Lund University
Department of Political Science

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Tutor: Maria Stömvik

The Competence that Creeped

A Systematic Content Analysis of EU Social Policy Case Law and Competence Creep

Rebekah Vance

Abstract

This thesis is about how the Court of Justice of the European Union (CJEU) has propelled competence creep forward in the European Union by consistently applying a broad interpretation of EU law to social policy court rulings. To derive these results, 180 social policy cases were analyzed and coded using systematic content analysis, transforming qualitative data into quantifiable data. The analysis is used to categorize and identify patterns that test the presence of competence creep and judicially constructed competence expansion over time, while also preserving the nuances of each of the selected cases. In this study, the case selection consists of social policy rulings produced by the CJEU. As a controversial area of shared competences in the EU, social policy will be analyzed ranging from EU jurisprudence under the Treaty of Rome (1957) to the Lisbon Treaty (2009). The analysis provides empirical support for the presence of competence creep over time and confirms the predominance of cases interpreted to favor the EU and an expansion of EU law in the area of social policy.

Keywords: *EU Competences, Court of Justice of the European Union, Social Policy, Competence Creep, Systematic Content Analysis*

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Table of Contents

1 Introduction **1**

1.1 The Debate: the EU and Competences 3

2 Legal Background **5**

2.1 It's a Matter of Principle(s) 5

2.2 A long time coming: Paris 1951 – Lisbon 2009 6

2.3 The current discussion on the Court and Competences 9

3 Subjects Matter: Social Policy **12**

3.1 An Evolution of Social Policy in the EU 12

3.2 Social Policy as "Soft Law" 13

3.3 Social Competences Expanded? 14

3.4 Why not investigate a different Shared Competence? 15

4 Theoretical Foundations **16**

4.1 How did we get this Competence Creep? 16

4.2 How the Court contributes to Competence Creep 17

5 Methodology **19**

5.1 How Scholars have derived data from Case Law 19

5.2 How to turn Law into Data 23

5.3 Research Method 27

5.4 Methodological Considerations and Limitations 33

6 Analysis **36**

6.1 The Distribution of Cases over time 36

6.2 The (not so) surprising interpretation of EU Law 37

6.3 Does procedure type matter? 39

6.4 A look into Direct Actions and the Appeal 40

6.5 A look into Preliminary References 43

6.6 What about the Lisbon Treaty? 46

7 Conclusions and Discussion **50**

8 Bibliography **52**

EU Case Law 52

References 53

9 Appendix **59**

Abbreviation List

CJEU	The Court of Justice of the European Union
ECSC	The European Coal and Steel Community
EC	European Community
EEC	European Economic Community
EPSR	The European Pillar of Social Rights
EU	European Union
EWS	Early Warning Systems
SCA	Systematic Content Analysis
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

1 Introduction

At its core, what gives the European Union (EU) the ability to assert powers is based on the competences conferred to it by its member states (Article 5(2) TEU). Competences outline what the EU has the authority to legislate, moreover, the EU enjoys only the competences explicitly given to it while the member states reserve all other competences at the national level (Schütze 2020: 61-63; Kellerbauer, Klamert, & Tomkin 2024: 88). Although clear cut in theory, in practice the idea that the EU only uses the competences explicitly conferred to them is misleading.

There is a gray zone where shared competences, meaning areas where the EU and the member states share jurisdiction, are left to interpretation, making it unclear to what extent the EU can act on them or not (Schütze 2020: 79). Where competences written in the treaties are not clear cut in their definition and application, there is a constant power struggle to keep the EU from furthering integration in key areas. This power struggle can be described as "whereby the EU somehow manages to legislate and/or otherwise act in areas where it has not been conferred a specific competence", also known as competence creep (Garben 2019: 205). The Union has been known to stretch its competences and go beyond the original meaning of the treaties, often against the will of the member states (Dawson 2011: 73; Lebeck 2008: 306). In an attempt to preserve their national autonomy, member states have made multiple attempts, and several treaty reforms, to consolidate EU competences and limit its power. Some argue that the Lisbon Treaty laid out more provisions to limit EU competences, meaning that competence creep could potentially be 'slowing down', and narrowing the EU's power (Garben 2019: 205; Oberg 2018: 695-697). However, because of the principle of subsidiarity and proportionality, limits on Union competence do not necessarily prevent the EU from acting through alternative legal bases. As a result, areas formally reserved to member states can still become deeply integrated at the EU level (Garben 2019: 205ff.).

Many member states, stakeholders, and academics have sought to understand the balance of power between the EU and national governments, using approaches ranging from interviews with EU representatives to analyses of heads of government and national political actors (Hooghe 2001: 67-92). An alternative way to study how competences are treated by the EU and are regulated beyond the treaties is by investigating the role that the Court of Justice of the European Union (CJEU) plays.

When the Court participates in competence creep, the wording used to describe it is 'judicially constructed competence expansion'. The CJEU has the jurisdiction to either further integrate political competences in the EU or set the boundaries of EU influence through its court rulings, making it a useful lens through which to examine how the boundaries of EU competences are interpreted, expanded, or constrained beyond the text of the Treaties.

The objective of this study is to add empirical evidence to the conversation on competence creep and the CJEU's role in it pertaining to case law on the EU's social policy. Many previous studies that look into EU case law and how competences are used employ an in-depth qualitative analysis of key cases in order to trace the detailed legal reasoning and doctrinal developments that underpin judicial expansion in social policy (Polomarkakis 2022: 272-273); while some researchers go in the opposite direction and opt for more computational and statistical methods (Bommarito & Katz 2010: 1; Mohammadi et al. 2025: 4; Marulli, Panattoni & Bertini 2025: 4). What is missing from this literature is a more systematic and quantifiable approach to assess the overall scale and consistency of judicial influence across a larger body of case law. Previous literature on the topic has been unable to answer questions about the interpretation of EU law and competence creep over time in a way that provides empirical data and frequencies of cases. Moreover, what the literature is missing is a study that is able to show trends and patterns of competence creep over time and provide a longitudinal view over the entirety of the CJEU's jurisprudence.

To fill the research gap this study will read and code social policy case law from 1971 to 2025, and uncover trends and patterns of competence creep in EU law by using systematic content analysis. The research serves as an empirical study that combines legal disciplines and social science methods to uncover more on the so-called 'competence creep' in relation social policy cases referenced to the Court of Justice of the European Union, hereinafter the Court or CJEU. Looking at case law spanning 54 years (1971-2025), this study analyzes the development over time to provide an overview of trends and patterns rather than explanatory conclusions about why the CJEU rules the way it does and what impact this creates. As such the research question for this thesis is:

> **What patterns of judicially constructed competence expansion can be identified in the CJEU's social policy case law?**

1.1 The Debate: the EU and Competences

One of the most debated competences within the EU is social policy (Graziano & Hartlapp 2019: 1485-1486). Social policy is a broad concept and expands across employment, equality, social protections, and beyond. Because of its status as a shared competence, the EU is constantly in battle of not overstepping the boundaries of the powers conferred to them, while also creating a unified and integrated 'Social Europe' (Kiess & Seeliger 2021: 299). This leads to questions on the legal authority the Union has to pass social policy legislation and if it acts within its competences. Some cite the EU's roots as an economic project and the base as an internal market to argue that the Union has no business to legislate on social policy in the first place (Gaydamaka 2020: 318). However, in the words of the President of the European Commission, Ursula von der Leyen, "the social market economy is at the heart of the prosperity of the European economy" , emphasizing a social aspect to the Union's mission as a whole (von der Leyen 2025).

Social policy initiatives from the EU are often subject to legal interpretation because of its status as a shared competence (Article 4(2b) TFEU; Craig 2013: 168). More specifically, social policy often falls under the principle of subsidiarity. This means that the EU cannot make substantial decisions in an area of shared competence without compelling reasons, which need to be justified to the member states (Schütze 2020: 45-46). In several cases the EU has used the internal market as a means to promote social policy initiatives such as the Single European Act (1987). This was a turning point for social policy being recognized as one of the key instruments for a further integrated Europe (Gaydamaka 2020: 318). In instances where member states do not agree with how the EU's competences have been interpreted, the forum for them to question EU legislation and competences sits with the Union's legislative branch.

Where social policy and EU competences meet at a crossroads, the Court plays an important role in either restricting or advancing European integration through its judgements in social policy case law (Polomarkakis 2022: 257-258). The Court has ruled on several EU social competences, such as whether the EU has the competence to set standards for minimum wages (*Denmark v Parliament and Council*, Case C-19/23, 2025), for how member states report on migrant workers (*Allemagne, France, Pays-Bas, Danemark and United Kingdom v Commission*, Case C-281/85, 1987, Case C-283/85, 1987, Case C-285/85, 1987, and Case C-287/85, 1987) , and if the EU may regulate the organisation of working time (*United Kingdom v Council,* Case C-84/94, 1996). Where EU actions are questioned from a point of law, it is for the Court to rule on the interpretation of EU law and 'how far' social policy competences are conferred onto the Union.

