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Measurement, Data Collection, and Analysis of Case Salience Data

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Media Attention for CJEU Case Law

Measurement, Data Collection, and Analysis of Case Salience Data

JULIAN DEDERKE

I Introduction

The amount of cases before the Court of Justice of the European Union (CJEU) has dramatically increased in recent decades, with the court delivering the highest number of binding decisions among international courts.¹ This development even led to the creation of the Court of First Instance (CFI) to cope with the amount of cases.² Currently, not only does the CJEU adjudicate more than 1,500 cases per year,³ but its case law also influences more and more legal and policy fields with an unprecedented frequency. The court's competences developed alongside the European integration process, during which the court has evolved as a powerful institution⁴ that shapes the EU's legal order. While in early decades the process of legal integration was one that has been characterized as a rather silent transformation,⁵ the influence of the court is nowadays followed much more closely by various political actors.

¹ KAREN ALTER, *THE NEW TERRAIN OF INTERNATIONAL LAW. COURTS, POLITICS, RIGHTS* 73, 103–05 (2014).

² See Lola Avril, *A Political Means to a Judicial End. Studying the Mobilization for the Creation of the Court of First Instance*, in *RESEARCHING THE EUROPEAN COURT OF JUSTICE: METHODOLOGICAL SHIFTS AND LAW'S EMBEDDEDNESS* (Mikael Rask Madsen et al. eds., 2022).

³ See, e.g., *Statistics Concerning Judicial Activity in 2015: New Records in Terms of Productivity and Cases Brought for the Court of Justice of the European Union, CJEU*, <http://curia.europa.eu/jcms/upload/docs/application/pdf/2016-03/cp160034en.pdf>.

⁴ DORTE SINDBJERG MARTINSEN, *AN EVER MORE POWERFUL COURT? THE POLITICAL CONSTRAINTS OF LEGAL INTEGRATION IN THE EUROPEAN UNION* (2015).

⁵ J. H. H. Weiler, *The Transformation of Europe*, 100 *YALE L.J.* 2403, 2403–83 (1991); J. H. H. Weiler, *A Quiet Revolution. The European Court of Justice and Its Interlocutors*, 26 *COMP. POL. STUD.* 510, 510–34 (1994).

In recent decades, the competences and authority of many international judiciaries has grown,⁶ making it more likely that their actions lead to responses by other political institutions and societal actors. Such an authority increase of international and supranational institutions bears potential for politicization.⁷ In light of its growing authority and a broad judicialization trend in the EU, the CJEU's competences and decisions do not remain unquestioned. However, so far, we hardly know anything systematic about which CJEU cases are discussed in the public or media.⁸ Despite recent efforts to trace public and political discussions in certain legal issue areas in response to court rulings,⁹ a more comprehensive overview and evaluation of the prominence of CJEU decisions in the public might only be possible by investigating media attention in a quantitative research design. Even though the immense caseload of the CJEU provides ideal preconditions for quantitative research designs, quantitative analyses are not very well established in the study of EU law so far. Building on an extensive data collection for media coverage of CJEU decisions, this chapter delivers such a quantitative approach. Doing so can provide novel insights, in particular, when studying law in its societal and political context.

In a quantitative research design, the aim is to maximize the number of observations, that is, the cases or units that are included in the analysis. Other than single case studies or doctrinal analyses that have their specific strengths in providing a highly detailed account of individual cases and their (re-)construction,¹⁰ the statistical design takes a 'bird's-eye view'. By looking at generalizable characteristics of court cases, this

⁶ See ALTER, *supra* note 1.

⁷ Pieter de Wilde & Michael Zürn, *Can the Politicization of European Integration Be Reversed?*, 50 J. COMMON MKT. STUD. 137, 137–53 (2012); Michael Zürn, Martin Binder, & Matthais Ecker-Ehrhardt, *International Authority and Its Politicization*, 4 INT'L THEORY 164, 164–82 (2012).

⁸ For an exception, see Julian Dederke, *CJEU Judgments in the News—Capturing the Public Salience of Decisions of the EU's Highest Court*, J. EUR. PUB. POLICY, 1–20 (2021), <https://doi.org/10.1080/13501763.2021.1872682>, which builds on the same underlying dataset as this chapter.

⁹ John Cotter, *'Keep Calm and Carry On': EU Legal Developments in 2017*, 55 J. COMMON MKT. STUD. 88, 88–101 (2017); Michael Blauburger et al., *ECJ Judges Read the Morning Papers. Explaining the Turnaround of European Citizenship Jurisprudence*, 25 J. EUR. PUB. POL'Y 1422, 1422–41 (2018).

¹⁰ See, e.g., Jens Arnholtz, *Re-constructing the Construction of Laval: Studying EU Law as a Social Interpretive Process*, in RESEARCHING THE EUROPEAN COURT OF JUSTICE: METHODOLOGICAL SHIFTS AND LAW'S EMBEDDEDNESS (Mikael Rask Madsen et al. eds., 2022); Julien Louis, *Litigation Strategies, Judicial Lobbying and Legal Experts in the Political Framing of EU Law. Exploring the Digital Archives of a Trade Union Lawyer in*

approach draws its strength from the fact that it allows general statements about relationships between variables, that is, between measured traits of court cases. At the same time such a design almost inevitably (and deliberately so) goes at the expense of detailed insights into individual cases. The quantitative statistical approach does not include an analysis of the specific circumstances of the litigation processes, the procedures themselves, or the text of the judgments. Instead, it aims at generalizability by looking at the entire universe of CJEU cases (for a specific time period).

Even though the importance of EU law for the European integration process is evident, one cannot take for granted the visibility of EU law and court judgments in the public sphere. This chapter considers the importance or *salience* of court decisions in the European public sphere as a concept that requires (1) conceptual clarity, (2) a reliable and comparable measurement strategy, and (3) an analysis that empirically investigates the prominence of CJEU judgments in the public to assess the degree of politicization of the output the CJEU produces.

In line with these goals, this chapter delivers a conceptual definition of salience and argues in favour of capturing public attention for court decisions with help of media coverage data that can be collected and standardized across thousands of cases. Moreover, the chapter uses the state-of-the-art literature in the field to derive testable hypotheses for the analysis of case salience. Third, a quantitative analysis provides insight into determinants of case salience on the level of court cases and countries. The project that provided the data used in this chapter made use of a comprehensive newspaper data base (Factiva)¹¹ that offers the digitized versions of most major newspapers in a large number of countries worldwide. The chapter describes the data collection process, the structure of the data, and the opportunities for quantitative analysis. Building on a data collection for more than 4,000 court judgments delivered between 1997 and 2016, this chapter provides insight into new data for eight European broadsheets. The analysis reveals considerable variation across countries and newspapers, and identifies the standing of courts in national political systems, court case attributes, the severity of conflicts at court, as well as the court's public communication activities as key factors

RESEARCHING THE EUROPEAN COURT OF JUSTICE: METHODOLOGICAL SHIFTS AND LAW'S EMBEDDEDNESS (Mikael Rask Madsen et al. eds., forthcoming).

¹¹ *Factiva*, Dow Jones, <https://www.dowjones.com/products/> (last visited 15 November 2019).

in determining the salience of CJEU judgments. Finally, the chapter reflects on the strengths and weaknesses of the approach relative to other new methodologies in the study of EU law presented in this volume.

