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Are CJEU judges impartial?

A quantitative analysis

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ARE CJEU JUDGES IMPARTIAL? A QUANTITATIVE ANALYSIS

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Abstract

Judges in the CJEU are assumed to be impartial, especially vis-à-vis their member states. However, the decision to propose the reappointment of CJEU justices depends on the governments of member states, which leads to an obvious conflict of interest. Despite this potential source of bias, there is surprisingly little literature regarding the impartiality of CJEU judges. To the best of my knowledge, this paper is the first one to solve this literature gap in the quantitative study of EU judicial politics and clarifies whether judges in the CJEU present a pro-national bias or not.

Using a multinominal probit model, I find that, in the cases involving member states as defendants, an increase in the percentage of judges from the defendant country in the panel ruling on the case –often infringement procedures– significantly increases the probability of the Court to decide in favor of the defendant state or to issue a mixed decision compared to ruling in favor of the plaintiff. Nevertheless, the bias is no longer significant when states are plaintiffs. If confirmed by further research, the findings of this paper could encourage procedural changes in the CJEU to prevent magistrates from ruling on infringement cases involving their member states.

ABBREVIATIONS

CJEU: Court of Justice of the European Union
ECtHR: European Court of Human Rights
TFEU: Treaty on the Functioning of the European Union
ICJ: International Court of Justice
MNP: Multinomial Probit

CONTENTS

1. INTRODUCTION

The Court of Justice of the European Union (CJEU) holds tremendous power at the apex of the EU legal system. As the supreme interpreter of EU law, its jurisprudence has become entrenched in the legal systems of all EU member states, for example by establishing the key principles of supremacy and primacy of EU law. Given the considerable power of the CJEU to shape the law of EU member states, it is essential to study how its judges make legal decisions.

Judges in the CJEU are assumed to be impartial, especially vis-à-vis their member states. In particular, magistrates are allowed to participate in cases involving their member states as well as legal persons from their countries. However, the decision to propose the reappointment of CJEU justices depends on the executives of member states. This situation could lead to an obvious conflict of interest: the judge can rule on cases involving the government that will eventually decide whether her tenure at the CJEU can be extended or not. Despite this potential source of bias, there is surprisingly little literature regarding the impartiality of CJEU judges. This is a puzzle: judges are assumed to be unbiased, but no one has checked if they are. Is this trust in CJEU judges to remain impartial a reality?

This paper has a clear objective: to solve this literature gap in the study of judicial politics of the EU and clarify whether judges in the CJEU present a pro-national bias or not. Consequently, this paper is innovative and crucially expands the current literature on EU judicial politics, following previous efforts in studying the impartiality of judges in the European Court of Human Rights (ECtHR) and the International Court of Justice (ICJ).

To do so, this paper takes a quantitative approach, using the recently published data from the CJEU Database Platform (Brekke et al., 2022). Although I do not have information on the individual opinions of justices, this article assumes that, given the consensual nature of the CJEU, each judge has a stronger influence on the final result as the size of the deciding chamber decreases. Econometrically, I develop a multinomial probit model to study the relationship between the final decision of the Court –i.e.: the plaintiff is successful, the defendant is successful, or mixed decision– and the percentage of judges coming from the member state that directly participates in a case, either as a plaintiff or as a defendant.

I find that in the cases involving member states as defendants –mainly infringement procedures–, an increase in the percentage of judges from the defendant country in the panel significantly increases the probability of the Court ruling in favor of the defendant state or issuing a mixed decision compared to ruling in favor of the plaintiff. Nevertheless, this bias is only present in the cases involving countries as defendants: when they are plaintiffs, the bias is no longer significant.

Hence, the results of this study suggest that judges are biased in favor of their home state in cases where the state is a defendant in the CJEU. If confirmed with further and more robust research, the findings of this paper could have consequences on the procedural rules of the CJEU –e.g.: encouraging changes to prevent judges from ruling on infringement cases involving their member states.

This article is structured as follows. Section 2 sets the theoretical background and introduces a review of the relevant literature informing my study, while Section 3 presents the dataset used. Furthermore, Section 4 thoroughly explains the methodology and econometric models of the paper, to then describe the key results of my analysis in Section 5. Finally, I discuss ways to improve my research and offer some conclusions at the end.

2. THEORETICAL BACKGROUND AND LITERATURE REVIEW

This paper studies the potential bias of the judges of the CJEU in favor of their member states in infringement cases. In section 2.1, I briefly introduce the relevant theoretical background vis-à-vis the impartiality of international judges.

Section 2.2 presents two branches of the existing literature that scientifically base my paper. On the one hand, section 2.2.1 describes the previous literature on the quantitative analyses of the bias of judges in international courts in favor of their home state. On the other hand, section 2.2.2 introduces the previous scientific work on quantitative analyses of the decisions of the CJEU.

2.1 THEORETICAL BACKGROUND

2.1.1 Why is impartiality important?

An international system based on the rule of law not only requires functioning institutions based on legal rules, but also an unbiased application of such rules by third parties –i.e.: impartiality (Goldstein *et al*, 2001). In this context, international courts with impartial judges play a key role in upholding international law.

From a more theoretical perspective, international relations experts agree that impartiality should be central for these international courts for a variety of reasons. Firstly, following the doctrine of Dworkin (1977), impartiality ensures that all nation-states are treated as equal in the specific field of international relations where the court operates. In other words, all actors are scrutinized only based on whether they respect their international rights and obligations rather than on power balances.

Secondly, constructivists like Reus-Smit (2004) argue that impartiality helps legitimize international courts because it isolates legal questions from political bargaining in the international realm.

Thirdly, Majone (2001), Keohane, Moracvsik, and Slaughter (2000), and other institutionalists defend that impartial international courts help provide unbiased information vis-à-vis compliance of the parties with international law, which encourages countries to cooperate and allows them to credibly commit to respect international agreements.

All these three schools of thought serve to illustrate how impartiality among CJEU judges is fundamental for the well-functioning of the EU legal system. First, using Dworkin's arguments, it protects smaller member states from the excessive influence of the most powerful EU countries in the application of EU law.

On top of that, from a constructivist point of view, the impartiality of EU judges isolates the application of EU law from political disputes between member states and ensures that it is respected even in contentious cases. As said, this legitimizes the Court and, in turn, EU law.

Finally, the rational institutionalist approach can also be applied to the case of the CJEU: an unbiased interpretation of EU law by the Court allows countries to overcome collective action problems because it commits them to EU integration. Namely, an impartial CJEU helps identify violations of EU law by member states, which discourages them in the first place to commit those transgressions.

2.1.2 Can international judges be impartial?

To answer this question, we need to present the concepts of 'independence' and 'impartiality'. Dannenbaum (2012:108) considers that a judge is independent to the extent that her "judicial decisions are not subject to any other agent's control or direct and improper influence." In addition, an impartial judge is such that "is personally free of bias, both with respect to the parties before the court and, equally importantly, with respect to interested others beyond the courtroom" (Dannenbaum, 2012:109). Therefore, if a judge is not independent, she will probably not be impartial.

In this sense, authors like Carrubba (2005) or Garrett and Weingast (1993) have argued that governments exert considerable influence on judges, even if their status is formally independent. For instance, there is ample research concluding that judges who can be reappointed by executives change their behavior to persuade the government to renew their term. In the context of the US states' supreme courts, Gray (2019) and Shepherd (2009) have found that renewable terms make judges adjust to the policy goals of their appointer.

Are CJEU judges independent and impartial? Although formally independent, the fact that they can be reappointed questions the extent to which they can be isolated from the control of the government. In turn, this can affect their impartiality: it is in the rational interest of judges to rule in favor of their national government because they want it to reappoint them. In other words, they could be biased and partial. Given this rising literature highlighting the negative impact of reappointments on the impartiality of judges, the ECtHR changed its rules in 2010, limiting the terms of its judges to a single non-renewable one (Hermansen and Naurin, 2021:3). Other international courts such as the Inter-American Court for Human Rights or the African Court of Justice and Human Rights also have established term limits.

Nevertheless, scholars like Alter (2006, 2008) or Majone (2001) have concluded that the ability of governments to monitor and penalize judges is insignificant and does not change the behavior of judges. In particular, the CJEU's institutional organization was designed specifically to undermine the ability of governments to monitor judges: rulings are consensual, individual opinions of judges are secret, and dissents are not allowed to prevent the positions of judges within the chamber to be revealed. These institutional characteristics help isolate judges from the governments of member states, fostering their independence and potential impartiality.