Academics argue that the Court plays an important role in defining the EU's competences, despite them being laid out in treaty articles (Burley & Mattli 1993: 44). This goes against the original meaning of EU treaties where competences are meant to be clearly defined and conferred by the member states (Cini & Pérez-Solórzano Borragán 2022: 40). Many academics would describe an expansive interpretation of EU competences through what is known as the 'competence creep'. The concept, which will later be described in more depth, explains how the Union has gone beyond the original meaning of the treaties through Court cases that rule in favor of a more integrated Europe (Pollack 1994: 102; Weatherill 2004: 17). This research paper combines the three elements: EU competences, the Court, and social policy, to unveil patterns of competence creep and add empirical evidence over the CJEU's jurisprudence that the research field has failed to address thus far.

In this thesis, an overview will be given on the EU's legal structure, followed by an explanation on how the EU has used and interpreted its competences. Then the paper moves into how researchers theorize about, and explain EU competence expansion. Then a discussion will be held on the role that the Court plays in checking and balancing these competences, and the empirical ways in which this influence can be measured. A detailed explanation will be provided on why social policy is the preferred policy area for this study. In the next major section theoretical foundations will be expanded and an in depth understanding of implied powers and competence creep will be presented. A discussion on how the competence creep will be used in this research follows, after which the methodological considerations of the research, its design, and how cases are selected is presented. In the last major chapter the analysis is presented along with its results and a discussion on how the research ties back to an understanding of the Court's role in expanding or narrowing EU competences. The paper will conclude with a discussion with a summary of the study and inspiration regarding future research.

2 Legal Background

This chapter provides a brief background on the judicial landscape of the EU and provides an explanation on how the EU's treaties work and how competences are defined. It outlines what legal principles guide the EU's use of competences, a brief history of how competences emerged in the treaties, how the CJEU works, and what role the CJEU plays in interpreting competences.

2.1 It's a Matter of Principle(s)

Where it is difficult to define exactly what competences are, Robert Schütze provides a suggested definition of "a legislative competence is the material field within which an authority is entitled to legislate" (2020: 62). Rather than following such a definition, the EU defines its competences through principles. According to Article 5 in the Treaty on European Union (TEU) there are three principles that govern the EU's competences:

> The limits of Union competences are governed by the principle of conferral.
> The use of Union competences is governed by the principles of subsidiarity and proportionality.

The principle of conferral outlines that the EU may only act in areas which the member states, in the Treaties, conferred to the Union. In other words, if it is not stated in the Treaties that the EU may act on a competence, the EU simply may not legislate or act in that area. The principle of subsidiarity allows for the Union to propose actions in competences that are not exclusive, if the proposed action cannot be sufficiently achieved at the member state level. And finally, the principle of proportionality limits Union action to only that which is decisively needed to achieve the objectives of the Treaties (Schütze 2020: 45-48, 61-62).

All of these principles outlined in the TEU seem relatively black and white on first read, however, some argue that the Union has significantly expanded its competences into policy areas that were not mentioned as exclusive competences in the Treaties (Ronkainen, Wallerman Ghavanini, & Leino-Sandberg 2024: 877). Due to theological interpretations of the Treaties the EU has come to enjoy an abundance of competences that were not originally prescirbed. This does not mean that member states have lost their competences and autonomy to act on a national basis. Rather, trends have shown that there has been an increase in shared competences between the two, placing EU competences in a gray zone, trying to balance their ability to act without stepping on member states' toes (Schütze 2020: 62).

2.2 A long time coming: Paris 1951 – Lisbon 2009

The Treaty of Rome was the first instance of European cooperation where established institutions were able to act within the limits of the powers conferred upon them by the signing nation states. Before signing the Treaty of Rome and establishing the European Economic Community (EEC) in 1957, the same six original countries had signed the Treaty of Paris establishing the European Coal and Steel Community (ECSC) in 1951. They determined that the ECSC did not provide enough of a legal framework to guide the Community's actions. So, six years later, the Treaty of Rome institutionalized the Community's conferred attribution of power, conceived from international, treaty-based powers. At this point the powers provided by the Treaty were mainly executive and not legislative, given that there was a very small role given to the then 'Assembly', which at the time was barely considered a Parliament. The main shift that occurred with the establishment of the EEC in 1957 is that it turned away from the traditional aspects of international organizations and furthered member state integration, containing broad and purposive competences to harmonize Europe (Garben 2025: 46-48).

The EU's competences have developed through major treaty changes, particularly in the Maastricht Treaty and the Lisbon Treaty. Following the Treaty of Rome, member states felt that there was a need to update and redefine the EU's conferred competences and political mandate (Garben 2019: 205). As a response, member states signed in the Maastricht Treaty in 1992, and amended in Amsterdam, that:

> "The union shall respect the equality of Member States before the constitution as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government" (Garben 2025: 202).

This added emphasis to member state autonomy; however, it did not mend all of the member states' criticisms. They still perceived EU competences after Maastricht as a problem of control. Constantly striving for a balance between deeper cooperation, without constructing a federal EU. Pioneers of the Maastricht Treaty suggested a formulation of "federal goals" in the text, but was dropped after controversy which was reflected in a discontent for losing too much nation-state control. Even a vague formulation of a constitution or federal rhetoric was ultimately unacceptable and strongly rejected by the member states (Garben 2025: 113-114). Maastricht therefore expanded EU activity while assuring that these activities remained under state control, making competence depend on treaty based delegation rather than autonomous EU authority (ibid: 126).

By the time the Lisbon Treaty was ratified, the discourse had shifted from whether competences should exist to how clearly they were defined and divided. After the call for a clearer distinction between exclusive Union competences, member states competences, and shared competences, the question remained how to keep powers not conferred to the Union with the member states. This reflected fear of a creeping expansion of the EU's competences and an encroachment on national competences (Garben 2025: 189). Lisbon answered this call to action by making conferral more explicit and by categorizing competences in the treaty. Despite this, Garben argues that the Court's judicial authority continues to play a crucial role in the expansion of EU competences, despite treaty changes (ibid: 192).

The EU Judicial System

In order to understand how the Court facilitates EU competence expansion, it is important to make sense of the EU's judicial system. The Court of Justice of the European Union, first established in the EEC, comprises two courts: the Court of Justice and the General Court. The most common procedure to reach the Court of Justice is the preliminary reference procedure, which requires national courts to refer questions concerning the interpretation of EU law when handling it on a member states level. This measure is in place, found in Article 267 TFEU, to ensure the even application of EU law across the Union and secure the autonomous legal order (Chalmers, Davies & Monti 2019: 158-159). Despite the majority of CJEU cases emerging through the preliminary reference procedure, the central provision for the Court of Justice to address is the judicial review of Union acts, also known as direct actions. This jurisdiction is outlined in Article 263 TFEU and allows the Court to make judgements on the grounds of lack of competence, infringement of member states to EU law, or misuse of powers. These actions can be brought against all the institutions, but also EU agencies, offices, and other bodies. Importantly, this is the main mechanism the Court has to review Union competences and the breadth of European powers. If a member state believes that the Union has gone beyond its competences, the system for checks and balances has them submit cases to the Court for legal interpretation (Chalmers, Davies & Monti 2019: 365-369).

The General Court plays a more limited role than the Court of Justice. It does not sit as a full court but rather a Grand chamber, meaning that different cases receive a different number of judges hearing the cases depending on importance, legal difficulty, or that 'special circumstances so justify' (Chalmers, Davies & Monti 2019: 163-164). The General Court has its own, unique jurisdiction compared to the Court of Justice, including appeals from the decisions of the European Intellectual Property Office, the judicial review of cases brought by individuals against EU agencies and institutions, disputes between EU institutions, agencies, bodies, and its employees, and other matters. The General Court's rulings in these cases are all subject to appeal to the Court of Justice. Appeals make up the third mechanism for the Court of Justice, in addition to direct actions and the preliminary reference procedure. The appeals made from the General Court to the Court of Justice cannot be made based on the outcome of the ruling, but only on questions of law and interpretation in the case. If the Court of Justice finds the appeal to be well founded it overrides the General Court. This procedure offers the Court Justice the opportunity to correct errors from the General Court in the application of EU law and is thus the highest interpreter of what constitutes EU law (Gentile 2020: 75-76). In short, there are many ways for the EU court system to render judgements and the political weight that these judgements hold is a subject of ongoing discussion amongst academics.

The court system quickly transformed how the EC interpreted its competences, giving it the judicial authority to expand them through court rulings. The Court in landmark rulings has established "that the authority of the Community could not, after the entry into force of the Treaty, be conditioned on national constitutional law, regardless of the national constitutional conditions under which ratification of the Treaty was undertaken" (Garben 2025: 64). This means, in short, through cases such as *Van Gend and Loos and Costa v ENEL*, the Courts now possess supremacy in the European legal order over member states (ibid: 60-61). Although these findings may seem obvious to some, it is important to understand how the role of Treaties, and the Court have changed in the EU to better understand Europe's legal landscape and how EU competences have grown beyond their original scope.