II How to Measure the Salience of CJEU Judgments

The importance or prominence of a political or legal event is mostly referred to as ‘salience’. The term is used in a variety of ways, trying to describe the relevance of an event compared to others. Therefore, ‘salience’ as a concept is central in determining which court procedures or judgments are more or less influential or relevant. Such a criterion for relevance is, naturally, strongly shaped by the specific research context. For example, previous studies have used criteria such as which cases are covered in major law text books,¹² which cases have higher case citation and network scores,¹³ or which were decided in larger chambers.¹⁴ The most established way of operationalizing and measuring salience in the literature on court cases in their societal context, however, identifies influential cases based on newspaper coverage about judgments.¹⁵ This salience measure situates the importance of a court case in the realm of the public and is thus particularly useful for studying law in its societal and political environment.

In their influential article from the US Supreme Court literature, Epstein and Segal emphasize the virtue of a measure that differentiates court judgments based on their standing in the public that is anchored in a reliable, comparable measurement mechanism (the publishing of a

¹² David W. Rohde, *Policy Goals, Strategic, Choice and Majority Opinion Assignments in the U.S. Supreme Court*, 16 *MIDWEST J. POL. SCI.* 652, 652–82 (1972); Elliot E. Slotnick, *Who Speaks for the Court?: Majority Opinion Assignment from Taft to Burger*, 23 *AM. J. POL. SCI.* 60, 60–77 (1979).

¹³ Yonatan Lupu & Erik Voeten, *Precedent in International Courts: A Network Analysis of Case Citations by the European Court of Human Rights*, 42 *BRITISH J. POL. SCI.* 413, 413–39 (2012); Olof Larsson et al., *Speaking Law to Power: The Strategic Use of Precedent of the Court of Justice of the European Union*, 50 *COMP. POL. STUD.* 879, 879–907 (2017); Urška Šadl & Henrik P. Olsen, *Can Quantitative Methods Complement Doctrinal Legal Studies?: Using Citation Network and Corpus Linguistic Analysis to Understand International Courts*, 30 *LEIDEN J. INT’L L.* 327, 327–49 (2017).

¹⁴ Clifford J. Carrubba, Matthew Gabel, & Charles Hankla, *Understanding the Role of the European Court of Justice in European Integration*, 106 *AM. POL. SCI. REV.* 214, 214–23 (2012); R. Daniel Kelemen, *The Political Foundations of Judicial Independence in the European Union*, 19 *J. EUR. PUB. POL’Y* 43, 43–58 (2012); Larsson et al., *supra* note 13.

¹⁵ Lee Epstein & Jeffrey A. Segal, *Measuring Issue Salience*, 44 *AM. J. POL. SCI.* 66, 66–83 (2000).

daily newspaper). The scholars use case salience data that captures front-page mentions of Supreme Court cases in the *New York Times* the day after the judgment. This measurement strategy is transferrable to almost all jurisdictions of the world since daily newspapers are a worldwide phenomenon. Newspapers are particularly suitable for a comparative approach to study the public salience of court cases. Their daily appearance and their role for public discussion in all European democracies allow for generating data across a broad geographical area, for thousands of events or decisions across a long time horizon. Other media are much younger and do not allow us to systematically investigate the salience of court decisions in the public sphere before approximately 2005 (Twitter, for example, started operating in 2006). Moreover, newspaper coverage as a measure is also very flexible and can be measured at various points in time (specific days) or for various time periods. The way it is used in the US context – measuring salience at the single day after the court judgment – emphasizes the immediacy of the measure in line with the logic of media: either an event is immediately salient, or it is not. Not least, media coverage is a particularly suitable measure to address research questions related to law in its socio-legal environment and political context. It is thus attractive for interdisciplinary research on EU law and socio-legal practices to address public and political responses to legal developments.

Due to its broad applicability, newspaper coverage as a measure for court case salience is widely used in the US Supreme Court literature.¹⁶ So far, no such data for media attention was available for the CJEU, even though the societal ramifications and discussions about its judgments are far-reaching. Therefore, the salience measure introduced by Epstein and Segal¹⁷ is transferred to the context of the CJEU in this chapter. It provides the first opportunity to analyze the salience of CJEU cases in a quantitative setting and to identify conditions under which CJEU judgments receive media attention. This allows us to better understand the

¹⁶ See, e.g., Todd A. Collins & Christopher A. Cooper, *The Case Salience Index, Public Opinion, and Decision Making on the U.S. Supreme Court*, 37 JUST. SYS. J. 232, 232–45 (2016); Epstein & Segal, *supra* note 15; Kaitlyn L. Sill, Emily T. Metzgar, & Stella M. Rouse, *Media Coverage of the U.S. Supreme Court: How Do Journalists Assess the Importance of Court Decisions?*, 30 POL. COMM. 58, 58–80 (2013); Logan Strother, *How Expected Political and Legal Impact Drive Media Coverage of Supreme Court Cases*, 45 POL. COMM. 1, 1–19 (2017).

¹⁷ Epstein & Segal, *supra* note 15.

importance of CJEU judgments in the public sphere. By building on several strands of literature, I identify theoretically relevant factors that should contribute to the explanation of media attention to CJEU judgments, and I develop testable expectations to empirically assess the media salience of CJEU judgments.

III Theoretical Expectations

Public discussion and contestation can be the result of collectively binding decisions. This applies to legislative, executive, and judicial decisions. Nevertheless, courts and their judgments are often hidden from the public eye. The character of judicial institutions, the technicality of their decisions, and the language of the law that functions as a ‘mask and shield’¹⁸ contribute to this. In particular, international courts might be subject to such tendencies given their remoteness from domestic political discourses. However, the realm of international law is nowadays characterized by ‘the globalization of judicial politics and the judicialization of international politics’.¹⁹ Judicialization, ‘the ever-accelerating reliance on courts and judicial means for addressing core moral predicaments, public policy questions, and political controversies’,²⁰ makes more and more societal questions the object of legal conflicts. This trend is particularly strong in the EU.²¹ Thus, it is increasingly the CJEU that exerts power over EU societies and citizens. Such developments evoke fundamental questions regarding the accountability and legitimacy of the court.²² In light of these developments, international and supranational governance

¹⁸ Anne-Marie Burley & Walter Mattli, *Europe before the Court: A political theory of legal integration*, 47 INT’L ORG. 41, 72 (1993).

¹⁹ ALTER, *supra* note 1, at 335; see also Robert O. Keohane, Andrew Moravcsik, & Anne-Marie Slaughter, *Legalized Dispute Resolution: Interstate and Transnational*, 54 INT’L ORG. 457, 457–88 (2000).

²⁰ Ran Hirschl, *The Judicialization of Mega-Politics and the Rise of Political Courts*, 11 ANN. REV. POL. SCI. 93, 94 (2008).

²¹ Ran Hirschl, *The Judicialization of Politics*, in THE OXFORD HANDBOOK OF LAW AND POLITICS 122 (Gregory A. Caldeira, R. Daniel Kelemen, & Keith E. Whittington eds., 2009); R. Daniel Kelemen, *Judicialisation, Democracy and European Integration*, 49 REPRESENTATION 295, 295 (2013).

²² See Allen Buchanan & Robert O. Keohane, *The Legitimacy of Global Governance Institutions*, 20 ETHICS & INT’L AFF. 405, 405–37 (2006); Jonas Tallberg & Michael Zürn, *The Legitimacy and Legitimation of International Organizations: Introduction and Framework*, 18 REV. INT’L ORG. 403, 581–606 (2019); Michael Zürn, *Global Governance and Legitimacy Problems*, 39 GOV’T & OPPOSITION 260, 260–87 (2004).

institutions face increasing demands for legitimation.²³ This sparks questions regarding the prominence and perception of collectively binding decisions in the public. Capturing these dynamics should be of primary interest to empirical legal research.