In sum, there is a theoretical ambivalence regarding the impartiality of CJEU judges. On the one hand, the fact that national governments decide whether to propose the reappointment of a CJEU judge undermines their independence and encourages them to vote according to the preferences of their national governments. On the other hand, concealing the individual opinions of each judge makes monitoring by governments difficult, shielding them and allowing them to be impartial. This dissertation aims at shedding light on this debate and helping inform the discussion about the impartiality of CJEU justices.

2.2 LITERATURE ON QUANTITATIVE ANALYSES OF INTERNATIONAL COURTS

2.2.1 Literature on quantitative analysis of the pro-national bias of international judges

The main piece of literature that examines the question of the bias of international judges in favor of their member states is Voeten (2008). In particular, he studies the impartiality of the judges in the ECtHR using a quantitative approach based on a dataset on public minority opinions by judges.

He identifies three different sources of bias. Firstly, the 'cultural bias' of judges, where they "assign different meanings to the same legal rules because they have internalized modes of legal reasoning specific to their domestic legal cultures" (Voeten, 2008:418). The author hypothesizes that judges tend to favor countries whose legal system has a similar legal tradition (i.e.: common or civil law).

Secondly, there is a 'pro-government bias', where judges rule in favor of their national governments to maximize their career prospects, especially when judges can be reappointed to their posts (Voeten, 2008:418). In this sense, Voeten expects judges whose countries offer high salaries to vote more often against their governments, given the attractive outside options in case they are not reappointed.

Thirdly, the 'personal bias': judges try to advance their personal policy preferences from the bench (Voeten, 2008:418). To operationalize this variable, Voeten uses the variable 'judicial restraint', previously created by Martin and Quinn (2002) for their analyses of the United States Supreme Court. This variable captures the tendency of judges to vote in favor or against governments and calculates how often the judge tends to side with the executive in cases where her government is not a party to the dispute.

Voeten does not find significant biases among judges in the ECtHR, but he concludes that the probability of supporting the national government increases when other judges from other countries also support the government. He also finds that national judges are more statistically significant to show support for their government in politically salient cases.

Posner and de Figueiredo (2005) undertake a similar approach to analyze the bias of judges in the ICJ and their probability to vote in favor of their home country or allies. In the case of the ICJ, votes during the deliberation of a case are made public, so it is easier to track the parties for which each judge has voted. They find that judges favor the states that appoint them and those whose wealth level is close to that of their member states.

My paper is inspired by these two pieces of research and their empirical strategies. However, there is a significant difference in the functional organization of the CJEU that prevents an immediate application of their statistical models: decisions of the CJEU are done by consensus and the individual opinion of each judge is unknown. I will address how to adapt the strategies of Voeten (2008) and Posner and de Figueiredo (2005) to my case in the Methodology section.

2.2.2   Literature on quantitative analyses of the CJEU

There is a broad set of papers that analyze different aspects of the functioning of the CJEU from a quantitative perspective. In this section, I present different papers that help inform my work.

To start with, Hermansen and Naurin (2021) collected data on the reappointments of CJEU judges and undertook a regression analysis to conclude that the probability of reappointment decreases when the political ideology of the government that appointed the judge and that of the executive which decides upon her reappointment changes. More specifically, their regression analysis suggests that a median change in the political ideology of a government compared to the government that appointed the judge increases the probability of replacement by 40% (Hermansen and Naurin, 2021:28). They also conclude that being the rapporteur in high-profile cases or holding elected leadership positions in the Court reduces the odds of being replaced (Hermansen and Naurin, 2021:30). Hermansen and Naurin (2021) help understand how the reappointment process of CJEU judges works, a key element to analyze whether judges could be biased in favor of their member states.

Furthermore, the work of Larsson and Naurin (2016) is relevant for our paper, particularly vis-à-vis the dataset used. They aim to explain how the risk of override by the Council affects the decisions of the Court –i.e.: signals from the governments of member states that they would be willing to change a specific EU statute if interpreted in a certain way by the CJEU. The authors collected and coded data on

preliminary references to the CJEU, which included names of the parties, originating member state, observations submitted by governments on the case, the content of the observations, and the final ruling, among others. A similar database will be used for this paper –see the section Data.

Finally, Pavone and Kelemen (2019) offer not only quantitative analysis of the politics of preliminary rulings but also include qualitative evidence in the form of interviews and comparative case studies. In particular, they discern how national courts in different hierarchical positions within the judicial systems of member states use the tool of preliminary rulings to maximize their power within the member state. To do so, they collect data on all preliminary references between 1957 and 2013 and classify the national courts where the request originated by their hierarchical position within the national judicial system –a similar dataset will be used in my paper. They find that higher courts in more centralized states have a higher probability of sending requests for preliminary references to the CJEU and that the probability of a higher court requesting a preliminary reference also increases over time.

In sum, the methodological strategies of these papers help base my empirical strategy presented in the section Methodology. Besides, their data collection also is fundamental for my paper, given that I will use a database based on their papers to develop my analysis –see more information in the Data section.

3. DATA

This part introduces the main aspects of the CJEU Database Platform and explains how the database was transformed to fit the purposes of this paper.

3.1 CJEU DATABASE PLATFORM

3.1.1 The database: origin and collection of the data

This paper uses the CJEU Database Platform, a brand-new dataset collected by the scholars of the Iuropa Project, a multidisciplinary group of researchers focusing on judicial politics of the EU. The dataset, presented in the paper Brekke, Fjelstul, Hermansen, and Naurin (2022), aims to collect and systematize information regarding all the cases decided by the Court of Justice and other supranational EU courts since 1952. As seen in the literature review, many authors had already started to collect data on CJEU cases –e.g.: Larsson and Naurin (2016), Pavone and Kelemen (2019), or Hermansen and Naurin (2021)–, but the efforts had previously been uncoordinated and lacking a holistic approach. Brekke et al. (2022) and the CJEU Database Platform correct this situation and offer the most comprehensive database on the cases and rulings of the Court of Justice and related courts ever.

The dataset has been created by aggregating all rulings of the Court of Justice (since its creation in 1952), the General Court (since its creation in 1986), and the Civil Service Tribunal (from its creation in 2005 to its dissolution in 2016). The sources of the dataset are strictly official –i.e.: the Registry of the CJEU, InfoCuria, and EUR-Lex. The authors of the database organized the data collected in nine datasets, of which I will use the following four:

- DECISIONS: it covers all the decisions of the CJEU (judgments, orders, opinions of the Advocate General…) and includes data on the parties of the cases.
- PROCEDURES: it provides information about the outcome of each decision, together with the type of legal procedure associated with each decision.
- ASSIGNMENTS: it includes the name of the judges, panel size, and chamber of the CJEU that ruled in each decision.

- JUDGES: it gives information regarding the country of origin of the judge, her professional background (if the judge was a lawyer, a judge, a politician, or a civil servant before joining the CJEU), the start and end dates of her tenure, and other personal information.

3.1.2 Adaptation and transformation of the CJEU Database Platform

The original dataset has a total of 23,631 observations, which represent all the decisions of the Court of Justice and other European courts since 1952. Nonetheless, I undertook small arrangements to be able to effectively use the CJEU Database Platform as the basis for my quantitative analysis. I used Python to code all the changes.

I start by merging ASSIGNMENTS and JUDGES, obtaining a dataset with one observation per judge per decision plus all the information of each judge. I then merge this dataset with DECISIONS to add information about the parties of each decision.

At this point, I create two additional variables. First, judge_plaintiff is 1 if the judge comes from the state that participates as a plaintiff of the case and 0 otherwise. Second, judge_defendant is constructed similarly but refers to states acting as defendants in a case. I manually code the values of these two variables for the observations with more than one state as a plaintiff or defendant (around 100 decisions). Note that these two variables only consider the cases where the state itself is part of the procedure. In other words, the value of both judge_plaintiff and judge_defendant will be 0 in decisions where a state does not directly take part –i.e.: cases involving only legal persons or EU institutions.