2.3 The current discussion on the Court and Competences

In this section there is a discussion on how shared competence has turned into implied powers, which then led to competence creep. Further discussed will be what role the Court plays in monitoring and influencing the EU's competences.

From Implied Powers to Competence Confusion

One interpretation of international law would rationalize international institutions as only acting in accordance with their competences, not imposing any limitations on state powers (Garben 2025: 116-119). Yet, in a post-war Europe, the rules of interpretation have not adopted this restrictive view. Rather, international treaties, as outlined by the Vienna Convention, are to be interpreted with good faith and in the context of achieving treaty objectives (United Nations 1969, Article 31). With general interpretive trends in the EU going shifting towards an increase in the presence of shared competences, many scholars have identified the emergence of 'implied powers'. Implied powers confer additional powers to the EU that are not clearly defined by the Treaty. The existence of implied powers inherently goes against the mandate that member states are 'masters of the treaties', and often leads to disagreements about whether the EU is reaching beyond its competences in a delicate balance between member state autonomy and EU harmonization (Lebeck 2008: 306).

With an increase in the use of implied powers, a phenomenon emerges commonly referred to as competence creep. Competence creep will be further explained in the theory chapter, however, the academic debate on whether competence creep exists will be described in this section.

First coined by Pollack in 1994, competence creep as a theory describes how the EU has made power grabs beyond the original meaning of the treaties and expanded its competences (Vėlyvytė 2023: 1). Before the term was coined, Weiler identified the shift in the supranational legal order that favored expanded competences by the EC (1991: 2140). As the theory developed over time, other academics brought the Court into focus, emphasizing its role in competence creep (Garben 2020: 430; Brooks 2012: 33ff. Lecykiemicz 2005: 1678). Many scholars tend to agree that the EU participates in this competence creep; however, some do not subscribe to the notion that the EU's competences are continuously expanding through their interpretive grey zone.

Other researchers hold that the Lisbon Treaty set out to enhance containment of EU competences, by introducing increased checks on the exercise of EU competence by national parliaments in addition to more strict competence categories (Garben 2019:

205). Jacob Öberg agrees with this and argues that the Lisbon Treaty's the Yellow card, early warning systems (EWS) among other measures would help combat competence grabs and strengthen the ability of national parliaments to monitor and challenge the exercise of EU competences (Oberg 2018: 695-697). His results hold that these measures have effectively contributed to halting competence creep in the EU (Oberg 2018: 730-731).

Nevertheless, some researchers contest the idea that the Yellow card mechanisms have produced any tangible results (Fabbrini & Granat 2013: 115ff), because since the implementation of the mechanism in 2009, the EWS has only been evoked three times (Follesdal 2025: 52). Fabbrini and Granat argue that the entire Yellow Card Procedure in its first use was ineffective in the light of the principle of subsidiarity and that the EU, after investigating the EWS, can often just argue in favor of an inadequate implementation of scale and effect across the member states (Fabbrini 2013: 139-143). Overall, the dominant view in the literature remains that EU competences continue to expand, making it important to examine both how member states contest this development and how the Union responds to such challenges. As a broader school of thought, competence creep has allowed authors to analyze the complex structure of the EU and how over time the Union has expanded its competences in various ways (Pollack 1994: 102; Weatherill 2004: 17).

The CJEU and Competences

Following increased concerns of competence creep after the Nice Treaty (2000) was signed, and moving into the 21st century, the extent of EU competences was taken into consideration during new treaty negotiations. When drafting and implementing the Lisbon Treaty, reforms were made to try to narrow the so-called 'competence problem', and limit the EU's powers (Craig 2013: 155; Gasparini 2024: 1072). There were calls to make competence divisions more clear and transparent, limiting the EU's competences, while also not preventing the Union from performing necessary tasks conferred to them by the member states (Craig 2013: 157). This resulted in overall consolidated competences, including a reprioritization of European flagship policies, such as the single market, euro, and the AFSJ that were put on the back burner in favor of consolidating the EU's powers (Chalmers, Davies & Monti 2019: 32). Authors such as Craig argue that these measures hold value in the redistribution of competences, but that there are still forces pushing competence expansion forward (Craig 2013: 155-157).

Although it is only one factor out of many, the EU's judicial system has contributed to the expansion of competences in the EU. The CJEU has become famous for its political powers, particularly considering its status as a supranational court. It is considered to be the constitutional court of the EU and a "master of integration" that can shape the development of Europe through its jurisprudence; at times contrary to the preferences of member states and their national autonomy.

In comparison with other national and international courts, the CJEU has been seen as particularly influential in shaping legislative outcomes, partly due to the unique environment where EU politics are often too fragmented to effectively check the Court's influence (Martinsen 2015: 1622). EU law is based on two primary sources of law, the first is comprised of acts of legislation including regulations, directives, and decisions (Ponzetto & Fernandez 2008: 379; Solanke 2022: 171). The second is judicial decisions- also known as case law. Case law refers to the body of law developed through the judicial decisions of appellate judges, who may have different preferences but are mainly bound by precedent (Ponzetto & Fernandez 2008: 379). Accordingly, case law can be understood as a continuous process of legal development, making it an important body of material for the research of judicial competence expansion (ibid: 381).

3 Subjects Matter: Social Policy

This chapter focuses on why social policy case law was investigated in this study. Social policy's status as a shared competence is discussed as well as its treaty provisions, soft law traditions in the EU, and how this policy area is relevant to the Court, EU competences, and case law analysis.

3.1 An Evolution of Social Policy in the EU

The Lisbon Treaty, enforced in 2009, marked a significant shift in the constitutional structure of the EU by moving away from the earlier three-pillar model and more comprehensively clarifying the Union's competences (Gasparini 2024: 1072). Within this framework, social policy was explicitly defined as an area of shared competence under Article 153 TFEU, with a seemingly clear list of competences the EU possesses. Despite this formal recognition, the scope of EU social policy has remained contested and controversial in practice.

Scholarly literature highlights how the CJEU has played a central role in expanding the reach of social policy provisions, even in areas initially considered beyond EU competence, such as pay and working time (Garben 2020: 439; Martinsen 2015: 1636-1637). For example, EU working time regulations have been heavily contested among member states, with early debates focusing on whether working time should be classified as a health and safety issue, or as an employment matter. In general, judicial expansions of social policy have sparked controversy among member states, criticizing EU initiatives that aim to create a more homogeneous Social Europe (Martinsen 2015: 1636-1638).

The trajectory of EU social policy has also been shaped by broader political and economic developments. The eurozone crisis significantly increased attention to social policy (Graziano & Hartlapp 2019: 1484), leading to the introduction of several initiatives, including Europe 2020 (2010), the Employment Package (2012), the Social Investment Package and Youth Guarantee (2013), and the Pillar of Social Rights (EPSR) (2017) (Graziano & Hartlapp 2019: 1485). The EPSR was in some regards successful, displaying a long-awaited advance in social policy after a period marked by austerity in Europe (Kenn 2025: 170). Despite these initiatives, the overall competences of the EU in social policy remain limited, contributing to what has been described as a persistent tension between high expectations and limited realization in the EUäs legislative tapestry (Graziano & Hartlapp 2019: 1486).

3.2 Social Policy as “Soft Law”

Given the magnitude of factors for push back, the development of social policy within the EU has increasingly relied on “soft law” and “soft governance” instruments. Soft law is described as “measures by which the Union can make political stances, without threatening the Union’s existing structure” (Dawson 2011: 4-5). This label is commonly attributed to non-legally binding measures such as recommendations and guidelines (Weismann 2024: 69). While the Lisbon Treaty drafting process incorporated social goals and emphasized a social dimension, subsequent governance approaches have often avoided binding legislation (Dawson 2011: 2–3; Kenn 2025: 170). The increase in soft law mechanisms has been seen as discursively minimizing the importance of social policy and contributing to an overall ambiguity in the strength and enforceability of EU social objectives (Dawson 2011: 5). As noted by Vėlyvytė, in the absence of meaningful legislative initiatives, key areas of social policy have fallen within the purview of EU law primarily through the Court, effectively making the CJEU a driving force of social policy legal integration (2023: 3).