The CJEU has become the most powerful international court, with strong independence and high authority.²⁴ Given the high amount of decisions delivered by the CJEU,²⁵ it is an ideal candidate for quantitative research designs. Moreover, given the fact that as an international court the CJEU gains influence and authority in more and more fields of people's everyday lives, it is important to acknowledge that decisions that do not receive public attention might be problematic. Collectively binding judgments that remain hidden behind the language of the law²⁶ or masked by a "technical" legal garb²⁷ can evoke concerns regarding the accountability or legitimacy of the institution making the decisions. Furthermore, given the increasing authority of the court and the increasing influence of CJEU case law in EU politics, the times of invisibility surrounding court decisions might have ended. Politicization theory suggests that under such circumstances, when inter- and supranational governance institutions gain in authority, their actions and output are increasingly subject to public attention and debate.²⁸ In its most established notion, the term 'politicization' refers to something that 'goes public' or that is being dragged into the limelight of the public. The story of the early decades of European integration when the court remained '[t]ucked away in the fairyland Duchy of Luxemburg and blessed . . . with benign neglect by the powers to be and the mass media'²⁹ does no longer hold. The politicization of courts and court judgments might even be an 'inevitable flip side of judicialization'.³⁰ Partly, the CJEU also takes an active role in media relations, cultivating contacts to the press and

²³ Jennifer Gronau & Henning Schmidtke, *The Quest for Legitimacy in World Politics – International Institutions' Legitimation Strategies*, 42 REV. INT'L STUD. 535, 535–57 (2016); Tallberg & Zürn, *supra* note 22.

²⁴ Karen J. Alter, *The European Court's Political Power*, 19 WEST EUR. POL. 458, 458–87 (1996); Karen J. Alter, Laurence R. Helfer, & Mikael R. Madsen, *How Context Shapes the Authority of International Courts*, 79 L. & CONTEMP. PROBS. 1, 1–36 (2016).

²⁵ ALTER, *supra* note 1; CJEU, *supra* note 2.

²⁶ NIKLAS LUHMANN, LAW AS A SOCIAL SYSTEM 1–498 (Fatima Kastner et al. eds., 2004).

²⁷ Burley & Mattli, *supra* note 18, at 70.

²⁸ Zürn et al., *supra* note 7.

²⁹ Eric Stein, *Lawyers, Judges, and the Making of a Transnational Constitution*, 75 AM. J. INT'L L. 1, 1 (1981).

³⁰ Hirschl, *supra* note 20, at 120.

journalists. The court's communication service was founded in March 1968 and observed its 50th anniversary recently.³¹ Media monitoring is done in the form of press dossiers for the press officers working at the court.³² Thus, demand on a public opinion market is matched by an institutional awareness for the role of public attention and appearance. Despite some remaining open questions, what is quite certain are the mobilizing effects of media coverage. For these reasons, it is all the more relevant to gain insight into empirical data about which court decisions actually receive media attention and which do not – that is, which are salient and which are not.

An empirical approach for addressing these questions necessitates testable hypotheses that allow us to systematically test assumptions about media attention for CJEU cases. To undertake a first quantitative approach of this kind, I build on previous literature to identify conditions under which court decisions are expected to receive media attention. The literature on the US Supreme Court has been at the forefront of such analyses. Sill, Metzgar, and Rouse list '*case origins, court behavior, issue area, case participants, and case salience*'³³ as those factors contributing to understand media attention for court decisions. Factors such as case participants and issue areas that describe the nature of the conflicts at stake can be grouped together as *case attributes*. The *case origin* should be of even greater importance in the EU than in the United States because of the various countries and languages in the European context. Moreover, the actions courts and judges take can be summarized as judicial behaviour or *court behaviour*. Thus, four categories of factors can be identified that should have explanatory power for case salience: standing of the judiciary, case attributes, case origins, and court behaviour. Following the guiding question *under which conditions CJEU judgments receive media attention*, the next section summarizes factors that can help to explain the salience of court decisions in the public sphere from a theoretical point of view. Based on the established literature it formulates testable hypotheses in preparation of the analysis.

³¹ Court of Justice of the European Union, *Le Service de la communication de la cour fête ses 50 ans*. In: News@curia, No 79 (19 March 2018) [internal printed newsletter for employees]

³² Interviews, 12–14 March 2019. For an overview of the press officers, see https://curia.europa.eu/jcms/jcms/Jo2_25870/en/ (accessed 28 March 2021).

³³ Sill et al., *supra* note 16, at 59.

A *Judicialization Effects*

Judicialization trends are particularly strong in the EU.³⁴ With the increasing importance of the EU, the immense caseload of the court, and the growing importance of the judiciary, the probability of court judgments being salient should increase over time:

H1: *Over time, the probability of newspaper reports about CJEU rulings increases.*

The importance of court decisions in the public sphere should also be dependent on the judiciary's role in each of the national political systems. Newspapers and journalists that are accustomed to influential court decisions in the national political system should also be more attentive to decisions of the union's highest court. The role and importance of courts in a state depends on constitutional rules. Such rules led Arend Lijphart in his famous 'Patterns of Democracy' to classify countries according to the strength of judicial review in their political systems.³⁵ Furthermore, Hirschl assumes that 'the impact of the judiciary on public policy outcomes is likely to be more significant under a decentralized, all-court review system'.³⁶ Thus, the standing of the judiciary within a political system is expected to affect its influence on public policy and should therefore determine the perception of and attention to court judgments in the respective country. Such country differences and the varying familiarity of societal actors with the power of courts will not leave the attention for and perception of CJEU judgments unaffected:

H2 (*relevance of the judiciary*): *CJEU decisions are more likely to be salient in countries with stronger judicial review.*

B *Domestic Origin*

Although the EU's public sphere and the structure of its judicial-political space assume a more and more stable form,³⁷ litigation processes and court procedures are still strongly shaped by the fact that most

³⁴ Hirschl, *supra* note 20, at 122; Kelemen, *supra* note 21, at 295.

³⁵ AREND LIJPHART, PATTERNS OF DEMOCRACY. GOVERNMENT FORMS AND PERFORMANCE IN THIRTY-SIX COUNTRIES 212–25 (2d ed. 2012).

³⁶ Hirschl, *supra* note 21, at 131.

³⁷ Olof Larsson & Daniel Naurin, *Split Vision: Multidimensionality in the European Union's Legal Policy Space*, 63 INT'L STUD. Q. 492, 492–506 (2019).

procedures are initiated at the domestic level. The CJEU's preliminary reference procedure illustrates this structure in a remarkable way.³⁸ Therefore, many CJEU cases have a clear link to one of the EU states, which should surface in the probability of domestic media attention:

H3 (*domestic origin*): *Newspapers are more likely to report about a CJEU judgment if the case stems from a national court from the same EU member state as the newspaper.*

There might also be country differences that lead to more or less media attention for court decisions in certain countries. Such country differences will be explored in the analysis as well. However, since there are no specific expectations in the literature regarding country differences, it is not possible to formulate any clear hypotheses.

C Case Attributes and Inter-institutional Conflict

To take into account the different legal procedures that characterize the EU's legal architecture – that might also lead to differences in media attention – I include control variables for infringement procedures and annulment procedures in the statistical analysis, while preliminary reference procedures are treated as the reference category.