This paper is only interested in keeping information about judges if they rule on a case directly involving their member state. This is because these cases can most obviously generate a conflict of interest: a judge rules on a case involving her member state, which can decide whether to reappoint her or not. In this context, cases involving legal persons such as firms or citizens might not generate as many conflicts of interest.

Consequently, I collapse the dataset to have only one observation per decision, keeping only information about the judges if they are part of a panel that rules on a case involving their member state –until now, we had one observation per decision per judge. Once the dataset is collapsed, I merge it with PROCEDURES to add the information about the outcome of each decision. I eliminate all decisions that do not have a state as either the plaintiff or the defendant, which reduces the size of the sample to 3,328 cases.

Originally, Brekke et al. (2022) code the information about the outcomes of the decision using four variables: successful, unfounded, inadmissible, or unnecessary. More concretely, the variable successful signals that the plaintiff is successful, whereas unfounded, inadmissible, and unnecessary all lead to a legal defeat of the plaintiff. Therefore, I simplify them by creating three summarizing variables. First of all, plaintiff_successful is a dummy variable that takes a value of 1 if successful is 1 and unfounded, inadmissible, and unnecessary all have a value of 0. Contrarily, defendant_successful is also a dummy that takes a value of 1 if successful is 0 and if at least one of the variables unfounded, inadmissible, or unnecessary has a value of 1. Lastly, mixed_decision is a dummy that is 1 if successful is 1 and at least one of the variables unfounded, inadmissible, or unnecessary is also 1 –denoting that the judges ruled that some aspects of the plaintiff's claims are valid while others are not.

Moreover, I create the variables perc_plaintiff_judges and perc_defendant_judges. They calculate the percentage of judges in a panel that comes from the member state that acts as a plaintiff or a defendant in a case respectively. TABLE 1 summarizes the variables included in my final dataset.

TABLE 1: Overview of the variables of this paper's dataset.

Variable	Measure	Key information
iuropa_decision_id	String	ID number uniquely identifying each CJEU decision given by the Iuropa Project.
ecli	String	ECLI number for each decision given by CJEU.
celex	String	CELEX number for the document if it appears in EUR-Lex.
formation	Qualitative	Formation of the Court ruling the decision (plenary, chamber).
panel_size	Numeric	Number of judges in the panel ruling the decision.
judge	Qualitative	Name of the national judge part of the panel ruling a decision involving her own member state.
iuropa_judge_id	String	ID number uniquely identifying each CJEU judge.
member_state	Qualitative	Country whose national judge is part of the panel ruling a decision involving this same state.
start_date	Date	Date that the national judge started her tenure at the CJEU.
end_date	Date	Date that the national judge ended her tenure at the CJEU.
court	Dummy	The Court was the Court of Justice (1) or the General Court (0).
decision_date	Date	Date when the decision was published.
plaintiff	Qualitative	Plaintiff (state, EU institution/agency, official or legal person).
defendant	Qualitative	Defendant (state, EU institution/agency, official or legal person).
plaintiff_2004	Dummy	The plaintiff state joined the EU after 2004 (1) or not (0).
defendant_2004	Dummy	The defendant state joined the EU after 2004 (1) or not (0).
judge_plaintiff	Dummy	A judge from the state which acts as a plaintiff is part of the panel (1) or not (0).
judge_defendant	Dummy	A judge from the state which acts as a defendant is part of the panel (1) or not (0).
infringement	Dummy	The procedure was an infringement procedure (1) or not (0).
annulment	Dummy	The procedure was an action for annulment (1) or not (0).
appeal	Dummy	The procedure was an appeal (1) or not (0).
successful	Dummy	At least one claim of the plaintiff was successful (1) or not (0).
unfounded	Dummy	At least one claim of the plaintiff was unfounded (1) or not (0).
inadmissible	Dummy	At least one claim of the plaintiff was inadmissible (1) or not (0).
unnecessary	Dummy	At least one claim of the plaintiff was unnecessary (1) or not (0).
plaintiff_successful	Dummy	All claims of the plaintiff were successful (1) or not (0).
defendant_successul	Dummy	All claims of the plaintiff were unfounded, inadmissible or unnecessary (1) or not (0).
mixed_decision	Dummy	Some claims of the plaintiff were successful and some were unfounded, inadmissible or unnecessary (1) or not (0).
decision	Categoric	Plaintiff is successful (0), defendant is successful (1), mixed decision (2).
perc_plaintiff_judge	Numeric	Percentage of the judges of a panel that ruled on a case involving a state that are nationals of the state acting as a plaintiff.
perc_defendant_judge	Numeric	Percentage of the judges of a panel that ruled on a case involving a state that are nationals of the state acting as a defendant.

4. METHODOLOGY

This part introduces the methodology that will allow us to quantitatively determine whether CJEU judges tend to be biased in favor of their member state in cases directly involving it. Section 4.1 presents the identification strategy and econometric specifications used in the quantitative analysis. Section 4.2 explains the two different models used in this paper.

4.1 IDENTIFICATION STRATEGY

4.1.1 Dealing with the anonymity of individual opinions

This paper aims to explain whether the final decision of a panel in CJEU cases involving a member state depends on whether there is a judge in the chamber from that member state. Judges in most international courts can publish individual opinions on a case and their votes in deliberations are public. This simplifies the study of whether these judges are biased in favor of their countries since we know whether the judge directly votes for its country or not in all proceedings.

However, the internal functioning of the CJEU is different: panel opinions are consensual, the position of each judge inside the panel is secret, and no particular votes or opinions can be published. This insulates judges from national politics. Notably, if their opinions are kept secret, governments cannot accuse them of being biased in favor or against their states and judges can rule without pressure. At the same time, this particular arrangement also complicates the objective of this paper: to analyze whether magistrates are biased in favor of their states or not.

I minimize this anonymity problem by operationalizing a variable that will allow us to causally study impartiality in the CJEU. In this context, I created two variables calculating the percentage of judges in a panel ruling on a case involving a member state that comes from that same member state. More specifically, one of them (perc_plaintiff_judge) shows the percentage of judges coming from the plaintiff state while the other (perc_defendant_judge) calculates the percentage of judges coming from the defendant state. These variables address the issue of anonymity of opinions in the following way. If a judge was biased in favor of her country and was to rule in a case involving her member state, she would try to influence the panel into ruling in favor of her state. Yet, given that opinions have to be consensual, her power to influence the panel will be higher in small chambers compared to big ones. In a chamber of three judges, one single national judge can exert a considerable influence (she represents 33% of the panel), while a national judge can barely push the full court of 27 judges towards her theses (she is only 3.7% of the chamber). Therefore, using the percentage of national judges in a panel allows us to account for the fact that judges will more effectively influence the Court in small chambers compared to larger ones.

This approach to studying the impartiality of CJEU judges is innovative: there is still no study in the literature quantitatively analyzing the potential national bias of CJEU judges. This anonymity problem has so far prevented scholars from studying the issue (Brekke et al., 2022), but the creation of the CJEU Database Platform this year has allowed me to construct the variables involving the percentage of national judges coming from the plaintiff and defendant state that help tackle the problem. Hence, to the best of my knowledge, this dissertation is the first paper of its kind to address the impartiality of the CJEU judges and represents a notable step forward in the field of the quantitative analysis of EU judicial politics.

4.1.2 Dealing with the process of appointing a panel

The President of the Court has the power to decide which chamber will rule on each of the cases and who the judge rapporteur will be. More specifically, Hermansen (2020) finds that the President uses this power strategically to ensure that the panel ruling on each case is seen as impartial and legitimate. As a consequence, magistrates are allowed to participate in a panel ruling on a case involving their member state only in relatively uncontroversial cases with strong settled case law.

Thus, this strategic allocation of cases will reduce the possibility to find that judges are biased in favor of their state. However, this strengthens my models: in reality, national bias will be much deeper than the one I can potentially find. This is because I can only identify national bias in the context of a strategic allocation of cases by the President that aims to precisely reduce such biases. In other words, the judges' national biases would be extremely strong if I can still identify them even in this sample where the President tries to reduce national biases.

4.1.3 Econometric specification: multinomial probit model (MNP)

The econometric model that allows me to identify the relation between the percentage of national judges in a panel and the final decision of the CJEU in a case is a MNP, following Greene (2000). Let us explain why this model ensures a correct causal interpretation of our results.