Empirical evidence also suggests a decline in substantive social legislative output. As of 2019, the number of social policy directives peaked in 1992, with seven directives adopted, but significantly decreased in the decades following (Graziano & Hartlapp 2019: 1492). This decline is linked to broader structural changes within the EU political system, including enlargement, crisis dynamics, and shifting political majorities. In particular, the rebalancing of power between the European Commission and the Council has favored an austerity-oriented and intergovernmental approach, often at the expense of advancing Social Europe (ibid: 1497–1498). As a contrast to Graziano and Hartlapp’s claim of “the end of Social Europe”, some scholars argue that EU social policy has not declined but rather adapted, with evidence of a potential shift away from liberalisation toward stronger social regulation (Arnholtz & Seikel 2025: 1–2). Some suggest that EU social policy continues to generate concrete outputs, particularly in areas such as minimum wage coordination and work–life balance, indicating ongoing policy developments rather than stagnation (Keune & Pochet 2023: 177-180). Bridging these opposing viewpoints, EU social policy can be understood as simultaneously present and constrained, where formal commitments and significant legislative change remains limited, but soft law provisions remain present (Graziano & Hartlapp 2019: 1486; Kenn 2025: 170). This reflects a broader tension between social policy being present in institutional dialogue, while its capacity to produce substantial outcomes remains uneven and contested (Vėlyvytė 2023: 3; Arnholtz & Seikel 2025: 1-5).

3.3 Social Competences Expanded?

The reason for choosing social policy to investigate competence expansion in the EU is mainly inspired by Polomarkakis' "Social policy and the judicial making of Europe" (2022), where he describes how the Court has been central to the judicially constructed constitutionalisation of Europe through social policy. Although he mainly discusses European integration, he compares the development of European integration with the Court's influence on member states' competences (Polomarkakis 2022: 258). Where social policy is loosely defined in the EU, it becomes all the more important to understand the Court's interpretive role in defining social policy's gray zone.

Polomarkakis argues that there is a need to further investigate the impact of judicially constructed competence expansion on Social Europe because of how the CJEU has played a decisive role in shaping the boundaries of EU social policy beyond what is explicitly granted in the Treaties (Polomarkakis 2022: 257-258). He highlights that social policy has often emerged not through legislative action but through case law, making it essential to understand how Court judgements contribute to the expansion of EU competences in this field (ibid: 260). The article further notes that it is important to understand the various actors within the European legal field, and that the CJEU is not the sole perpetuator of an expansion of Social Europe. That behind each judgement lies the Court's bureaucracy, EU institutions, member states, national courts, and much more. Although it is important to recognize all of these factors, case law provides the so-called 'final destination' that provides the outcome of all these power structures in the form of a binding judgement (Polomarkakis 2022: 262–263).

Moreover, examining EU social policy case law helps clarify whether judicial expansion aligns with or departs from the EU's stated social objectives, especially those articulated after the Lisbon Treaty (Polomarkakis 2022: 258). Polomarkakis also stresses that without such analysis, the role of the judiciary in driving integration and a broadened understanding of competences risks being underestimated in comparison to other political institutions (2022: 284). Finally, he suggests that understanding judicial competence expansion and social policy case law is key to evaluating the broader legitimacy and effectiveness of EU social policy and the Court (ibid: 270).

Although the research at hand is heavily inspired by Polomarkakis' understanding of why social policy is an important field of study to understand integration, there is an aforementioned lack of empirical data on the subject that can be used to describe and support his argument further.

3.4 Why not investigate a different Shared Competence?

As outlined in Article 4 of the TFEU, there are 11 policy areas that are defined as shared competences in the EU. Shared competences in this case meaning that both the member states and the Union have the shared ability to adopt legislation and binding acts in that area (Schütze 2020: 75). In Article 4, two of these competences are listed, and followed with the statement “for the aspects defined in this Treaty”, to further specify the limits of EU power in the shared competence (Article 4b & 4k TFEU). These are found and specified under ‘social policy’ and ‘common safety concerns in public health matters’. In practice this means that there are additional guarded tones in the TFEU articles that restrict these areas more compared to the other shared competences. What sets social policy Treaty articles aside is that they expressly preclude harmonization and roads for integration compared to health matters (Craig 2013: 169).

Articles 152-161 TFEU provide the EU with its conferred social competences, however, in practice they are still left to interpretation by the legal system, despite their definition as a shared competence. This remains the case despite the Lisbon Treaty setting out to provide explicit guidelines on shared competences, especially social policy. This is made particularly relevant in Article 153 TFEU, which is framed to let the EU support and coordinate member states action, which does not align neatly with the idea that shared competences are clear cut and defined in nature. Nevertheless, the EU may adopt directives establishing “minimum requirements for gradual implementation” in many of these areas, making it unclear to what extent social policy falls within the scope of shared competence (Craig 2013: 169-170).

Beyond contributing only to research on social policy, conclusions from a study such as this could be applied comparatively to other areas of shared competence in the EU. Conclusions on competence creep can be drawn from social policy, which has just been described as one of the shared competences with the most guarded tones because it is legally restricted, then similar patterns may also appear in less restricted areas. Additionally, this study could add methodological inspiration for future studies on how to select, code, and derive data from EU case law, in areas of shared competence, in a way that traces patterns over time. Considering all of the mentioned factors it is apparent that social policy is in some ways the most defined, and yet least defined, area of shared competences within the EU. This unclarity of social competences prompts further investigation into what role law plays in regulating and promoting these competences within the EU and judicial system compared to other controversial areas of shared competences in the EU.

4 Theoretical Foundations

This chapter outlines the theoretical considerations used in the research, in particular the guiding ideas on how the Court interacts with EU competences. Specifically, how competences have been used over time and why it is important to add empirical data to the longitude discussion on competence creep. First, a short discussion will be presented on the emergence of, and a definition for, competence creep, stemming from implied powers. The section will then continue on how competence creep came about in academia and how it has developed over time. The conversation then returns to what role the Court plays in interpreting the EU's competences and how this can push competence creep and legal integration forward. Finally, the theory chapter concludes by operationalising competence creep and how it is used in this paper to draw meaningful conclusions.

4.1 How did we get this Competence Creep?

As the rulebook of EU law continuously changes and adapts over time, there are many assumptions and theories on the emergence of 'implied powers'- which confer additional powers to the EU that are not clearly defined by the Treaty. The existence of implied powers inherently goes against the mandate that member states are in control of what competences are conferred onto the EU, and often leads to disagreements about whether the EU is reaching beyond its competences in a delicate balance between member state autonomy and EU harmonization (Lebeck 2008: 306). A theory that offers explanations for all of these questions and frustrations is competence creep.

One of the first systematic accounts of competence creep came from Joseph Weiler's "The Transformation of Europe," in which he claims that in the early years of the EC, up until the mid 70s, there was a transformational shift from an international treaty-based system to a constitutionalized, supranational legal order (1991: 2410). In this book he never explicitly wrote the words 'competence creep' but rather described what Weiler observed as an erosion of attributed powers in favor of a more expansive EU, utilizing the previously mentioned concept of implied powers (1991: 2415-2416).

The exact phrasing "competence creep" first emerged in Pollack's 1994 publication "Creeping Competence: The Expanding Agenda of the European Community". What really brought the theory into the limelight was Weatherill's use of it in "Competence Creep and Competence Control" in 2004 (Vėlyvytė 2023: 1). Competence creep as a theory emphasizes the Court's role in furthering the EU's competences in areas in which the EU has not been conferred a specific legislative competence (Garben 2020: 430). As a theoretical viewpoint, ideas such as implied powers and competence creep claim that the EU rulebook is not as black and white as the principle of conferral would assume (Pollack 1994: 102; Weatherill 2004: 17).

4.2 How the Court contributes to Competence Creep

Whether or not the EU has the competence to act on something is inherently a legal question. Given the legal nature of competences, it is the Courts' task to interpret the scope of EU action and determine if its bounds have been exceeded or not (Weatherill 2004: 12).

The treaty basis for this interpretation is in Article 263 TFEU, by which the court has the ability to determine the legality of legislative acts, and noticeably may annul actions for a lack of competence. The argument that law functions as a mask for politics, and that law can never be completely separated from politics, is rooted in neofunctionalism, and often agrees that the Court rules in favor of further integration that goes beyond the original meaning of the treaties (Burley & Mattli 1993: 44). The expansion of EU competences has been a key driver of legal integration within the Union. The more that the Court and EU legal systems push competences forward and expand their meaning and reach, the further European integration evolves (Weiler 1991: 2410-2411). As previous EC legal norms developed, they created enforceable legal obligations for the member states, making the Court's role imperative to the balance between supranational and national interests in Europe (ibid. 2413-2414). However, not everyone agrees with this perspective of the Court.

The President of the CJEU, Koen Lenaerts, argued in a speech at the 30th jubilee of the Academy of European Law in 2022 that the Court has successfully prevented the EU from creeping into the domain of national competence. He presented multiple cases that frame competence creep as a myth, and that the EU should not be considered a "biased promoter of EU competences" (Lenaerts 2022). In favor of his argument, and in line with an intergovernmentalist view of the Court (Granger 2015: 209), the principle of conferral is in place to assure that the Court does not allow for any interpretation that goes beyond the specific competences the member states have conferred to the Union (Conway 2010: 966). Despite this, there are several authors who have questioned this position and emphasize the interpretive and integrationist approach the Court has taken over the years.