Previous literature has pointed towards specific types of court cases that are particularly sensitive and often lead to public and/or political attention: abortion and death penalty cases in the United States,³⁹ cases that involve questions of torture and inhumane treatment at the European Court of Human Rights (ECtHR),⁴⁰ or cases regarding health and safety standards and agriculture at the World Trade Organization.⁴¹

³⁸ For novel, qualitative approaches to study the preliminary reference procedure, see, e.g., Tommaso Pavone, 'In This Bureaucratic Silence EU Law Dies': *Fieldwork and the (Non)-Practice of EU Law in National Courts*, in RESEARCHING THE EUROPEAN COURT OF JUSTICE: METHODOLOGICAL SHIFTS AND LAW'S EMBEDDEDNESS (Mikael Rask Madsen et al. eds., forthcoming); Jos Hoevenaars, *The Micro-Level Foundations of Integration-Through-Case-Law: Reflections of a Bottom-Up Approach to EU Law Mobilization*, in RESEARCHING THE EUROPEAN COURT OF JUSTICE: METHODOLOGICAL SHIFTS AND LAW'S EMBEDDEDNESS (Mikael Rask Madsen et al. eds., forthcoming).

³⁹ Paul Brace & Brent D. Boyea, *State Public Opinion, the Death Penalty, and the Practice of Electing Judges*, 52 AM. J. POL. SCI. 360, 360–72 (2008).

⁴⁰ Erik Voeten, *The Impartiality of International Judges: Evidence from the European Court of Human Rights*, 102 AM. POL. SCI. REV. 417, 421 (2008).

⁴¹ Marc L. Busch & Krzysztof J. Pelc, *The Politics of Judicial Economy at the World Trade Organization*, 64 INT'L ORG. 257, 271 (2010).

Meanwhile, these issue areas are typically not dealt with before the CJEU. The union's highest court could be classified as an economic court⁴² whose initial mandate has broadened considerably over time. Nowadays, the CJEU adjudicates on diverse issues, such as taxation, state subsidies, migration, social subsistence benefits, data protection, patent questions, etc. However, so far we lack systematic insights into how the CJEU appears in the media and which judicial conflicts are most prominent in the public sphere. While Kriesi et al.'s findings regarding major debates in advanced democracies suggest economic liberalization and migration as the most conflictual and salient topics,⁴³ Hirschl rather identifies civil rights cases as those receiving most attention.⁴⁴ Amidst the lack of unequivocal theoretical expectations, the quantitative design proposed here mainly includes control variables for various legal issue areas and provides a first insight into varying degrees of media attention, depending on the legal issue areas that are at stake in a CJEU case.

Even though prominent quantitative studies tried to map political conflict in (Western) Europe,⁴⁵ conflicts at court have been left out from these investigations most of the time. Recent quantitative scholarship tries to deliver a more complete picture on the conflicts at court, by building on research designs and insights from the US Supreme Court literature.⁴⁶ In the same vein, this chapter sheds light on the role of conflicts and their intensity for media attention. Building on Larsson et al.'s research,⁴⁷ I test how important a conflict between the CJEU and the EU member state governments (H4) is for the probability of newspaper attention:

H4a (*Conflict_a*): *Newspapers are more likely to report about a CJEU judgment if the Court's decision goes against the majority position among member state governments.*

⁴² Alter, *supra* note 1.

⁴³ HANSPETER KRIESI ET AL., POLITICAL CONFLICT IN WESTERN EUROPE 1–349 (2012).

⁴⁴ Hirschl, *supra* note 20, at 94.

⁴⁵ Kriesi et al., *supra* note 41; POLITICISING EUROPE. INTEGRATION AND MASS POLITICS 1–334 (Swen Hutter, Edgar Grande, & Hanspeter Kriesi eds., 2016).

⁴⁶ Carrubba et al., *supra* note 14; Alec Stone Sweet & Thomas Brunell, *The European Court of Justice, State Noncompliance, and the Politics of Override*, 106 AM. POL. SCI. REV. 204, 204–13 (2012); Olof Larsson & Daniel Naurin, *Judicial Independence and Political Uncertainty: How the Risk of Override Affects the Court of Justice of the EU*, 70 INT'L ORG. 377, 377–408 (2016).

⁴⁷ Larsson et al., *supra* note 13.

Meanwhile, Gibson et al.'s findings point in the opposite direction, namely that 'courts become visible not through controversial decisions . . . but by ruling in a direction pleasing to the majority'.⁴⁸

H4b (*Conflict_b*): *Newspapers are more likely to report about a CJEU judgment if the Court's decision is in agreement with the majority position among member state governments.*

D *The Court's Public Communication Tools*

Courts are actively engaged in managing their public images by framing messages about their work in a certain way.⁴⁹ They might be even more inclined to do so under conditions of increased judicialization and public attention. Press releases as regularly issued public messages have been identified as a useful tool to study courts' public communication efforts.⁵⁰ While it is nothing new to the CJEU's staff to cultivate press contacts, it had been the court's information and documentation service that dealt with press relations for a long time. This allocation appears as if press relations were rather a 'side product' that was treated in a mode of documentation and storage instead of active communication. The Communications Directorate as it exists now was only created in December 2014. William Valasidis, head of the communications directorate, who had worked in the institution in different capacities before, emphasized in an interview that nowadays the court cannot afford to not actively engage in public communication: 'We are on an opinion market place, and our opinion has to be present'.⁵¹ Asked why the court actually engages in public communication at all, the communications staff emphasized that it is important to publish the court's reading of what the court does, because otherwise other actors would be the ones spreading their own version of things: 'If I can sum this [the CJEU's external communications policy] up with one phrase: it's either we communicate

⁴⁸ James L. Gibson, Gregory A. Caldeira, & Vanessa A. Baird, *On the Legitimacy of National High Courts*, 92 AM. POL. SCI. REV. 343, 353 (1998).

⁴⁹ Pablo Barberá, Zuzanna Godzimirska, & Juan A. Mayoral, *Courting the Public? The Use of Social Media by International Courts*. Paper presented at: International Studies Association (ISA) February 22nd – 25th, 2017 (2017).

⁵⁰ Jeffrey K. Staton, *Constitutional Review and the Selective Promotion of Case Results*, 50 AM. J. POL. SCI. 98, 98–112 (2006); JEFFREY K. STATON, JUDICIAL POWER AND STRATEGIC COMMUNICATION IN MEXICO 1–221 (2010).

⁵¹ Interview with William Valasidis, Dir. Comm'ns Ct. Just. Eur. Union (13 March 2019).

about what we do, or others will communicate in our place'.⁵² To capture the CJEU's active engagement with the media, press release data are expected to be particularly useful:

H5 (*press communication*): *Media attention for a CJEU judgment is higher when the Court tries to mediatize a judgment with help of a press release.*

IV Data and Methodology

Access to newspaper content is nowadays provided in several ways. On the one hand, publishers are marketing current as well as past content of their newspapers in online databases and online archives. On the other hand, comprehensive newspaper databases such as LexisNexis and Factiva offer access for corporations or researchers through licences that include the content of a broad range of newspapers. The project that provided the basis for the new method introduced here builds on the Factiva database.⁵³ It sought to maximize the number of court cases included, as well as to include a selection of the most important quality newspapers in a range of countries. I gathered data for newspaper reports about CJEU decisions for eight European leading newspapers (Figure 13.1).

The comprehensive newspaper database Factiva provided the opportunity to code values for the media coverage of 4,357 CJEU judgments. All cases were lodged between 1997 and 2008 and decided between 1997 and 2016.⁵⁴ Based on the dates of the judgments I conducted one search per newspaper for each day following a day at which the CJEU ruled on at least one case. The search query contained the identifier for the respective news outlet with a long search string that combines all possible names or abbreviations of the court in the respective language (including e.g. 'CJUE' for French and 'ECJ' for English, and earlier titles such as 'Court of the European Communit*'). Consequently, for each newspaper the search results included all newspaper reports that mention in their headline or full text any of the names or abbreviations for the

⁵² Interview with William Valasidis, Dir. Commc'ns Ct. Just. Eur. Union (19 October 2018).