To start with, the main dependent variable of this project is the decision of the Court, which is a categorical variable with three possible values. Firstly, the decision is coded with a value of 0 if the panel ruled that all claims of the plaintiff are successful. Secondly, a value of 1 means that the panel ruled that all claims of the plaintiff are unsuccessful –either unfounded, inadmissible, or unnecessary. In other words, the defendant is successful. Thirdly, the panel issued a mixed decision if decision is coded with a value of 2 –i.e.: some of the claims of the plaintiff were deemed successful while others were not. Given the nature of the dependent variable, the MNP appears as an obvious choice to specify the quantitative analysis of my dissertation. More especially, MNP allows us to use a categorical unordered variable like the Court's decision as our dependent variable and yields causal results if no relevant variables are omitted, as explained by Wooldridge (2001).

The general formula of the MNP is the following:

$$p_{ij} = p(decision_i = j) = \phi(x'_{ij}\beta) = \phi(\beta_0 + \beta_1 x_{1ij} + \beta_2 x_{2ij} + \cdots + \beta_k x_{kij}) \quad \textbf{(1)}$$

This means that the probability of the CJEU in case i making the decision = j is a function ϕ (standard normal distribution) of the different independent variables x and its coefficients β. There are 3,328 cases i and 3 possible outcomes of the variable decision –j = 0 if plaintiff is successful, j = 1 if defendant is successful, and j = 2 if there is a mixed decision.

In a MNP, we cannot directly interpret the coefficients β. Rather, a baseline category of decision has to be set, compared to which the coefficients will be interpreted. More general interpretation measures can be used, such as marginal effects or predicted probabilities. The Results part will more deeply interpret the coefficients of our models.

I also discard other econometric specifications given the nature of my variables. First of all, the traditional linear regression using ordinary least squares is ineffective in my model, given that the decision of the CJEU –my dependent variable¬– is not numerical.

Secondly, a standard probit model cannot be used, given that my dependent variable has three categories and not two.

Thirdly, I discard the multinomial logistic model because it has the additional assumption of the independence of irrelevant alternatives (IIA), which the MNP does not require (Álvarez and Nagler, 1998). IIA implies that "the relative probability of someone choosing between two options is independent of any additional alternatives in the choice set" (Benson et al., 2016). Although it could be possible to assume IIA in our dataset, I still prefer not to use multinomial logistic models to avoid any mistakes in the estimation that could hamper its causal interpretation. The only inconvenient to use the MNP over the multinomial logistic model would be the computational intensity required to run the MNP (Kropko, 2008). Yet, this is not a major problem in our dataset, which is not massive. Besides, I prioritize the probit version given that most authors in previous studies regarding judicial politics have also used probit specifications (see section 4.4).

4.1.4 Probit models in previous literature

One of the main articles on judicial politics that inspires this dissertation is Voeten (2008), which analyzes different sources of biases in judges of the ECtHR. He uses an advanced version of the probit model, given that his dependent variable is binary (expressing support for the national government or not) . Posner and de Figueiredo (2005) also develop a probit regression to determine the probability of a judge in the ECJ voting in favor of their home country or allies. Thus, their econometric specifications are similar to mine, with the difference that their dependent variable is binary, while the Court's decision in my study is categorical.

Larsson and Naurin (2016) use a similar empirical strategy to explain how a potential override by member states of a CJEU ruling affects the decision itself. They use an ordered logistic regression analysis with the dependent variable being the propensity of the Court to rule in favor of more European integration, preserving national sovereignty, or taking an ambivalent position. In their article, the dependent variable is more clearly ordinal than ours: support for more or less European integration can be ordered, while there is no order in the plaintiff or the defendant being successful in our case. This is why an ordered model would not apply to my analysis.

Finally, Pavone and Kelemen (2019) study how national courts in different hierarchical positions within the judicial systems of member states use the tool of preliminary rulings to maximize their power within the member state. They undertake a logistic regression analysis to explain what drives higher courts to request a preliminary reference. Pavone and Kelemen (2019) do not use the multinomial specification of the logistic model because their dependent variable is binary, unlike mine (requesting or not a preliminary reference). Yet, their econometric strategy is similar to the one in this paper.

Summing up, two previous articles have used probit specifications in different forms, while two others have focused on logistic models. I decide to prioritize the probit model given that both studies that tackle the issue of biases of international judges have used it. Contrarily, the two papers using logistic regressions do not exactly focus on whether international judges are impartial.

4.2 TWO SPECIFICATIONS

I apply the MNP in two different specifications, depending on the sample and variables used. Both models study whether the percentage of national judges in a panel explains the decision of the Court – i.e.: whether having a high percentage of national judges in the chamber ruling on a case involving a member state makes this country more likely to win. To do so, models 1 and 2 restrict the sample to cases where a state is a plaintiff or a defendant respectively. I divide the sample to more properly identify if the potential bias of judges is expressed in all cases or only in a subset of them. The main characteristics of my models are summarized in TABLE 2.

TABLE 2: Main information of the five models of this paper.

	Model	Sample	Dependent	Independent
Model 1	MNP	Cases with state as plaintiff	Decision	*perc_plaintiff_judge, date, court, plaintiff_2004*
Model 2	MNP	Cases with state as defendant	Decision	*perc_defendant_judge, date, defendant_2004*

4.2.1 Model 1: sample restricted to plaintiffs

As explained, model 1 restricts the sample to the cases with member states as plaintiffs. The dependent variable in model 1 is decision. In particular, decision = 0 (plaintiff is successful) will be our baseline category in the MNP. The core independent variable is the percentage of judges in the panel coming from the state that acts as a plaintiff in the case (perc_plaintiff_judge).

Moreover, I include several control variables to reduce the omitted variable bias and ensure a causal interpretation of my results. Firstly, I add court as a control variable, given that the behavior of judges might change along courts. For example, judges of the Court of Justice might be more pressured to rule in favor of their member state than judges of the General Court, given that the latter body often allows for an appeal to the Court of Justice.

Secondly, I control for the variable date, acknowledging that judges earlier in the integration process might have been more biased than current judges. Besides, cases in later dates will have less percentage of national judges in a panel because there are more judges to choose from. Namely, at the beginning of the European Communities, cases in the CJEU involving member states had to be resolved by judges coming from only 6 countries. Nowadays, judges can be chosen from a pool of 27 countries. Therefore, it was more possible that a magistrate would rule on cases involving her country in 1952 than now.

Lastly, I add plaintiff_2004 as a control variable. This dummy has a value of 1 if the plaintiff joined the EU in the 2004 enlargement or after, and 0 if the state joined the EU before that. This controls for the fact that maybe more recent members have less impartial judges, given their relatively short membership in the Union.

Mathematically, model 1 can be summarized as follows:

$$p_{ij} = \phi\big(\beta_0 + \beta_1 * perc\_plaintiff\_judge_{ij} + \beta_2 * court_{ij} + \beta_3 * date_{ij} + \beta_4 * plaintiff\_2004_{ij}\big) \quad \textbf{(2)}$$

Note that p_{ij} is the probability of the CJEU in case *i* making the *decision = j*. Case *i* involves a member state as a plaintiff in model 1.

4.2.2 Model 2: sample restricted to defendants

Model 2 is very similar to model 1, but now the sample is restricted to the CJEU cases with member states as defendants. The dependent variable is still decision, but the key explanatory variable in model 2 becomes perc_defendant_judges –i.e.: the percentage of judges in the panel coming from the state that acts as a defendant in the case.

Control variables are slightly different in model 2. First of all, it does not include court as a control variable because all the cases are ruled by the Court of Justice –i.e.: no cases are ruled by the General Court. Furthermore, instead of plaintiff_2004, I control for defendant_2004, which has a value of 1 if the defendant joined the EU in the 2004 enlargement or after, and 0 if the state joined the EU before that. Following the same rationale as in model 1, defendant_2004 aims to control for the fact the relatively short integration history of more recent member states might decrease the impartiality of their judges. Finally, the control variable date is still included, following model 1.

Mathematically, model 2 can be expressed as follows:

$$p_{ij} = \phi\big(\beta_0 + \beta_1 * perc\_defendant\_judge_{ij} + \beta_2 * date_{ij} + \beta_3 * defendant\_2004_{ij}\big) \quad (\mathbf{3})$$

Again, p_{ij} is the probability of the CJEU in case *i* making the *decision = j*. Case *i* involves a member state as a defendant in model 2.