In short, there are many different interpretations of competence creep and how it presents itself in the European legal framework. Some argue that although the Court is not the primary driver of competence expansion in the EU, it has not been eager to restrict it (Weatherill 2004: 13). From the general neofunctionalist perspective, there is the understanding that the interests of member state governments do not restrain or influence the Court in its judgements (Cichowski 1998: 392). Scholars have found evidence that the Court has used legal interpretation to further expand EU competences in fields such as national labor standards (Garben 2020: 438-439), health policy (Brooks 2012: 33ff), social security, and more (Vėlyvytė 2023: 2). This argument questions the very nature of the EU as a polity which is limited by conferred powers, thus questioning the legitimacy of the Union as a whole (Vėlyvytė 2023: 2-3, 26; Brooks 2012: 36).

In this thesis:

This thesis will test the presence of competence creep in EU social policy case law over time, and seek to produce data on how the CJEU, through its case law, has interpreted the relationship between national and EU law. By looking at patterns of broad and restrictive interpretations on the application of EU law, this thesis will be able to give an overview of competence creep from the beginning of the EEC until today that other studies lack in an empirical and systematic way. 'Competence creep' as such is to be understood in this paper as:

> EU law is upheld when challenged or EU law is permitted to influence or preclude questions of member states' national law.

As outlined in the methods section to follow, the empirical data to test the presence of competence creep will be derived from a coding scheme. The variable at the forefront for investigation is whether the Court rules in favor of a broad and influential interpretation of EU law, or a more restrictive interpretation that favors national law or member state autonomy over EU law. Scholars hold that the EU has rarely restricted its interpretive power (Ronkainen, Wallerman Ghavanini, & Leino-Sandberg 2024: 877), and with the lack of empirical studies on competence expansion in social policy over time, this study will be able to either support the argument of competence creep or contradict it over the entirety of the CJEU's jurisprudence. In either case, this study will test the presence of competence creep and be able to fill gaps on the lack of longitude empirical data on the Court's rulings and judicial behavior.

5 Methodology

This section sets out the methodological approach used to investigate patterns of competence expansion in CJEU social policy case law. It explains how the study converts the abstract debate on competence creep into an empirical research design, and how systematic content analysis (SCA) makes it possible to identify broader judicial trends across the entire timeline of EU jurisprudence. Compared to previous studies drawing conclusions based on individual case studies, using SCA this study will determine what can be seen from EU case law over time.

The section is divided into several parts. First, it addresses how previous literature has derived data from case law using different methods. Secondly the section outlines the chosen method, overall research design, and explains why SCA provides the most suitable framework for studying competence expansion in case law. Second, the section explains the inclusion and relevance of preliminary references alongside direct actions and appeals in the study. Third, the methodology section presents the mixed-methods logic of the study and explains how qualitative readings of individual cases are transformed into quantitative data through coding and the use of SPSS. Fourth, the case selection process is detailed, explaining how the case selection was delimited using online data tools such as EurLex and InfoCuria. Then the research design, the coding scheme, and variables used in the analysis are introduced and explained in detail.

The chapter concludes by discussing the study's delimitations and methodological limitations. This chapter clarifies both the strengths and the limits of the chosen methodology and prepares the reader for the empirical analysis that follows.

5.1 How Scholars have derived data from Case Law

Since there are various methods used when conducting research using case law as the empirical material, this section will explore how researchers 'go about' analyzing legal texts in order to produce tangible results. This section will shape an overview of more quantitative methods of analyzing case law such as network and computational analysis. Additionally it will review qualitative discourse methods, and finally systematic content analysis as a combination of the prior. The majority of studies used CJEU judgements, however, some analyze judgements from the United State Supreme Court instead. Both are included as the methods used are similar and applicable in understanding case law in terms of coding, mapping, and overall trends. To best structure an understanding of why this research is conducted as it is, it is necessary to understand how previous authors have gone about organizing their research. This provides direction and allows one to better formulate the methods used in this study so as to answer the chosen research question using a large body of case law.

Network Analysis

A common method employed by researchers who are aiming to understand which court cases are the most central, or legally notable, in a very large data set is network analysis. Using this method, academics can determine how actions, procedures, subject matters and actors are related to one another (Fowler et al. 2007: 325). A key feature of network analysis, as determined by reviewing the literature employing the method, is the large number of cases chosen in the case selection process (Derlén & Lindholm 2014: 6; Derlén & Lindholm 2015: 1080; Lupu & Voeten 2012: 432; Fowler et al. 2007: 324; Gelter & Siems 2013: 243). Of studies identified, the number of judgements used ranged from 2040 (Lupu & Voeten 2012: 432) to 9125 (Derlén & Lindholm 2014: 6), and the number of cross-citation instances ranged from 1430 (Gelter & Siems 2013: 216, 238-239, 243, 268) up to 38,261 citations (Derlén & Lindholm 2014: 6).

The literature is mainly divided into two primary methods used to identify a network, the first body investigating how courts will cite its own case law in judgements (Derlén & Lindholm 2014: 2; Derlén & Lindholm 2015: 1080; Lupu & Voeten 2012: 413 ff.), while others use cross-citations between courts as their method of data collection (Gelter & Siems 2013: 215 ff.). With such large bodies of data, tools such as Hub Score and PageRank are used to identify the most important, influential, or critical nodes in a chosen structure (Derlén & Lindholm 2015: 1076). Network analysis as a method of researching court cases is highly relevant if the body of data being analyzed is extremely large, with court judgements reaching into the thousands. As the research question posed in this study concerns a specific body of social policy CJEU rulings, the number of cases is insufficient and network analysis is not the most appropriate research method.

Computational and Automated Methods

In addition to network analysis, there are other popular methods used to analyze case law that are less clearly defined. The methods explored in this section use a computational and statistical base for understanding legal texts. More specifically, these studies involve processing techniques that convert texts into machine-readable data which can be used to quantitatively analyze large volumes of case law.

Some authors go beyond grouping models and instead use more extreme mathematical approaches to analyze legal texts and determine hierarchical structure, language and interdependency (Bommarito & Katz 2010: 1, 5). This overall structure of analysis has been described as 'computational text analysis' (Chau & Livermore 2024: 89 ff.), and there is a vast body of literature that uses methods falling under 'computational text analysis' despite not mentioning it explicitly. As such, rather than using computational text analysis as a label, key words such as 'machine learning', 'computer models' and 'statistical analysis' were used as keywords in searching for the literature. Additional material was found by looking into the source material for the studies previously found.

One technology frequently referenced was natural language processing (Mohammadi et al. 2025: 4; Marulli, Panattoni & Bertini 2025: 4). Natural language processing bridges the gap between human produced language and computers by providing machines with the data necessary to understand, interpret, and generate conclusions (Mohammadi et al. 2025: 4). Those authors who use natural language processing to describe the identification and grouping of different topics in a collection of documents will often make use of a tool referred to as 'topic modelling' (Dyevre 2021: 10; Mohammadi et al. 2025: 2). Although the method is often used in computer science, this model can also be used in legal and social studies to harvest data and measure language choices in digitized texts (Dyevre 2021: 8 & 23; Mohammadi et al. 2025: 2; Asmussen & Møller 2019: 1-2). In simpler terms, they use machine learning to group legal texts and proceedings into categories which later can be used to understand word distributions, topics, relevance and frequencies (Asmussen & Møller 2019: 4-5).

The argument has been made that this method has developed from manual exploration, and that topic modelling is more efficient as a research method because of the ability of computers to filter and examine information at a faster pace and larger capacity (Asmussen & Møller 2019: 1 ff; Marulli, Panattoni & Bertini 2025: 4). Beyond topic modeling, there are other computational text analysis methods that make extensive use of machine generated learning. These methods of identifying language and complex statistical categorization are not applicable in this study. This is because there is an emphasis on competence creep and establishing a deeper understanding of court rulings and matters of judicially constructed competence expansion that cannot be identified through language processing.

In-depth Qualitative Analysis

In contrast to the more computational and quantitatively complex methods for case law analysis, there are more qualitative and discursive methods to understand reasoning in EU case law. For example, in Polomarkakis' "Social policy and the judicial making of Europe: capital, social mobilisation and minority social influence" (2022), he analyzes four EU social policy cases in order to draw conclusions on the Court's role on integration and competences. He employs an in-depth qualitative analysis of key cases in order to trace the detailed legal reasoning and doctrinal developments that underpin judicially constructed competence expansion in social policy. This case-based approach allows him to uncover how specific judgments contribute incrementally to broader patterns of integration that would be difficult to detect through statistical methods alone (Polomarkakis 2022: 272-274).

Through this study he concludes that there is a general lack of literature that touches on how the CJEU has been important in advancing integration and constitutionalizing the EU and that "a systematic analysis of the contribution of social policy case-law in this endeavour is lacking" (Polomarkakis 2022: 257-258). Despite providing valuable contributions to the academic debate on the CJEU's role in EU social policy competences, he fails to provide empirical material or data to display long term trends or patterns. In light of this, further research could benefit from a more systematic and quantitative approach to assess the overall scale and consistency of judicial influence across a larger body of case law.