⁵³ *Factiva*, *supra* note 11.

⁵⁴ The data collection was constrained to these years due to the availability of data for CJEU cases, building on the three data sets that were combined. *See infra* notes 55–57. Moreover, news sources were not consistently digitized before 1997.

Die Presse (Austria), Der Standard (Austria), Irish Times (Ireland), Le Figaro (France), Politiken (Denmark), Süddeutsche Zeitung (Germany), The Guardian (UK), The Times (UK)
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Figure 13.1 Newspaper selection: leading newspapers from six countries

court. Each collected newspaper article was individually checked to see whether it concerned one of the CJEU judgments delivered the day before the newspaper report was published. If this was true for at least one newspaper article, the salience variable for the CJEU judgment and the respective newspaper was coded as '1', and '0' otherwise. This represents a novel and innovative method for the study of EU law and CJEU decisions.

Including newspapers from every EU country is beyond the limits of this chapter and the data collection within the underlying project generally speaking. The selection comes with obvious limitations that should be addressed in some more detail. Court cases might be more prominent in some countries as well as in certain newspapers. Economic newspapers, for example, could potentially report about CJEU decisions more often since many cases affect the organization of the common market, questions of trade, or the free flow of the means of production (capital, labour, etc.). Tabloids, on the other hand, could focus on particularly scandalous cases, but would most probably be much more selective and less inclined to systematically cover legally and politically influential CJEU decisions. The key purpose of the data collection process described here, that formed the basis of this chapter, is to ensure a comparability of the measure for salience (i.e. media coverage) across thousands of cases. This naturally goes at the expense of the number of newspapers included in any collection effort. The key argument, however, is that the data collection strategy as well as the analysis presented here is

- (a) standardized and comparable across a broad range of newspapers, and
- (b) generally applicable to the inclusion of more data points.

This means that with additional resources more or other newspapers from various time horizons can be included, going back to the creation of the court in the 1950s or going forward in the future. The standardized coding procedure developed in this project and presented in this chapter provides the basis for researchers to use it for the study of EU law, as well as court decisions in other jurisdictions. The newspapers and the time

frame can be flexibly adapted to the needs and resources of the respective researcher seeking to study court decisions in their socio-legal context.

Despite the obvious limits of the newspaper selection, the data allows us to monitor some of the most important newspapers in the respective countries. These include founding members of the EU (DE, FR), states that joined during early accession rounds (DK, IE, UK), as well as a smaller country (AT) that became EU member later on. This initial portfolio does not only include a great variety of socio-economic structures, media systems, languages, and public discourses in the EU, it also follows earlier selection strategies by, for example, Kriesi et al.⁵⁵ Including these newspapers means that salience for each court case can be measured up to eight times, once per newspaper.

In a quantitative research design, the aim is to maximize the number of observations, that is, the units that are included in the analysis. The quantitative statistical approach does not allow for a meticulous description and tracing of processes or events. Other than case studies or doctrinal analyses that have their specific strengths in providing a highly detailed account of cases or judgments,⁵⁶ the statistical design takes a 'bird's-eye view'. By looking at generalizable characteristics across thousands of cases, it is possible to discover relationships between case attributes. This approach draws its strength from the fact that it allows general statements about relationships between variables, that is, between measured traits of court cases. At the same time such a design almost inevitably (and deliberately so) goes at the expense of detailed insights into individual cases. By uncovering general tendencies, the patterns revealed in a quantitative research design can reveal factors of a case or its socio-legal context that might not have surfaced as important before. In this way, the results of statistical analyses can also inform qualitative legal scholarship to provide additional in-depth investigations of previously neglected factors. This chapter will elaborate further on that potential after presenting the analysis and results.

A *The Outcome Variable: Case Salience*

The method presented in this chapter utilizes a quantitative comparative design across thousands of court cases to identify *under which circumstances newspapers report about CJEU decisions*. By building on several

⁵⁵ Hutter et al., *supra* note 45, at 45; Kriesi et al., *supra* note 43, at 40.

⁵⁶ See e.g., Arnholtz, *supra* note 10; and Louis, *supra* note 10.

data sets for CJEU cases I was able to include more than 4,000 court decisions. This number stems from combining three data sets that include annulment procedures,⁵⁷ infringement procedures,⁵⁸ and preliminary reference procedures⁵⁹ that were initiated in the years from 1997 to 2008. The study of public opinion and media discourse allows capturing the politicization of CJEU decisions in a number of different ways.⁶⁰ As one of the primary components of politicization, the salience of a CJEU decision captures whether a case occurs in the media or not. Following scholarship on the US Supreme Court,⁶¹ salience is operationalized as the occurrence of a judgment in the print version of each of the included newspapers the day after the court ruling. It takes the value 1 if the newspaper reported about the respective judgment, and 0 otherwise (e.g. for the French *Le Figaro* $\text{Salience} = [0;1]$). Other than Epstein and Segal's measure, the salience data for CJEU cases is not restricted to front-page reports. By taking into account all reports that occur in the newspaper, it resembles the more comprehensive strategy of Collins and Cooper instead,⁶² that allows a more complete picture of newspaper coverage. This chapter introduces the data and offers a statistical analysis of the salience data collected for the entire set of court rulings and for each of the eight newspapers.⁶³ Unsurprisingly, for the vast majority of CJEU rulings there is no media attention the day after the judgment. For only roughly one out of seven judgments (14 per cent) there were newspaper reports (610 out of 4,357 court cases). Thus, about 14 per cent of judgments are salient to some degree (Figures 13.2 and 13.3).

⁵⁷ Christian Adam, Michael W. Bauer, & Miriam Hartlapp, *It's Not Always about Winning: Domestic Politics and Legal Success in EU Annulment Litigation*, 53 J. COMMON MKT. STUD. 185, 185–200 (2015).

⁵⁸ Alec Stone Sweet & Thomas Brunell, *Set on Infringement Proceedings in EC Law: NEWGOV Project* (2007), http://www.eu-newgov.org/datalists/deliverables_detail.asp?Project_ID=26.

⁵⁹ Daniel Naurin et al., *Coding Observations of the Member States and Judgments of the Court of Justice of the EU under the Preliminary Reference Procedure 1997–2008*, 1 CERGU'S WORKING PAPER SERIES 1, 1–48 (2013).

⁶⁰ See Michael Zürn, *Opening up Europe: Next Steps in Politicisation Research*, 39 WEST. EUR. POL. 164, 164–82 (2016) (offering a systematic overview over components and manifestations of politicization).

⁶¹ Epstein & Segal, *supra* note 15.

⁶² Todd A. Collins & Christopher A. Cooper, *Making the Cases 'Real': Newspaper Coverage of U.S. Supreme Court Cases 1953–2004*, 32 POL. COMM. 23, 23–42 (2015); Collins & Cooper, *supra* note 16.

⁶³ The data underlying the analysis in this chapter are available at <https://doi.org/10.3929/ethz-b-000449966>.