5. RESULTS

This part summarizes the main results of my dissertation. Section 5.1 descriptively analyzes the variables used in this project, while section 5.2 interprets the econometric output of the two models developed in this dissertation.

5.1 DESCRIPTIVE ANALYSIS

5.1.1 Characteristics of the dataset

My dataset has a total of 3,328 observations, which include all the cases in the CJEU that involve a member state either as a plaintiff or as a defendant since 1952. Nonetheless, I divide this sample into two different subsamples for each of the two models.

For model 1, I use all the cases involving a member state as a plaintiff, a total of 893 decisions. More specifically, Italy, Spain, and Greece are the most usual plaintiffs in CJEU cases, with 147, 131, and 85 cases respectively. Contrarily, Croatia has never been a plaintiff, while Malta has only filed a case in the CJEU as a plaintiff once. In terms of cases per year, the picture is quite similar: Spain is a plaintiff in 3.63 cases per year, and both Italy and Greece file 2.07 cases per year. In contrast, Croatia has filed 0 cases per year; whereas Malta is plaintiff in 0.06 cases per year, and Finland and Latvia file 0.11 cases per year. **FIGURE 4** in the Appendix provides additional information.

Moreover, practically all cases where a state acts as the plaintiff are actions for annulment (87%). This trend is reasonable because this procedure allows countries to try to annul EU legislation passed by EU institutions (Article 263 TFEU). The rest of the cases involving a state as a plaintiff are appeals.

Among the 893 decisions involving a member state as a plaintiff, a judge from the plaintiff state is part of the panel ruling on that case in 272 decisions, representing 33% of the total cases with a state as a plaintiff. In these 272 decisions, 15.9% of the panel on average consists of national judges, with an average panel size of 8.21. **FIGURE 1** graphically shows the countries that most typically have judges ruling on cases involving their own member states as plaintiffs. Italian judges tend to participate the most in cases involving their member state as a plaintiff: in 65 decisions, an Italian judge was part of the panel ruling on a case brought by Italy in the CJEU. Italy is followed by Germany (51), France and the Netherlands (39 each). Nine member states have never been a plaintiff in a panel composed by a judge from their countries.

FIGURE 1: Number of decisions per country where a judge has been part of a panel ruling on a case involving her own member state as a plaintiff in the CJEU (1952-2022).
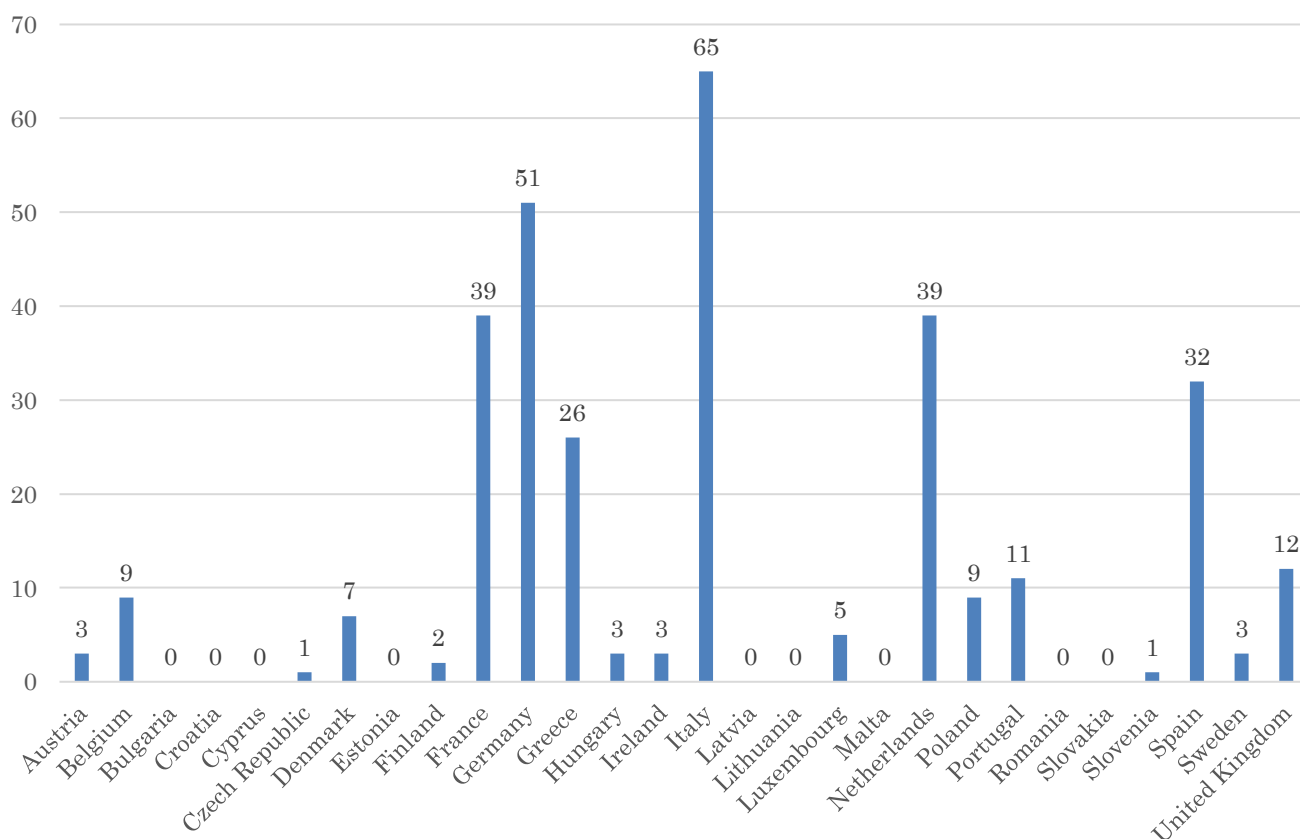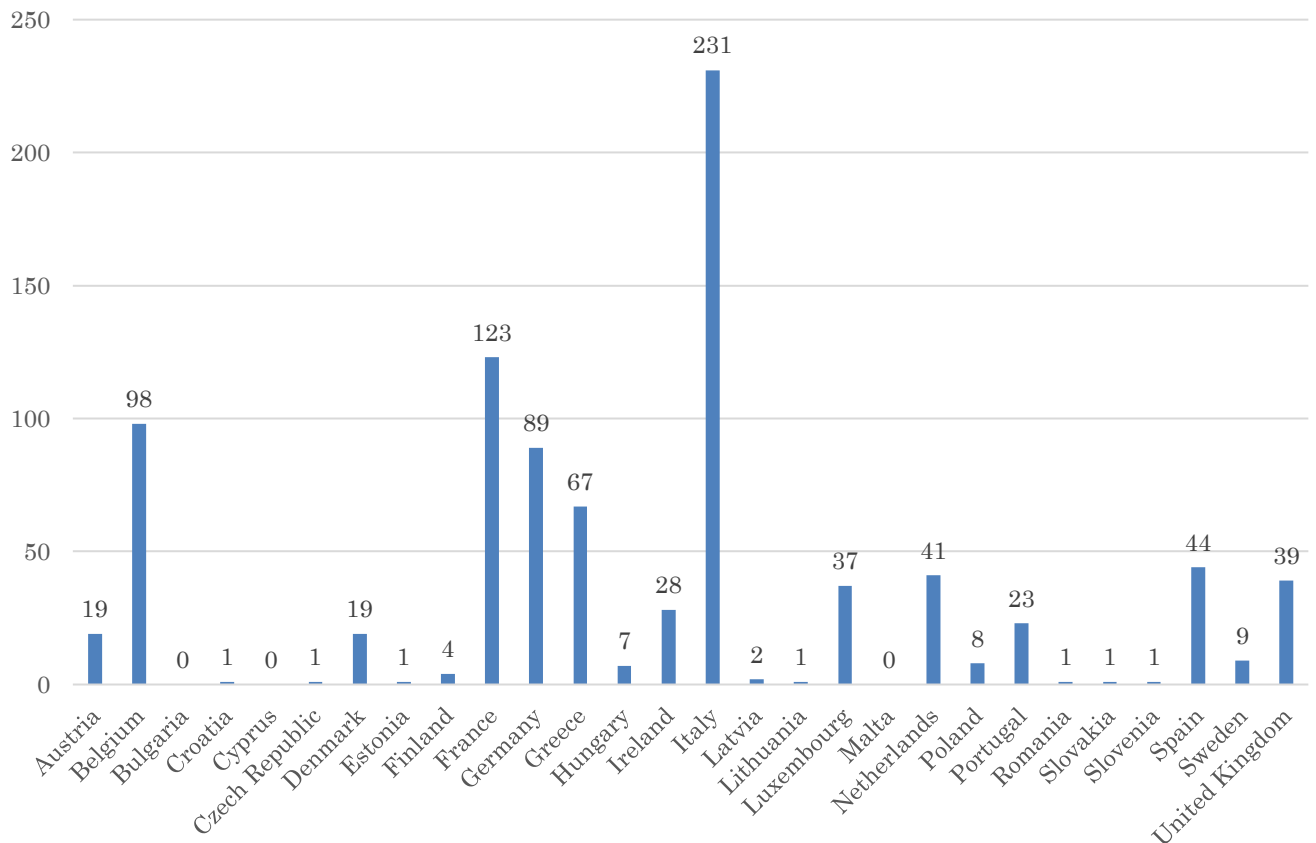
Source: CJEU Database Platform.

