011/92/UE du Parlement européen et du Conseil, du 13 décembre 2011, concernant l'évaluation des incidences de certains projets publics et privés sur l'environnement, telle que modifiée par la directive 2014/52/UE du Parlement européen et du Conseil, du 16 avril 2014, doit être interprété en ce sens que: lorsque l'autorité compétente pour déterminer si un projet vis...

[-0.0429, -0.1963, ..., 0.5030, -0.0226]

EC

OBS_2024_0236_00_02_PAR001

« L'article 9 bis de la directive 2011/92/UE du Parlement européen et du Conseil, du 13 décembre 2011, concernant l'évaluation des incidences de certains projets publics et privés sur l'environnement [(JO 2012, L 26, p. 1)]. inséré par la directive 2014/52/UE [du Parlement européen et du Conseil], du 16 avril 2014, [modifiant la directive 2011/92/UE concernant l'évaluation des incidences de certai...

[-0.0790, -0.1408, ..., 0.5308, 0.0077]

= 0.0480

BEL

OBS_2024_0236_00_03_PAR001

« L'article 9bis de la directive 2011/92 doit être interprété en ce sens qu'il ne s'applique pas à l'appréciation de la question de savoir si les projets visés à l'article 4, paragraphe 2, de la directive sont soumis à une évaluation conformément aux articles 5 à 10 de la directive »...

[-0.1589, -0.5204, ..., -0.0467, 0.1806]

= 0.3733



Measurement

CALCULATE DELTA DIFFERENCE

$$\Delta = \text{dist}(A - B) - \text{dist}(A - C)$$



$$\Delta = \text{dist}(\text{ECJ} - \text{EC}) - \text{dist}(\text{ECJ} - \text{BEL}) = -0.3253$$



Estimation

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



AGENDA

Puzzle

Theoretical Expectations

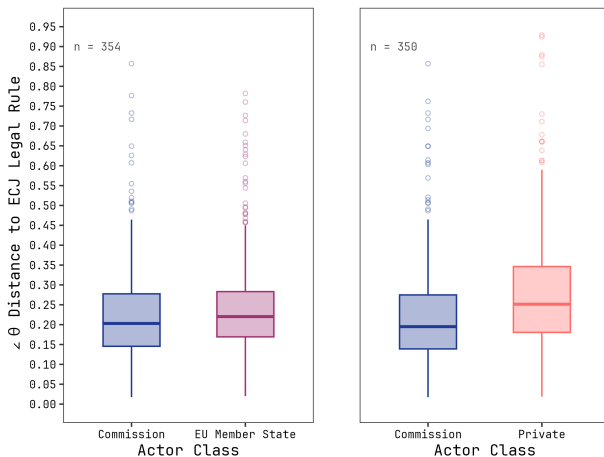
Research Design

Results

Conclusion



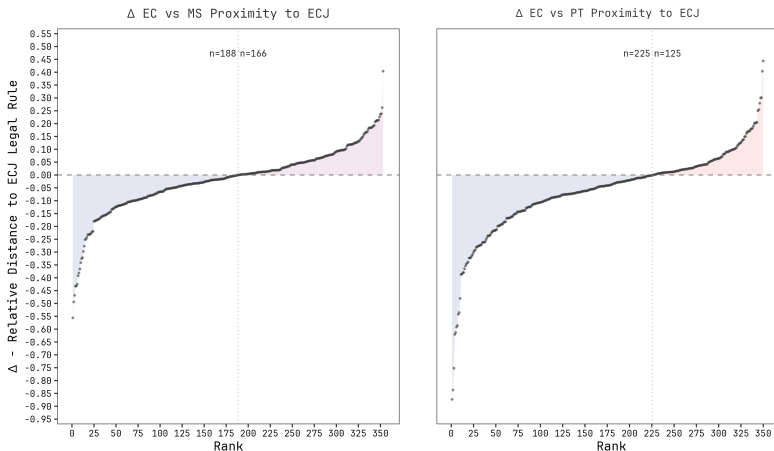
Median Distance to the ECJ's Rule



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

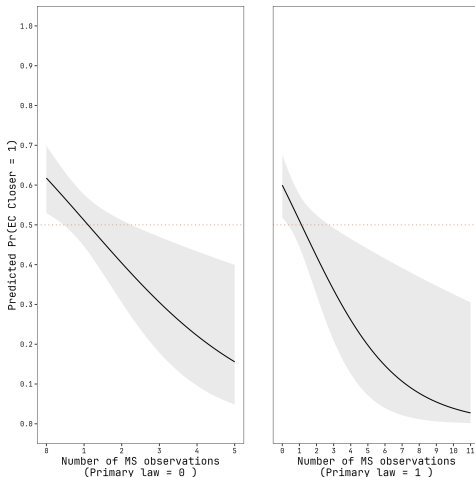


(Left) The Commission being closer than member states is 0.555 (SE = 0.0301)

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



Predicted probability of the Commission being closer than member states

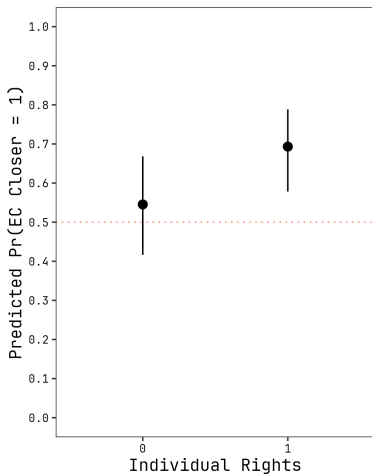


(Left) 9 percentage points (95% CI : 0.140, 0.035, $p < 0.001$).

(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.



AGENDA

Puzzle

Theoretical Expectations

Research Design

Results

Conclusion



Feedback or Questions

Thank you for your time!!!

Contact

Email: m.m.manriquez@arena.uio.no



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



Vaucher, 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.