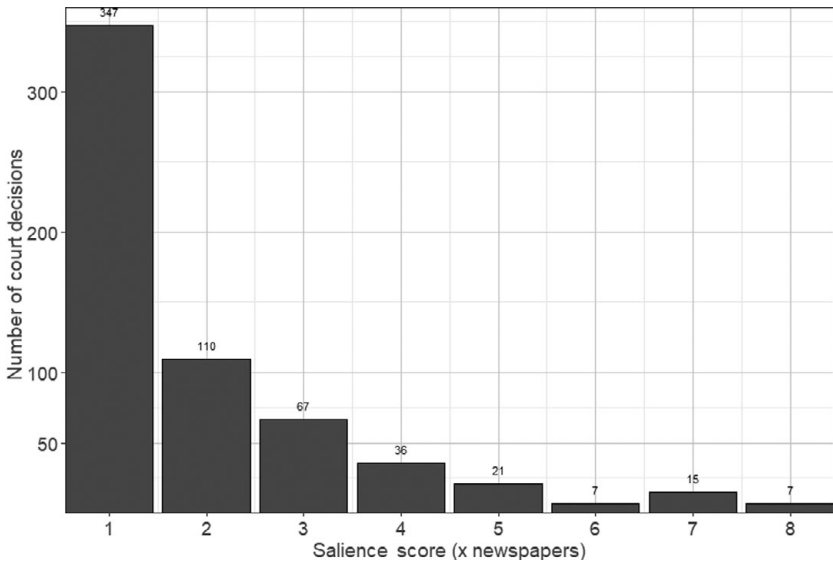


Figure 13.2 Newspaper coverage of CJEU decisions

Note: Salience scores for 610 out of 4,357 CJEU decisions (decided between 1997 and 2016) included in three data sets (see notes 52–54); image licenced under CC-BY 4.0 International by Julian Dederke.

This emphasizes the nature and technicality of many CJEU cases that often concern the very details of certain directions, regulations, products, or transactions. Nevertheless, by including several thousand court cases, the statistical analysis still carries substantial statistical power that allows for complex quantitative analyses.

These differences also emphasize the need to control for the effects of individual newspapers in the statistical analysis. Since this chapter does not seek to further investigate or explain the differences between newspapers, but instead focuses on other factors, the statistical analysis will mainly *control for* the effects of individual newspapers. Discovered differences between countries or newspapers can, however, inspire qualitative research designs such as case studies of individual newspapers. This will be explained further below.

B Explanatory Factors

Under which conditions do court cases receive media attention? To identify factors that help explain the salience (or absence of salience) of

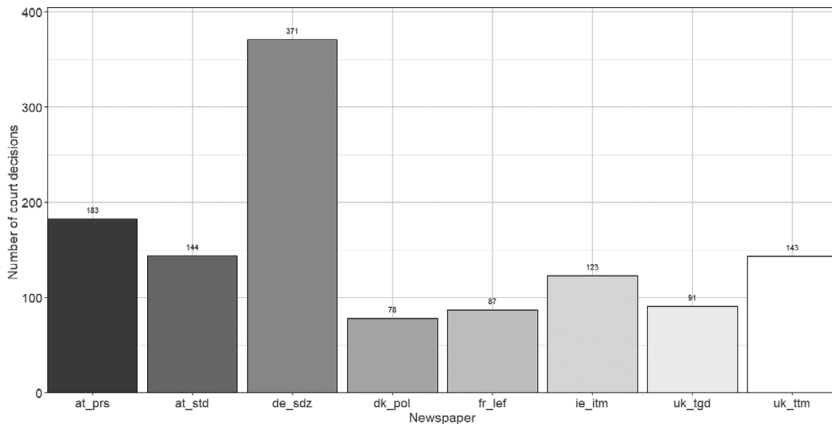


Figure 13.3 Number of covered CJEU decisions per newspaper; image licenced under CC-BY 4.0 International by Julian Dederke.

CJEU decisions, each of the formulated theoretical expectations needs to be operationalized. Ideally, the variables that serve as explanatory factors should vary across court cases to explain variation in a statistical analysis. I use a *Time* variable that denotes the number of days since 3 March 1997, that is, after the first ruling that is included in the data set (T-6/97). The court’s public communications activities are operationalized with a *Press Release* variable that denotes whether the court issued a press release for the respective judgment (1) or not (0).⁶⁴ Based on Lijphart’s comparison,⁶⁵ a binary variable is used to operationalize the standing of the judiciary in the national political system, coded either as *strong* (=1) in case of strong or medium-strength judicial review or *not strong* (=0) in case of weak or no judicial review. Court procedures are distinguished with the help of three dichotomous dummy variables that indicate whether the case is a preliminary reference procedure (PRP), an infringement procedure, or an annulment procedure. Each of those three variables can take the values 0 or 1.

Combining three sets of data for different types of CJEU procedures⁶⁶ allows us to include a large amount of cases. However, not all variables are available due to different priorities of the research projects that facilitated

⁶⁴ The data was gathered on the CJEU’s press release website. According to the CJEU registry, this list covers all press releases since 1997.

⁶⁵ Lijphart, *supra* note 35, at 215.

⁶⁶ See Adam et al., *supra* note 57; Stone Sweet & Brunell, *supra* note 58; Naurin, *supra* note 59.

the data collection. Thus, to test the assumptions about the role of conflict between the CJEU and member state governments, and the role of domestic origin, I only use a subset of all observations by building on the data set on preliminary reference procedures.⁶⁷ The variable for *Domestic Origin* denotes a 1 in the case of a newspaper from the same country as the court case, and 0 if the countries are not the same. The *Conflict* variable is adapted from Larsson et al. and ‘indicates whether the net weighted position of the member states is in conflict with (1) or in favour of (−1) the decision of the Court, or whether the position is ambivalent (0)’.⁶⁸

To control for the overall receptiveness of newspapers for EU-related topics, all models include the amount of news articles mentioning the EU in any of its names one day after the respective court judgment (*EU News*). Media attention might also differ from country to country. To control for all differences that are associated with the countries taken into consideration, so-called country dummy variables are included in one of the models. The same applies to individual newspapers. These dummy variables are binary factors that either take the value 0 or 1, depending on whether, for example, the *UK Times* is under consideration (1) or not (0). They can capture the effect of each individual country and/or newspaper and thus, make sure that statistical variation that stems from the behaviour or particularities of each individual newspaper are eliminated from the variation in media attention one seeks to explain. Moreover, cases that affect certain legal issue areas might attract more or less media attention. Therefore, dummy variables for different fields of EU law are included in a fifth model.⁶⁹ Since Krehbiel finds that the number of actors engaged in a court procedure could potentially influence its level of salience,⁷⁰ the number of member state amici curiae are used as a control variable (*MS Amici Curiae*), too.

V Explaining Media Attention for CJEU Cases

Each observation in the statistical analysis equals one newspaper-court decision, so that for each court decision there are ‘n’ observations with ‘n’

⁶⁷ See Naurin, *supra* note 59.

⁶⁸ Larsson et al., *supra* note 13, at 904.

⁶⁹ The coding of these legal issue areas is based on the sections of EU law/the EU treaties that are affected by a case. For details, see Naurin et al., *supra* note 55.

⁷⁰ J. N. Krehbiel, *The Politics of Judicial Procedures: The Role of Public Oral Hearings in the German Constitutional Court*, 60 AM. J. POL. SCI. 990, 998 (2016).

being the number of newspapers included in the analysis. In this way, the analysis can build on more than $4,000 \times 8 = 32,000$ observations, also illustrated schematically in Table 13.1.

Every newspaper has a certain likelihood of mentioning a particular CJEU judgment, or not mentioning it, which can be explained by various factors. Table 13.2 presents results of logit regression models. They are designed to explain variation of media salience by taking the salience of a CJEU judgment in a single newspaper as a dichotomous outcome variable (each cell takes the value 0 or 1). Since the data always includes eight newspapers per CJEU judgment, the newspaper articles are clustered per CJEU judgment, giving the statistical model a two-level structure. The continuous variable that measured time violated the linearity assumption of the regression model and was therefore omitted from all models. The variable for the amount of *EU News* is log-transformed to appropriately take into account that the data has many more small values (few articles per day mentioning the EU) than large values.