The subsample used in model 2 includes all the cases involving a member state as a defendant, reaching 2,435 observations. Italy is also the member state that most usually acts as a defendant in the CJEU, in a total of 422 cases. Well behind lie France and Belgium, defending 252 and 247 cases each. Au contraire, Croatia has only been a defendant in a CJEU case twice, whereas Latvia and Lithuania have defended 3 cases. Still, the picture becomes familiar when analyzing it in terms of cases per year: Italy remains at the top, defending almost 6 cases per year, followed by Greece and Spain, with 5.51 and 5.28 cases per year respectively. In opposition, Latvia and Lithuania defend only 0.17 cases per year, while Estonia and Croatia are defendants in 0.22 cases per annum. **FIGURE 5** in the Appendix provides additional information.

Furthermore, infringement procedures represent 98% of the subsample of model 2 (2,374 decisions out of 2,435). This trend also has a legal rationale: infringement actions, governed by Articles 258-260 TFEU, are designed to allow the Commission to sue member states for failure to fulfill their obligations under EU law.

Besides, 829 decisions out of the 2,435 involving member states as defendants were ruled by a panel including a judge from the defendant member state. In these cases, national judges represent 15.8% of the panel on average, with an average panel size of 7.71 judges. **FIGURE 2** graphically shows the countries that most typically have judges ruling on cases involving their own member states as defendants. Italian judges are also the ones that more usually take part in cases involving their state as a defendant (231 decisions), followed by France (123) and Belgium (98). Only Bulgarian, Cypriot and Maltese judges in the CJEU have never ruled on cases involving their countries as defendants.

FIGURE 2: Number of decisions per country where a judge has been part of a panel ruling on a case involving her own member state as a defendant in the CJEU (1952-2022).

Source: CJEU Database Platform.

5.1.2 Dependent variable

Let us now descriptively analyze my dependent variable, the Court's decision, using **TABLE 3**. Out of the 3,328 observations of my dataset, the CJEU has ruled in favor of the plaintiff in a total of 2,082 cases. This represents more than 60% of the cases involving member states. In addition, the CJEU ruled in favor of the defendant in 835 decisions, representing 25.09% of the sample. Finally, the CJEU issued a mixed decision in 411 cases or, in other words, in 12.35% of the decisions in my dataset.

5.1.3 Independent and control variables

The two core independent variables of this dissertation are the percentage of judges coming from the plaintiff or defendant state in the panel ruling the case (*perc_plaintiff_judge* and *perc_defendant_judge*). The former has a mean of 0.0136: on average, 1.36% of the judges in panels ruling on cases involving member states in the CJEU come from the plaintiff state. The most extreme case is C-281/85, where Germany, France, the Netherlands, Denmark, and the UK sued the Commission on its powers to promote cooperation in social policy. The decision was published in 1987 and involved 13 judges, 6 of whom came from these five member states (representing 46.15% of the panel).

Similarly, the mean of the percentage of national judges coming from the defendant state is 0.0406, which means that, on average, 4.06% of the judges in panels ruling on cases involving member states in the CJEU come from the defendant state. The cases C-90/63, C-33/69, and C-8/70 are the ones with the higher presence of national judges in the panel: in all three cases, two out of the five judges ruling on the cases came from the defendant member state.

Let us now briefly analyze the rest of the control variables. The average year of a proceeding in our sample is 2002, which means that the majority of cases have happened in recent years –2002 is closer to 2022 than to 1954.

The rest of the control variables are dummies, which means that their mean value can be interpreted as the percentage of observations where the variable equals 1. Thus, 89% of the cases in the sample were from the Court of Justice, while only 11% of cases were decided in the General –i.e.: the average value of *court* is 0.8877. Lastly, states that joined the EU in or after 2004 represent 12.21% of the cases involving member states as plaintiffs, whereas these countries only represent 6.1% of the cases with states as defendants. All the information can be found in **TABLE 3**.

TABLE 3: Frequency table of the variable *decision* and main statistical information of the twelve independent and control variables used in the dissertation.

decision	Freq.	%
0	2,082	62.56%
1	835	25.09%
2	411	12.35%

Variable	Mean	Minimum	Maximum
perc_plaintiff_judge	0.0136	0	0.4615
perc_defendant_judge	0.0406	0	0.4
court	0.8877	0	1
date	2002	1954	2022
plaintiff_2004	0.1221	0	1
defendant_2004	0.061	0	1

5.2   EMPIRICAL RESULTS

This section presents the empirical results of the two regressions run in this dissertation. I used Stata to run the regressions below, as well as to calculate additional explanatory tools.

5.2.1   Model 1

Model 1, which focuses on the cases with member states as plaintiffs, yields inconclusive results, as observed in **TABLE 4**. Most prominently, the coefficient of the main explanatory variable (the percentage of judges coming from the plaintiff state) in this MNP is insignificant for all the cases and at all relevant confidence levels. Given the statistical insignificance of my core independent variable, I cannot conclude that the percentage of judges coming from the plaintiff state significantly alters the decision of the panel.

TABLE 4: Empirical results of model 1 (baseline category: plaintiff is successful – *decision = 0*).

	Plaintiff successful	*Defendant successful*	*Mixed decision*
perc_plaintiff_judges	baseline	0.654	-0.7586
court	baseline	0.1678	-0.3729*
date	baseline	0.0161**	-0.0111
plaintiff_2004	baseline	0.0138	-0.2717
Constant	baseline	-31.4527**	22.1869

* means a coefficient is significant at the 90% confidence level.
** represents significance at the 95% confidence level.
*** represents significance at the 99% confidence level.

5.2.2 Model 2

The regression on the sample of CJEU cases with member states as defendants yields more promising results (**TABLE 5**). Note that this model restricts the sample to the cases where member states act as a defendant in the CJEU, mostly in infringement procedures. Let us now proceed to interpret the results.

Interpretation of the coefficients

First of all, an increase in the percentage of judges from the defendant country in the panel significantly increases the probability of the Court ruling in favor of the defendant state compared to ruling in favor of the plaintiff. The coefficient that allows me to extract these conclusions (1.7879) is highly significant at all relevant confidence levels. This would suggest that judges are biased in favor of their home state in cases where the state is a defendant in the CJEU.

On top of that, a higher percentage of judges from the defendant member state in the panel also significantly increases the probability of the chamber issuing a mixed decision compared to ruling in favor of the plaintiff. This coefficient (0.9977) is significant at the 90% confidence level and further strengthens the conclusion that CJEU judges have a national bias in cases where their member state is the defendant.

Some other coefficients of model 2 are significant. Still, I will not comment on them here, given that they only affect the control variables. However, an interpretation of their coefficients can be found in the appendix.

TABLE 5: Empirical results of model 2 (baseline category: plaintiff is successful – *decision = 0*).

	Plaintiff successful	*Defendant successful*	*Mixed decision*
perc_defendant_judges	baseline	1.7879***	0.9977*
date	baseline	0.0062	0.0144***
defendant_2004	baseline	0.4366**	0.0671
Constant	baseline	-14.1585	-30.2721***

* means a coefficient is significant at the 90% confidence level.
** represents significance at the 95% confidence level.
*** represents significance at the 99% confidence level.