The Middle Ground: Systematic Content Analysis

Given the overview of various methods and the research question at hand, which seeks to identify patterns of judicially constructed competence expansion, the method best suited for this research is one that combines qualitative and quantitative methods. This allows for an overarching understanding of how EU case law is ruled on, providing context for the cases, while also providing an empirical and quantitative aspect. As such, it is relevant to investigate systematic content analysis as an inspiration for how this study is conducted.

Deriving its origins from content analysis, systematic content analysis (SCA) consists of collecting a set of legal texts, documenting or coding themes and features of this set, then drawing relevant conclusions (Schrepel 2024: 357). This type of analysis is not a strict research method as it applies multiple social science methods to analyze case law, and can vary vastly between research designs (Verbruggen & Wijntjens 2025: 2).

Popularized by Hall and Wright, SCA is used by both social scientists and lawyers in order to break down the weight and language of legal texts to create more comprehensive legal analyses and scientific conclusions (Verbruggen & Wijntjens 2025: 2-3; Hall & Wright 2008: 73-74).

Content analysis has been used to code and analyse court cases dating back to Fred Knot, originating in the United States in 1957, by studying supreme court opinions (Hall & Wright 2008: 67). Early practitioners often fell into two categories of content analysis. The first hoped to use previous court judgements to predict future outcomes, whereas the second sought to understand what factors drove judicial behavior and understand the general practices of judicial decision making (ibid: 68). Since then, SCA has developed into a much larger umbrella of academic research, allowing for a flexible but empirical way for researchers to understand legal texts and investigate the decisions and opinions of dispute resolution bodies (Verbruggen & Wijntjens 2025: 2).

When reviewing the literature many authors have referenced SCA as their main method of research (Schrepel 2024, Verbruggen 2025, Hall & Wright 2008). Unfortunately, an overarching trend in SCA is to not include their coding schemes or detailed methodology upon publication. Some academics have criticized this lack of transparency in the field of SCA by conducting their own studies, that for a lack of better wording, conduct a SCA on SCAs. A study by Verbruggen & Wijntjens analyzes academic studies employing SCA presents similar results- in which 70% of the studied material made no mention of method in their publications (2025: 19). These studies were presented in this section to describe the lack of transparent research and methodological practice as a limitation for understanding exactly how SCA has been used, despite the large body of literature using it. SCA is still the best point of departure for this research paper. It allows for a flexible number of cases to be chosen based on the case selection and SCA can be molded to create a coding scheme that best answers the research question.

5.2 How to turn Law into Data

To tackle research on competence creep, many academics have found ways to understand case law empirically, often through identifying overall trends and patterns within their selected body of case law as data (Vėlyvytė 2023: 1-3, 26; Verbruggen & Wijntjens 2025: 3). By using empirical methods to trace legal trends researchers have uncovered lines or reasoning, repeated patterns, descriptive statistics, and other information that bring about new understandings of case law (Verbruggen & Wijntjens

2025: 4). As written by Hall and Wright, such empirical analysis “brings the rigor of social science to our understanding of case law, creating a distinctively legal form of empiricism” (2008: 64). By breaking down texts, concepts, or recurring arguments, legal corpus can be used to bring a degree of objectivity to social science research (Schrepel 2024: 357). The method determined best to identify patterns of competence creep from social policy case law is systematic content analysis.

Systematic Content Analysis in this Study

Different methods of analyzing case law were previously mentioned in detail, such as network analysis, computational analysis, discourse analysis, and other automated methods. All of which are suitable to derive data and conclusions from case law. However, for answering the research question at hand, SCA is the best point of departure because of its fluidity and the ability to mold the research in a way that is systematic and replicable. SCA is also appropriate for an analysis of the number of cases selected by the search criteria, amounting to 180 cases, ranging from the establishment of the CJEU and onward. Although not a research method per se, SCA is an umbrella term for the use of social science methods of both qualitative and quantitative nature in the analysis of case law (Verbruggen & Wijntjens 2025: 2).

As opposed to other methods of analysing legal texts, SCA allows for the systematic analysis of a large body of case law while also incorporating the nuances of court decisions rather than only searching for key words or doing an in-depth discourse analysis of a fewer number of cases. Important to note as well, SCA opens the doors for the research to create a longitudinal overview of the EU’s case law in a way that can identify patterns and trends over time in a way that the previous methods lack (Verbruggen & Wijntjens 2025: 5). By conducting content analysis on case law, researchers are observing reality, which classifies SCA as a form of empirical research (ibid: 6). Adopting an empirical legal method falls in line with one of the main aims of the research, which is to gather a collection of facts that can show legal observations and trends by understanding case law as a part of an observable reality (Argyrou 2017: 97).

Later specified in depth, the body of data for this research will be 180 judgements from CJEU social policy cases. That number of cases is too large for an in-depth discursive analysis of the Court's reasoning, however, it is still within the realm of reading and coding the cases to gather data. As such, SCA will be used to inspire the coding scheme and overall research design in this study. This is to produce a methodologically grounded analysis and a more in-depth understanding of legal trends in social policy CJEU case law, and what it can answer about competence creep.

From a neofunctionalist point of view, conducting an analysis through SCA should yield results that support the presence of competence creep and that the Court tends to place legal integration over the interests of member state autonomy in its judgements (Cichowski 1998: 392). Once the analysis is conducted, a body of data will be available to either support this argument, or rather the intergovernmental argument that contradicts it. As a byproduct of the research, one of the ideas that will be tested if the treaty period a court case falls under has any correlation to broad or restrictive court rulings. More specifically, it will test whether the Lisbon Treaty has any correlation with an increase in a restrictive interpretation of EU law in court cases, following claims that the Treaty set out to condense the EU's competences compared to previous treaties (Garben 2019: 205; Oberg 2018: 695-697).

To assess whether the treaty period a case falls under has a significant correlation to the interpretation of the court, the chi-square test will be conducted. The chi-square test is a statistical hypothesis test used to analyze categorical data. In this case the categories being the different treaty periods. In the chi-square test, When determining if an association has any significance, if the p-value is more than 0.05 ($p > .05$) in the crosstabulation, then there is no significance attached to the categorization (Schay 2007: 258). The test will in this case determine whether there is a significant difference when the Lisbon Treaty came into force, following the aforementioned claims that competences would be restricted. The test can be conducted using a contingency table, also known as a crosstabulation which will be derived from the manual coding of the judgements. It is important to investigate the evolution of the EU treaties because each provision of EU law must be interpreted and understood within its broader context. This means taking into account the EU legal framework as a whole, its underlying objectives, and its stage of development at the time of application (Dunbar 2024: 143). As such, relevant treaties will be identified in the case selection, then be used as a part of the coding scheme, and are further discussed in the analysis.

What Preliminary References have to add

There are three procedures which the Court of Justice rules on. These are direct actions, appeals, and preliminary references. The preliminary reference procedure is not the primary legal procedure where the Court establishes whether the EU lacks competence or maintains competence in its legislative acts. However, the procedure is still included in the research, and the section below explains why these cases are relevant and are a valuable component of this study.

The preliminary reference procedure accounted for 72% for all proceedings before the Court of Justice between 2013 and 2017, and its significance goes beyond just a quantitative measure (Chalmers, Davies & Monti 2019: 180). Preliminary references are capable of making ripples in the status quo of EU law and require attention as much as the other procedures (Martinsen 2015: 1637; Leijon 2021: 519). Reflected by the reality of the distribution of preliminary references, appeals, and direct action cases in the Court, the majority of cases investigated in this research are preliminary references. The basic premise of the preliminary reference procedure is to institutionalize a dialogue between national courts and the CJEU while ensuring that the interpretation of EU law is uniform across the member states (Mudler 2025: 186). Meaning that theoretically, the Court itself would not rule on the application of EU law. However, the byproduct of Article 267 and the preliminary reference procedure is that there is now a mechanism for individual litigants to sue their own governments and hold them accountable to the CJEU (Stone Sweet & Brunell 1998: 65). As such the CJEU is able renders a final judgement in the place of national courts, and since the procedure accessible to private parties the Court can answer with more nuanced avenues for testing and exploring EU law (Chalmers, Davies & Monti 2019: 180; Weiler 1991: 2420-2421). These judgements are binding interpretations and the importance of the procedure has become more widely recognized as an important aspect of EU law as well as the constitutionalization of EU treaties (Cichowski 1998: 388).

Although it is primarily through Article 263 (judicial review) and not Article 267 (preliminary reference procedure) that the Court reaffirms competences or establishes a lack of them (Chalmers, Davies & Monti 2019: 366), the Court often uses the preliminary reference procedure to test the limits of the theoretical border line that would broadening the implementation of EU law onto national courts (Weiler 1991: 2421). More than this the CJEU's interpretation of preliminary references may have strong repercussions for national courts and the competencies that member states wish to keep to themselves (Leijon 2021: 519). As such, researching how the Court interprets preliminary references, alongside direct actions and appeals, adds empirical data to the broader academic understanding of competence creep and how it is presented in social policy case law.