The overall probability of a newspaper reporting about a certain CJEU judgment the day after the decision is low.⁷¹ However, the analysis of thousands of cases can reveal that several factors have a substantial effect on this estimated probability. The logistic regression models show that the amount of *EU News*, the *standing of the judiciary*, and *CJEU Press Releases* have positive effects on the salience of CJEU judgments. These results are in line with hypotheses H2 and H5. The CJEU seems to be successful in mediatizing certain judgments with the help of press releases, while not mediatizing others. With a press release, the odds of a newspaper reporting about a court decision are more than thirty-eight times larger than without (Model I). The court seems to be able to mediatize cases. At the same time, it has to be acknowledged that the court also engages actively in media monitoring, indicating that press releases are also more likely for cases that are expected to receive more media attention.

The importance of a judiciary in its political surroundings also makes a difference. The chances of a CJEU judgment to appear in a newspaper are 3.8 times larger in member states with strong judicial review compared to those with a weaker role of the judiciary (see Model I). Thus, media outlets in member states that have a stronger standing of the judiciary in their political system are more likely to report about CJEU decisions.

⁷¹ See *supra* page five.

Table 13.1. *Simplified illustration of data structure*

Observation number	Court Case	Newspaper	Variable 1	Variable 2	Variable 3	Variable N
1	C-123/45	<i>Die Presse</i>
2	C-123/45	<i>Der Standard</i>				
3	C-123/45	<i>Politiken</i>				
4	C-123/45	<i>Le Figaro</i>				
5	C-123/45	<i>Süddeutsche Zeitung</i>				
6	C-123/45	<i>Irish Times</i>				
7	C-123/45	<i>The Guardian</i>				
8	C-123/45	<i>The Times</i>				
9	T-543/21	<i>Die Presse</i>				
10	T-543/21	<i>Der Standard</i>				
11	T-543/21	<i>Politiken</i>				
12	T-543/21	<i>Le Figaro</i>				
13	T-543/21	<i>Süddeutsche Zeitung</i>				
14	T-543/21	<i>Irish Times</i>				
15	T-543/21	<i>The Guardian</i>				
16	T-543/21	<i>The Times</i>				
...

Table 13.2. *Two-level logit analysis of media attention for CJEU judgments*

Odds ratios	Outcome variable: CJEU Case Salience (0 ; 1)				
	GLM multilevel regression models				
	I	II	III	IV	V
EU News	2.280* (0.053)	1.886* (0.059)	1.898* (0.060)	2.037* (0.081)	2.042* (0.080)
Strong Judiciary	3.790* (0.081)			4.244* (0.133)	4.179* (0.131)
Press Release Issued	39.653* (0.182)	43.298* (0.190)	43.778* (0.191)	38.271* (0.246)	29.179* (0.237)
Domestic Origin				22.923* (0.171)	21.649* (0.166)
Conflict				1.264* (0.100)	1.275* (0.097)
MS Amici Curiae				1.364* (0.090)	1.282* (0.087)

Table 13.2. (cont.)

Odds ratios	Outcome variable: CJEU Case Saliency (0 ; 1)				
	GLM multilevel regression models				
	I	II	III	IV	V
Infringement Procedure	0.819 (0.225)	0.827 (0.232)	0.827 (0.233)		
Annulment Procedure	1.041 (0.180)	1.023 (0.186)	1.021 (0.187)		
Constant	0.0003* (0.240)	0.0003* (0.257)	0.0002* (0.282)	0.0002* (0.348)	0.0005* (0.358)
Fixed Effect Controls					
- Countries		X			
- Newspapers			X		
- Legal issues					X
Observations	34,794	34,794	34,794	12,780	12,780
Log Likelihood	-3,457.879	-3,417.085	-3,403.525	-1,352.014	-1,327.414
Bayesian Inf. Crit.	6,988.958	6,949.200	6,942.993	2,779.673	2,872.308

Note: * Significant on $p < .05$ level; Two-level logistic regression with newspapers clustered per CJEU judgment. Table reports odds ratios, and standard errors in parentheses. Analysis script available at: <http://doi.org/10.5905/ethz-1007-452>; Underlying data available at: <https://doi.org/10.3929/ethz-b-000449966>

The insignificance of the variables for infringement procedures and annulment procedures indicates that the procedure types themselves do not make a significant, measurable difference for media attention in comparison to preliminary reference procedures. These findings remain stable across models, as the robustness checks in Models II and III show. When testing for country-related effects and newspaper-related effects (Models II and III), the variable for the strength of the judiciary is excluded, because as a country-level factor it correlates perfectly with some of these control variables.

As mentioned earlier, the analysis can be extended with additional variables when using the most comprehensive data set that covers 1,598 preliminary reference procedures.⁷² A variable for the *Domestic Origin* allows us to evaluate whether cases sent from a national court are more likely to be covered in the respective domestic media outlets. Furthermore, the *Conflict* variable denotes whether there is a conflict between the position of the court and the majority of member states governments. The *MS Amici Curiae* variable allows to control for the amount of governments participating in the procedure as amici curiae. Finally, Model V tests whether legal issue areas that are affected by the respective CJEU case have an effect on media attention (see also Figure 13.4).

The effects reported earlier hold in these additional models, too. Furthermore, the domestic origin of a preliminary reference case makes a difference for media attention, and newspapers are more than twenty times more likely to report about cases that stem from their own country (OR = 22.9 in Model IV). Thus, case origin appears as an important variable to explain media attention. The *Conflict* variable also proves significant, but indicates a weak effect (OR = 1.3 in Model IV). The same holds for the number of amici curiae. Media attention is more likely for CJEU cases in which more governments get involved.

In sum, the presented analysis reveals some first insights that hold across 4,350 CJEU decisions.⁷³ Court cases with a domestic origin clearly have higher chances to be reported in their respective newspapers (H3). Moreover, a stronger standing of the judiciary in the national political system has a substantial positive effect on media attention for CJEU judgments (H2). Third, the strongest discovered correlation is the one between CJEU press releases and media attention the day after a judgment.

⁷² See Naurin et al. *supra* note 59.

⁷³ Some observations were dropped from the statistical analysis due to missing values.

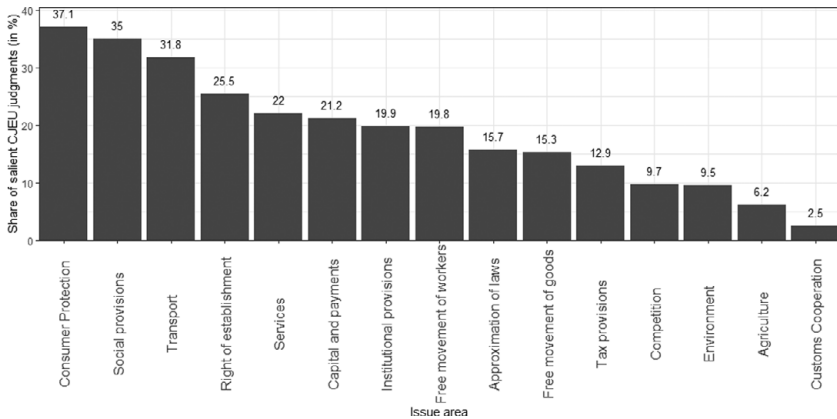


Figure 13.4 Share of covered preliminary reference procedures per legal issue area
Notes: Numbers and bars are not mutually exclusive, since a court case can always affect several legal issue areas; example: of all preliminary reference procedures that affect Tax Provisions, 12.9 per cent received media attention the day after the judgment.⁷⁴ Image licenced under CC-BY 4.0 International by Julian Dederke

The conflict between CJEU judgment and member state positions has a positive relationship with media attention, thus confirming H4a. Other than expected in H1, for the covered time period 1997 to 2016, the analysis did not reveal a linear time effect. The time variable had to be omitted, because model assumptions about a linear relationship were violated. This calls for an analysis that would ideally capture media attention for CJEU judgments starting back in the 1950s in a more comprehensive project that would also require reliance on individual newspapers' archives. Even though some variables that control for the effect of individual countries, news outlets, or legal issue areas show significant effects (see Figures 13.2–13.4), the main discovered relationships do not change when using these additional robustness checks (see Models II, III, V).