Marginal effects

I have also computed the marginal effects to further interpret the results of model 2, which can be found in **TABLE 6**. Firstly, an increase in 10 percentage points of judges in a CJEU panel coming from the defendant member state makes plaintiffs 3% less successful, holding all other variables constant at their mean. This result is significant at all relevant confidence levels. Given the non-linearity of the MNP, these marginal effects are valid only for a 10-percentage-point increase starting from the mean of the variable of the percentage of national judges coming from the defendant state[1]. Secondly, an increase from the mean of 10 percentage points of judges in a CJEU panel coming from the defendant member state makes the defendant state 2% more successful, holding all other variables constant at their mean values. This result is also highly significant. Thirdly, an increase in 10 percentage points of judges in a CJEU chamber coming from the defendant country also makes mixed decisions 1% more likely, holding

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[1] The coefficient is -0.3, but it refers to a one unit increase in *perc_defendant_judges*. Given that the variable refers to percentages, a one-unit increase does not make sense: for instance, a panel cannot move from 0.2/20% to 1.2/120% of the judges coming from the defendant state. Therefore, we divide the marginal effects by 10 to be able to interpret it not in terms of a one-unit increase, but of a one-tenth of a unit increase –namely, a 10-percentage-points increase.

all other variables constant at their mean values. In this case, the result is significant at the 90% confidence level.

TABLE 6: Marginal effects for variable *perc_defendant_judges* on *decision* (at the mean).

	Plaintiff successful	*Defendant successful*	*Mixed decision*
perc_defendant_judges	-0.3043***	0.2***	0.1043*

* means a coefficient is significant at the 90% confidence level.
** represents significance at the 95% confidence level.
*** represents significance at the 99% confidence level.

Predicted probabilities

Using the coefficients of my model, I calculated the predicted probabilities of the Court ruling in favor of the plaintiff, in favor of the defendant, or issuing a mixed decision depending on the percentage of judges coming from the defendant state in the panel. To do so, I calculate the value that my model would generate using equation **(3)** holding date and whether the country joined the EU after 2004 constant at their mean and changing the value of the percentage of national judges coming from the defendant state. Then, I calculate the predicted probabilities using the normal standard distribution, which is the underlying distribution of the MNP. **FIGURE 3** shows the results.

FIGURE 3: Probabilities predicted by model 2 of a CJEU panel ruling in favor of the plaintiff, in favor of the defendant, or issuing a mixed decision (y-axis) depending on the percentage of judges coming from the defendant country that sits on the chamber in question (x-axis).
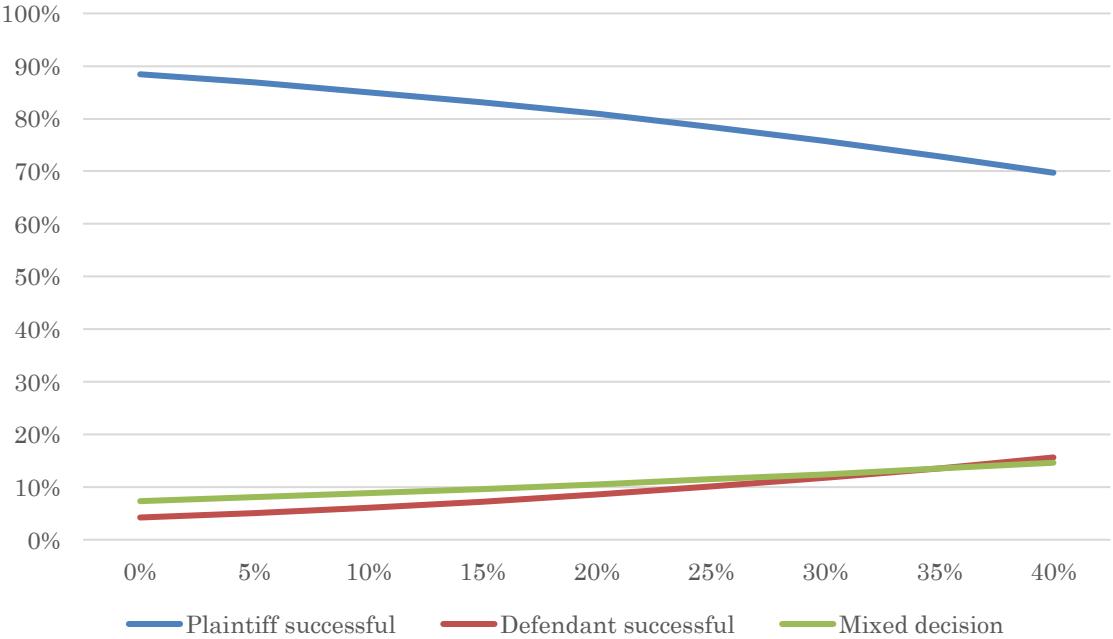
On the one hand, the probability of the chamber ruling in favor of the plaintiff in cases where a state is the defendant (mostly infringement cases) is almost 90% if no judge from the defendant state sits in the panel. However, this value falls to 80% if one out of five judges in a panel come from the defendant state, and down to 70% if two out of five judges come from the defendant.

On the other hand, member states that act as defendants in cases in the CJEU barely win them when all the judges in the panel come from other countries: they only have a predicted probability to win of 4%. This probability climbs up to 10% if one-quarter of the magistrates in the panel comes from the defendant

member state, and up to 16% if two-fifths of the judges are nationals of the defendant country. The probability of the Court issuing a mixed decision follows a similar pattern: it is 7% if no judge comes from the defendant country, and it rises to 15% when 40% of the judges come from the defendant state.

In sum, I observe a significant tendency of panels to rule in favor of the defendant member state or to issue a mixed decision as the percentage of judges coming from that country sitting in the panel increases. This suggests that justices in the CJEU are biased in favor of their member state when it acts as a defendant and try to persuade the other judges to rule in favor of their country or at least issue a mixed decision.

6. DISCUSSION AND CONCLUSIONS

This paper is, to the best of my knowledge, the first quantitative study on the field of the judicial politics of the EU that tackles whether CJEU judges are biased in favor of their member states. My project has been possible thanks to the recent creation of the CJEU Database Platform in April 2022, which dramatically facilitates quantitative research on the CJEU. Using multinomial probit models, my analysis has led to a twofold conclusion. On the one hand, I find that judges do not show any bias in cases involving their member state as a plaintiff. On the other hand, there is a significant national bias when justices rule on cases where their member state is the defendant.

These results are relevant for the study of judicial politics in the EU. More particularly, CJEU judges are assumed to be impartial and no rules preclude them from being part of a panel deciding on cases involving their member states or firms coming from their countries. The only implicit limit lies in the capacity of the President to prevent national judges from ruling on controversial cases involving their member states, but this does not prevent bias as my model shows. This bias is most acute in cases involving member states as defendants, particularly in the politically-salient infringement procedures.

This partiality of CJEU judges in such high-profile cases could jeopardize the functioning of the supranational judicial institutions in the EU, making citizens and other member states reluctant to obey CJEU rulings. Following the constructivist theories of Reus-Smit (2004), lack of impartiality could introduce political bargaining into the judicial realm, delegitimizing the Court. Given how political infringement procedures are, this dreadful consequence cannot be disregarded.

Institutionalists like Majone (2001) or Keohane, Moracvsik, and Slaughter (2000) would conclude that, if the CJEU judges are not impartial, cooperation in the EU could dramatically decrease. The rationale is that an impartial CJEU provides unbiased information vis-à-vis compliance of the parties with EU law, allowing member states to credibly commit to respect it and overcome collective action problems. If the Court no longer fulfills this function, countries will be discouraged to cooperate because information about non-compliance is more uncertain, increasing mistrust and commitment problems. Ergo, violations of EU law are more difficult to identify, further encouraging transgressions.

As a consequence, the results of my research support a change in the procedural rules of the CJEU to prevent judges from ruling on cases involving their member states, especially in infringement procedures.