5.3 Research Method

This section goes through the different methodological approaches and considerations used in this thesis. The first section will describe the research as using mixed methods, seeing that systematic content analysis blends qualitative and quantitative aspects to conduct research. This section will also include why case law is chosen as the material for analysis and what can be concluded from court rulings. After this, the case selection will be presented and the types of cases included in the research will be discussed. Following the case selection, the coding scheme is introduced for how the cases are coded for analysis. Finally, there is a discussion on how the study understands the interpretation of EU law and how it is able to code the CJEUs's rulings.

Mixing Methods

One of the main benefits of adopting SCA is the ability to blend qualitative and quantitative research methods in a way that is objective, reproducible, and feasible (Hall & Wright 2008: 65). Specifically in this study, SCA is used to manually code the selected 180 cases (see Appendix 1) before transforming qualitative deductions into quantitative data that can be displayed through tables, graphs, and written explanations. Thus, rather than focusing on academic literature written on law, empirical legal research focuses on case law through the systematic collection of data (Ansems & van den Bos 2022: 218); which in this study is social policy case law from the CJEU.

The tool best used to organize the data for this research is SPSS as it is capable of organising a relatively large body of descriptive statistics as well as crosstabulations. Descriptive statistics refers to data that can be presented as quantitative data, often by using tables, graphs, or diagrams to identify patterns and trends in the data (Verbruggen & Wijntjens 2025: 5). Hall and Wright hold that in order to conduct a credible content analysis there is no need to use an overly complicated statistical method. In fact, they explain how quantitative descriptive statistics such as frequencies still hold empirical value and can yield significant results (Hall & Wright 2008: 117). SPSS can also be used to conduct the chi-square test where applicable. The data variables used to conduct the content analysis will be listed and explained under data selection in order to assure the empirical nature of the study and the replicability of it.

Case law was chosen as the medium for study as it presents the most abundant data base for primary sources on CJEU judgements. In its broadest form, law can apply to every field of human life, and it is therefore important to select case law which is relevant to the question and subject at hand (Zarębska 2015: 938). The EU legal system is set up so that member states have to adapt to the Court's case law, meaning that beyond CJEU case law being codified in treaty revisions and Council legislation, it has also contributed to the amendment of national legal regimes (Stone Sweet 2004: 199-200).

Although there are other forms of data that are valuable to understanding law (such as interviews, surveys, and observations), case law serves as the most crucial and available data base when conducting empirical legal research. In part because case law represents a critical part of the "real world" when investigating the EU's legal landscape (Argyrou 2017: 97, 101-102). Case law is particularly relevant in this study because to answer the research question and uncover trends of judicial competence expansion, going 'straight to the source' and reading case law provides the best and most abundant source of primary data. Other sources are worth exploring in the future to expand on this research, however, the incorporation of further data sources is beyond the scope of the present study.

Case Selection

In order to delimit the cases and assure the most relevant selection of case law, both EurLex and InfoCuria were used as primary sources of law. The primary delimitation to be made is finding CJEU case law on social policy. To determine which social policy cases test the so-called 'limits' of EU competences, only cases that use treaty articles pertaining to social policy competence in its grounds of judgement will be used.

The first step in the case selection is to determine which treaty articles throughout the Union's history concern social policy competences. EurLex is the official and up to date database for all EU legal documents. As such, it is the primary source for filtering out and determining which treaties, and more specifically which treaty articles, refer to social policy competences. These treaty articles are later used to filter through the EU's case law and find relevant rulings on EU social competences. To systematically categorize which articles pertain to social policy, a detailed EurLex search is made as follows:

> Domain: *EU law & case-law,* Subdomain: *Treaties,* Results containing: *Social policy (in title),* Search language: *English.*

The search resulted in 241 search hits, some of which included irrelevant searches (i.e. non-treaty law, acts, or articles not signed into force). After manually filtering out irrelevant searches and doubles of any treaty articles, 56 treaty articles remained in total that pertain to social policy (see the articles in Appendix 2). With the 56 relevant treaty articles selected, InfoCuria was then used to find and filter through the case law and relevant court rulings.

InfoCuria is the EU's own case law database and search tool, providing the full range of CJEU case law throughout the Union's history. Despite being a reliable source provided by the EU, InfoCuria is continuously updated. As such, throughout the research process and analysis the same search criteria were kept, but the number of cases was always subject to change. This is due to new cases being ruled on by the Court, older cases being re-uploaded to the system, cases being reclassified or tagged with additional subject matters, and other factors that may cause the number of cases to change despite consistent search criteria (Court of Justice of the European Union, n.d.). The case selection used for the analysis was verified on May 11, 2026 at 187 cases, and delimited to 180 cases. The search filters used were as follows:

> Result Source: *All*, Courts of the European Union: *Court of Justice & General Court*, Published in the European Court Reports: *yes* (to avoid doubles), Type of Document: *Judgement*, Subject matter*: Social policy*, and Legislation and Case Law Cited: *Grounds of Judgement*.
> Under 'Legislation and case-law cited', the relevant CELEX numbers (ex. 11957E118A) are inserted under Grounds of Judgement.

When selecting material for a research project, there is always data that will be excluded. Had the search relied solely on the subject category "social policy," rather than filtering through Treaty provisions, individual cases, and detailed Eur-Lex and InfoCuria searches, it would have produced 1,272 cases. As the present analysis is based on manual coding and the human reading of the cases, there is a natural limit to how many cases can be read and coded within the scope of the research. If the entire body of social policy case law were to be analysed, it would prompt a computational analysis of sorts that would produce less depth on the judgement of the cases and the other variables involved, thus not be applicable to the study's research question. In an attempt to make the choice of cases wide enough to yield substantial data while also keeping within a reasonable scope, EurLex and InfoCuria were used to find data which was between roughly 100 and 200 cases, and were relatively evenly spread over the history of the Union.

By delimiting the case law through the filtered search above, the remaining number that appeared in the search is 187. Out of these cases, 186 are from the Court of Justice, the other one is from the General Court. This singular case (*EPSU v Commission*, Case T-310/18, 2019, at the General Court or *EPSU v Commission*, Case C-928/19, 2021 at the Court of Justice) will not be included in the analysis for the sake of repetition. The case was appealed from the General Court to the Court of Justice, meaning that both courts ruled on the case and produced its own rulings. In this case, the courts shared the same ruling, meaning no new case law was created. Because of this the entire body of case law in the analysis comes from the Court of Justice.

Additionally there is one case (*Nisttahuz Poclava*, Case C-117/14, 2015) that did not yield a judgement from the Court. This is because in their judgement the judges determined that the Court did not have the jurisdiction to rule on the case. However, this case will still be included in parts of the analysis to keep the body of cases consistent as well as the case itself representing a unique ruling from the court that adds perspective on the nature of the preliminary reference procedure and jurisdiction in the CJEU. Figures in the analysis will reflect whether or not this case was included in the presentation of data.

Joined Cases

Another factor to consider with the case selection is the presence of joined cases. Joined cases are defined as "[t]wo or more cases of the same type concerning the same subject-matter may at any time be joined, on account of the connection between them", meaning that the cases produce the same judgement (Court of Justice of the European Union 2012: 18). The cases that shared a joined judgement in this study's case selection are classified as 'one case' in the coding scheme, as not to inflate the number of cases that are ruled with a certain interpretation. This is because although two or more cases are filed under slightly different circumstances the court found it appropriate to respond with one singular judgement. So to prevent the data from showing a skewed representation of a certain judgment being made multiple times, a shared judgement over multiple joined cases will be considered one case in the data analysis.

For the majority of joined cases, they were listed in InfoCuria as one opinion or decision, however, in 2004, seven cases were joined from Germany pertaining to medical employees (*Pfeiffer*, Case C-397/01, 2004; *Roith*, Case C-398/01, 2004; *Süß*, Case C-399/01, 2004; *Winter*; Case C-400/01, 2004; *Nestvoge*l, C-401/01, 2004; *Zeller*, Case C-402/01, 2004; *Döbele*, Case C-403/01, 2004). These cases share a joined ruling but appear in InfoCuria as seven separate listed cases. As to not inflate the interpretation of this ruling the cases will be combined as one judgement in the coding and analysis. This changes the total number of cases from 186 to 180. All other identified joined cases were already listed as such and do not need further clarification in the methods section. How all of these cases are handled in the analysis is outlined below.