VI Applying the Approach to Substantive Research Problems: Strengths and Weaknesses

Compared to the other approaches presented in this volume, the macro-analytical perspective that offers a bird's-eye view on thousands of cases

⁷⁴ Due to the lack of clear theoretical expectations regarding legal issue areas, I abstain from detailed interpretations.

comes with its very own strengths and limitations and a necessary downside regarding the details of individual court cases. In this quantitative setting, cases are merely categorized as to their generalizable and easily comparable characteristics, such as the formal procedure applied, the legal issue areas affected, and the actors or institutions involved. This general view does not offer the same detailed insights as offered by, for example, Arnholtz for the *Laval* case,⁷⁵ or other chapters in this book. Meanwhile, one of the major strengths of this quantitative approach to study EU law lies in 'zooming out' to generate generalizable results across many court cases.

Generally speaking, the described measurement strategy and standardized coding procedure is suitable for covering the entirety of all CJEU decisions back until the 1950s or forward in the future. Inspired by the well-established measure for case salience in the United States,⁷⁶ selected newspapers and the time frame can be adapted flexibly to the needs and resources of the respective researcher seeking to study a court and its decisions in their socio-legal context. In the US context, research on judicial behaviour has a prominent standing in empirical legal scholarship. This focus is less developed in case of the CJEU, since many variables that are necessary for studying judicial behaviour are not available in the EU context: individual voting behaviour, dissenting opinions, opinion assignment, etc. Different from research in the US context, there are other research strands in the EU context that dominate the discussion about the relationship between law and politics, or law and society more generally. These research areas include, for example:

- (i) *the politicization of judicial authority*;⁷⁷
- (ii) *measurement and evaluation of public authority*;⁷⁸
- (iii) *measurement and evaluation of (public) legitimacy; and*⁷⁹
- (iv) *the relationship between international courts and the public.*

The case salience data presented here does not only offer opportunities to contribute to these research areas with quantitative approaches studying EU law, but can also spark additional interest for future qualitative research and can provide arguments for the case selection in

⁷⁵ See Arnholtz, *supra* note 10.

⁷⁶ Epstein & Segal, *supra* note 15.

⁷⁷ See, e.g., Zürn et al., *supra* note 7.

⁷⁸ See, e.g., Alter et al., *supra* note 24, at 11–12.

⁷⁹ *Id.*

'low-N(umbers)', qualitative studies. For example, judgments that show a remarkable gap between legal authority of the court case and public salience can be described as 'masked' by the law. Their importance does not surface in the public sphere, and these decisions are either hidden from public attention, very technical in nature, not publicized by the court, or simply not controversial and thus, not politicized. Such decisions represent important instances for case selection in studies that engage in questions of politicization, legitimacy (deficits), and accountability of the CJEU and its output.

Second, since there is to date no comprehensive theory or systematic empirical insight regarding which legal issue areas attract most media attention, more in-depth, qualitative analyses of news reports for particularly salient CJEU decisions could prove helpful in this regard. Another option to supplement the initial insights delivered in this chapter could be case studies that investigate a newspaper's journalistic practice regarding court decisions. Figure 13.3 already has illustrated that there seem to be relevant differences across newspapers that cannot be addressed in more detail here. Similarly, it might also be relevant to take into consideration the fact that newspapers maintain contacts among each other and that coverage of a court case by one newspaper might not be independent of coverage by other newspapers.

Third, the fact that press releases and the probability of media attention for court decisions correlate, leaves us with important additional questions. These concern, for example, the incentives of the CJEU and its communication staff to use such public communication tools. Addressing all these questions is beyond the scope of this chapter that deliberately sought to provide a generalizable view on relationships that hold across thousands of cases. The additional questions raised here can potentially be best addressed by qualitative research that builds on fieldwork, ethnographic, interview, or doctrinal analyses.⁸⁰ Thus, the methodological approach introduced here can inform the selection of court cases or newspapers for more detailed, in-depth case studies.

VII Conclusion

The amount of cases before the CJEU has seen a dramatic increase in recent decades. With the court shaping the union's legal order and public

⁸⁰ RESEARCHING THE EUROPEAN COURT OF JUSTICE: METHODOLOGICAL SHIFTS AND LAW'S EMBEDDEDNESS (Mikael Rask Madsen et al. eds., 2022).

policy output in thousands of instances each year, CJEU cases provide ample material for quantitative analyses in empirical legal studies. This opens up numerous opportunities to further explore the CJEU, its actions and legal procedures, and its political and societal environment. By introducing a novel approach to systematically measure and analyze media attention for CJEU judgments, this chapter explored these opportunities, illustrating that the immense caseload of the CJEU provides ideal preconditions for quantitative research designs.

The starting point of this undertaking was the observation that we hardly know anything systematic about which CJEU cases are discussed in the public or media, although questions of legitimacy of EU law and the CJEU are of paramount importance. Despite fruitful recent efforts to trace public and political discussions in response to CJEU rulings in certain legal issue areas,⁸¹ the scope of uncovered terrain is still wide. Quantitative research designs can deliver broader and potentially more comprehensive insights regarding the prominence of CJEU decisions in the public. Building on an extensive data collection for media coverage of CJEU decisions, this chapter introduced a new methodological approach that focused on a systematic and large-scale measurement of media attention and public salience of court decisions. I delivered a conceptual clarification of salience of CJEU cases in the European public sphere, presented a reliable and comparable measurement strategy, and a systematic empirical analysis for newspaper coverage of more than 4,000 CJEU decisions. The analysis provided insight into determinants of case salience on the level of court cases and countries. The analysis revealed considerable variation across countries and newspapers, and identified the standing of courts in national political systems, court case attributes, the severity of conflicts at court, as well as the court's public communication activities as key factors for determining the salience of CJEU judgments. Finally, the chapter reflected on the strengths and weaknesses of the approach relative to other new methodologies in the study of EU law presented in this volume.

Aiming at a generalizable overview across thousands of cases, the data provides a comparative measure that allowed a quantitative, statistical analysis of conditions under which CJEU judgments appear in the media. Other than previous chapters in this volume, this contribution put an emphasis on 'zooming out' and providing an overview

⁸¹ See Cotter, *supra* note 9; Blauberger et al., *supra* note 9.

across thousands of CJEU cases from a bird's-eye view. It emphasized the general applicability of this methodological approach for a large number of court cases across a longer time period. It is transferable to the context of other courts or tribunals. The contribution also acknowledges specific strengths and weaknesses of this quantitative approach of studying EU law in its socio-legal context. The quantitative statistical approach does not include an analysis of the specific circumstances of the litigation processes, the procedures themselves, or the text of the judgments. Instead, the analysis represents a first step to assess in more detail the degree of politicization of the output the CJEU produces and provides inspiration for quantitative studies of EU law as well as for more in-depth, qualitative analyses.