Nevertheless, this paper would be crucially complemented by research regarding the specific channels that explain the pro-governmental bias of judges. For instance, one could study whether the personal characteristics of judges –their background, years in the CJEU, time to reappointment…– affect their bias. Besides, the causal strategy of this paper could be enhanced by adding a variable estimating the allocation of judges in cases without the influence of the CJEU President. This would more accurately

identify the real bias of judges without the strategic action of the President and would reduce the omitted variable bias of my regression.

Moreover, literature would gladly welcome alternative methods to account for the fact that the individual votes of judges in a CJEU decision are unknown. As explained, I created variables calculating the percentage of judges coming from the plaintiff and defendant countries to circumvent the problem of the anonymity of individual votes in CJEU decisions. Yet, another possibility would have been to include the number of judges coming from the plaintiff or defendant member state in absolute terms, but also adding chamber fixed effects. Thus, considering other methodologies would allow me to check if my results are robust to other specifications and identification strategies.

Finally, more research should be undertaken to understand why judges show a national bias only in cases where their member state acts as a defendant. Qualitative methods using interviews with judicial experts could be a powerful complement to my research.

In sum, my paper is an innovative step forward in the study of judicial politics in the EU using quantitative methods and can serve as the foundation for future research on the topic.
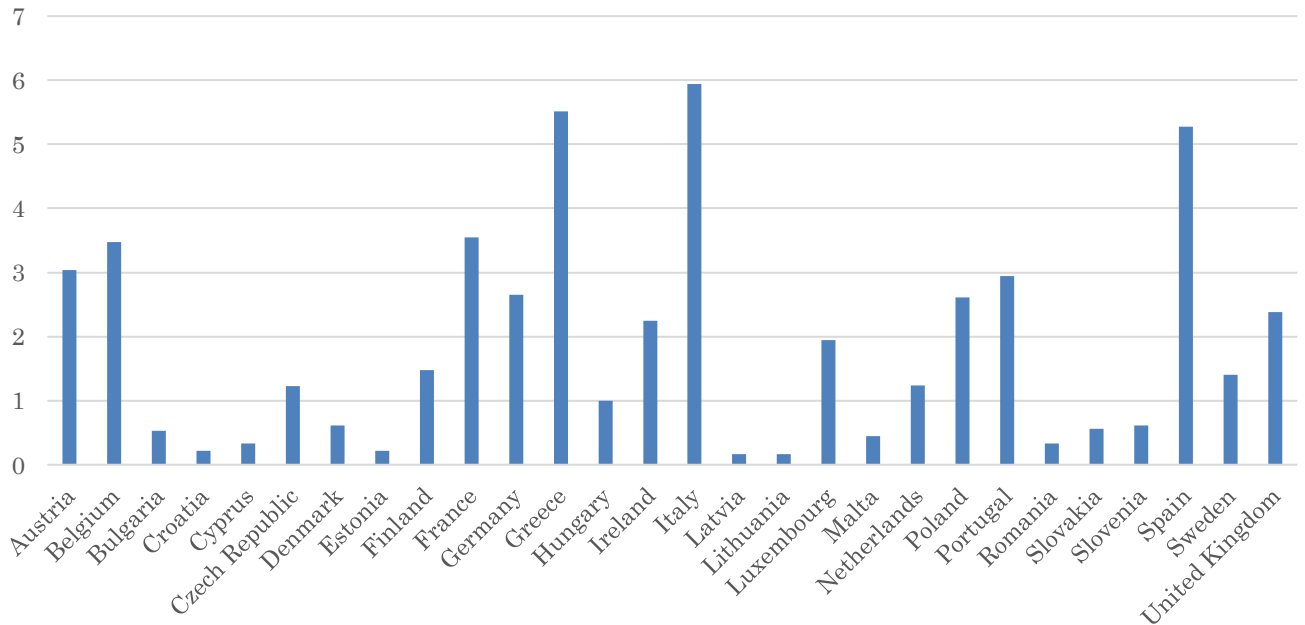
7. APPENDIX

FIGURE 4: Number of cases per year that each member state files in the CJEU as a plaintiff.
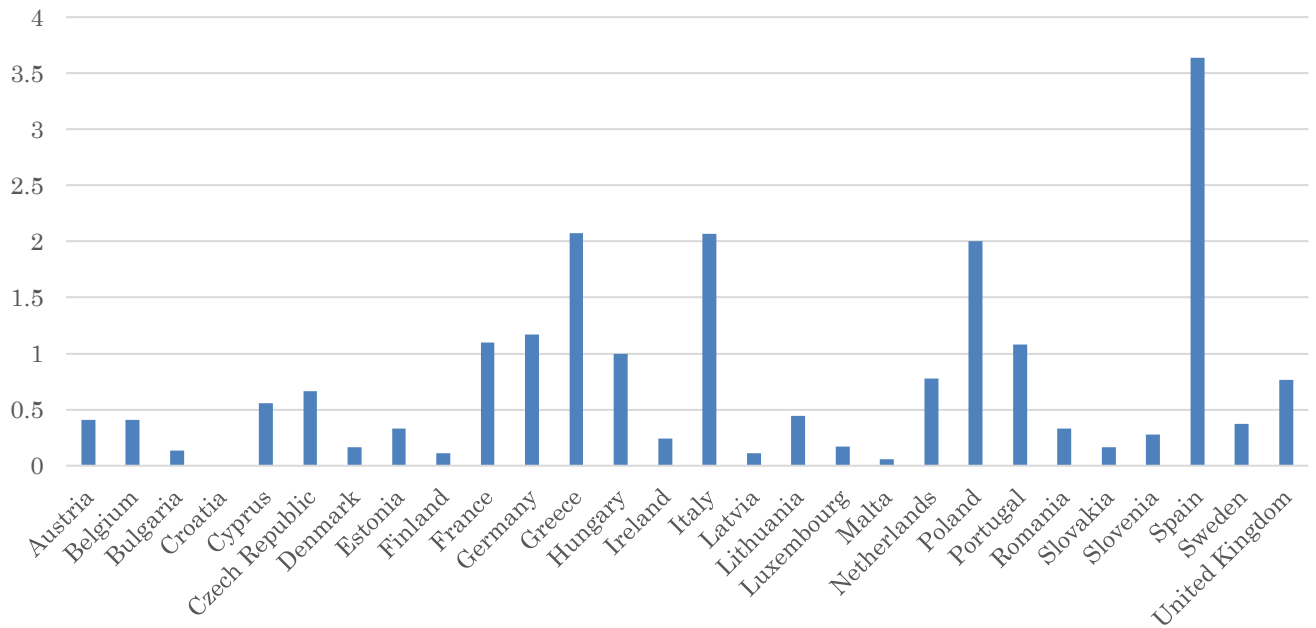
Source: CJEU Database Platform. Calculated dividing the number of cases in the CJEU that each member state files as plaintiff and the years of membership in the EU.

FIGURE 5: Number of cases per year that each member state defends in the CJEU.

Source: CJEU Database Platform. Calculated dividing the number of cases in the CJEU that each member state defends and the years of membership in the EU.

Interpretation of the coefficients of the control variables in Model 2

As explained above, I decided to skip the interpretation of the control variables in the main body of the dissertation because they were only included to reduce omitted variable bias and are not a central part of my study. However, let us still interpret their coefficients in this section (please refer to Table 5 for the specific results of the model 2).

On the one hand, cases in later dates have a higher probability of leading to a mixed decision compared to the CJEU ruling in favor of the plaintiff. This result is significant at all relevant confidence levels. This might be explained by the fact that the Court has become more nuanced with time. Another explanation could be that a bigger Court with many nationalities has to make a complex balancing act when delivering a decision on a case, leading to more mixed decisions. This also explains why date does not significantly alter the probability of the defendant winning: if the Court is more nuanced or has to balance more interests, only the probability of mixed decisions will increase.

On the other hand, the probability of the defendant country winning the case compared to the plaintiff winning increases if this country joined the EU after 2004. This result is significant at all relevant confidence levels. Whether the country joined the EU after 2004 or not does not significantly affect the probability of the Court issuing a mixed decision. More specifically, I offer two alternative explanations to clarify this situation. To start with, it could be that the Commission brings cases against countries that joined the EU after 2004 more often than it should. This is not unreasonable, given that they have less civil servants in the Commission and control it less effectively than countries that joined the EU before. Secondly, one could argue that the judges coming from the post-2004 states are more biased that those coming from EU-15, leading to a higher probability of the defendant country winning.

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