The Coding Scheme

The dataset includes a range of variables designed to capture both descriptive characteristics of the cases and analytically relevant factors related to judicially constructed competence expansion. Case identification variables include the Case ID and Case Name, which ensure transparency, traceability, and replicability of the coding process. The year of judgment and under which treaty it took place is also recorded, allowing for the identification of temporal trends and enabling conclusions to be situated within a broader chronological context. The Treaties used in this research are based on the treaty articles as they appeared in the EurLex search, and are thus limited to:

1. Treaty establishing the European Coal and Steel Community
2. Treaty establishing the European Economic Community
3. Treaty establishing the European Community (Maastricht codified)
4. Treaty establishing the European Community (Amsterdam consolidated)
5. Consolidated Treaty on the Functioning of the European Union

These treaties will be named as the Treaty of Paris, Treaty of Rome, Maastricht Treaty, Treaty of Amsterdam, and Lisbon Treaty throughout the analysis for clarity and simple identification.

Establishing which treaty the cases fall under is crucial in testing claims that treaty period has an effect on how competences are treated. In particular determining whether there was a significant shift in court judgements under the Lisbon Treaty compared to previous ones (Craig 2013: 155; Garben 2019: 205, Oberg 2018: 695-697). Cases are coded under treaties according to the date that the treaty went into force, not the date that the treaty was signed. These treaty limitations allow for the time span of cases to range from 1951, when the Treaty of Paris was signed, until 2025 when the last case was ruled on. Despite the wide range of cases accounted for, the analysis will show that the first social policy case from this delimitation was ruled on in 1971. This 20 year gap of cases rulings can be described by the relatively few cases brought before the Court after the establishment of the EC because the Court was institutionally limited and judicial procedures remained heavily controlled by the member states. When the Court became the common judicial institution of the three Communities in 1957, its Statute had to be renegotiated and as a result, the Court operated within a cautious and tightly supervised institutional framework during the early years of the EC (Sarvarian 2013: 116).

Several variables also provide important institutional and procedural context. The type of procedure (e.g. preliminary references, direct actions, or appeals) is included to contextualize the legal process of the case, not to establish whether there is any correlation between the procedure and its outcomes. The majority of cases going to the General Court are in the subject areas of competition, intellectual property, and external trade (Chalmers, Davies & Monti 2019: 164). These are topics rather distant from social policy, explaining why in the data selection only one case is ruled on by the General Court, and the rest are from the Court of Justice.

For direct action cases and appeals, descriptive factors include the applicant and defendant, as well as the respective party types (e.g. member state, EU institution, or private party). These factors are not considered in preliminary references since the nature of these include national courts referring cases to the Court of Justice. So instead the referring member state is recorded to contextualise the national origin of the case, and the distribution of cases will be mapped in the analysis. While primarily descriptive, these factors allow for the analysis to identify various patterns correlated to competence expansion.

Another consideration for the case selection is that all 27 member states were included and given a number in the coding scheme (Austria-Sweden; 1-27). However, because the case selection dates back to 1971, the United Kingdom is also included as the number 28. They account for the second largest number of preliminary references, and are involved in several direct action cases. As such is it important that the UK is included in the case selection despite the country's withdrawal from the Union in 2020.

The Interpretation of EU law

The central analytical consideration of the dataset is the interpretation of EU law. The cases will be coded according to whether the Court adopts a restrictive or expansive interpretation of EU social competences.These classifications will be used in the analysis to determine whether EU law is given a broad and comprehensive interpretation, or if the Court identifies a lack of EU competences and emphasizes member state autonomy. A third categorization will be presented for cases that did not clearly produce judgements in either direction. Overall, the interpretation of EU law serves as the primary basis for assessing the Court's role in shaping the scope of EU authority, particularly in areas traditionally regulated by the member states.

In the case of preliminary references, often national courts ask whether aspects of national law 'preclude' EU law or not. To preclude legislation is a common phrase used by the CJEU to convey in its ruling that a national norm or law is contrary to EU law and ought to be set aside or removed (Passalacqua & Costamagna 2023: 323). Each case will be coded with either a 0, 1 or 2. The Court precluding national law is often associated in this analysis as a 2, representing a *broad* interpretation of EU law. This is in cases where EU law is upheld when challenged, or EU law is permitted to influence, or preclude, questions of member states' national law.

A 1 is assigned to cases that are *moderate* in the ruling and can be characterised as a non-transformative decision, combining a limited extension of EU law while also constraining some aspects of EU law, and therefore having only modest implications for the scope of EU competence. This classification would for example be used in preliminary reference cases where the court answered different questions with significantly different answers within the same ruling. This also applies to cases where the Court confirms established doctrine and applies no major shift in influence of the EU on member states. Finally, a 0 accounts for a *restrictive* interpretation of EU law, where the court to a high degree identifies a lack of EU competences in the area or that EU law does not preclude national law, and to a large extent emphasizes member state autonomy. In only one of the selected cases did the Court determine that it had no jurisdiction to produce a ruling, so instead it will be assigned a 3 and be excluded from certain parts of the analysis (*Nisttahuz Poclava,* Case C-117/14, 2015).

All of the abovementioned coding is done manually by reading through each of the individual judgements and recording the data in SPSS for the analysis.

5.4 Methodological Considerations and Limitations

Before moving to the main analysis, some delimitations, limitations, and methodological concerns need to be addressed. This section addresses in particular the considerations associated with human coding in systematic research, the overwhelming majority of preliminary references in the case selection, and the descriptive rather than explanatory nature of the research.

Despite having a transparent and reproducible coding scheme, the element of human coding faces potential problems concerning reliability and replicability of the content analysis since every reader may attach different meanings to the same text (Mikhaylov, Laver & Benoit 2012: 78-80). Ideally to combat this, or to minimize the coder bias, multiple researchers would test the coding scheme and read through the selected case law (Verbruggen & Wijntjens 2025: 10). Since this research is conducted as an independent project, the coding scheme was made with the intention of reducing as much coder bias as possible by using descriptive statistics to a high degree, and for analytical statistics coding into a simple set of predefined variables. Although this comes with the risk of oversimplification, SCA is set to prioritize what is explicitly stated rather than deeper interpretations that indicate causal inference (ibid: 4). As such the codebook (see Appendix 3) aims to be as transparent and consistent as possible, allowing for a systematic guide to test and replicate the research.

Out of the 187 cases filtered, and the 180 used for analysis, 164 of them were preliminary references (91.1%). A drawback of this large number of preliminary references is that it produces an overrepresentation of preliminary references compared to other procedures. Additionally, the Court is likely to take national traditions and context into account in preliminary references depending on subject, relations, frequency, and style of preliminary references. For example, previous studies have shown that while the UK and Germany have both sent a significant number of preliminary references to the Court regarding sex discrimination, the CJEU has treated them differently based on national traditions and laws, favouring German over UK law (Mudler 2025: 189). However, as discussed earlier, preliminarily references are an important source of case law, and considering that the preliminary reference procedure accounts for the majority of CJEU case law, it is still relevant to include, and rely, on this data (Cichowski 1998: 388; Chalmers, Davies & Monti 2019: 180). As a result, the analysis is heavily driven by preliminary references, which may bias the findings toward interpretative expansion, given their function in shaping the application of EU law and the consequences of competences within member states (Leijon 2021: 519).

Finally, the study adopts a descriptive rather than explanatory approach, focusing on identifying associations rather than causal mechanisms. While this allows for a clear empirical mapping of trends, it does not account for underlying factors that may influence judicial behaviour, such as political context, institutional dynamics, or the strategic role of national courts in preliminary references. It should also be noted that the temporal and treaty-based categorisation may oversimplify the evolution of EU law. Although the analysis spans multiple treaty periods, legal change is not always neatly aligned with formal treaty revisions (Stone Sweet 2004: 199-200). Developments in jurisprudence may reflect longer-term doctrinal shifts rather than discrete constitutional moments, which could partly explain the lack of statistically significant differences across treaty frameworks. The role of national courts in this is also vital, but excluded from this research (Mudler 2025: 188). Consequently, the findings should be interpreted as indicative patterns rather than explanations of why competence expansion occurs.

Final thoughts before the Analysis

In short, the methodology chapter has outlined the research design used to investigate patterns of competence expansion in CJEU social policy case law. By adopting systematic content analysis, the study has aimed to place the abstract debate on competence creep into an empirical and replicable methodological framework. Rather than relying solely on a small number of leading judgments, the chosen method makes it possible to observe broader trends across a larger body of case law and to assess how the Court interprets EU law in cases of social policy.

The use of SCA is particularly suited to this purpose because it allows for the structured reading and coding of a substantial number of judgments while still preserving the legal nuance necessary for interpreting court decisions. Through manual coding, SCA allows for qualitative observations to transform into quantitative data, making it possible to identify recurring patterns, compare cases across treaty periods and procedures, and test whether certain variables appear to be associated with different interpretative outcomes. The purpose is not to offer a complete causal explanation of judicial behaviour, but to provide a systematic empirical mapping of how the Court has interpreted EU law in the selected field. On that basis, the following analysis turns to the coded dataset itself and answers the research question on what patterns of judicially constructed competence expansion can be identified in the selected body of social policy case law in the CJEU.

6 Analysis

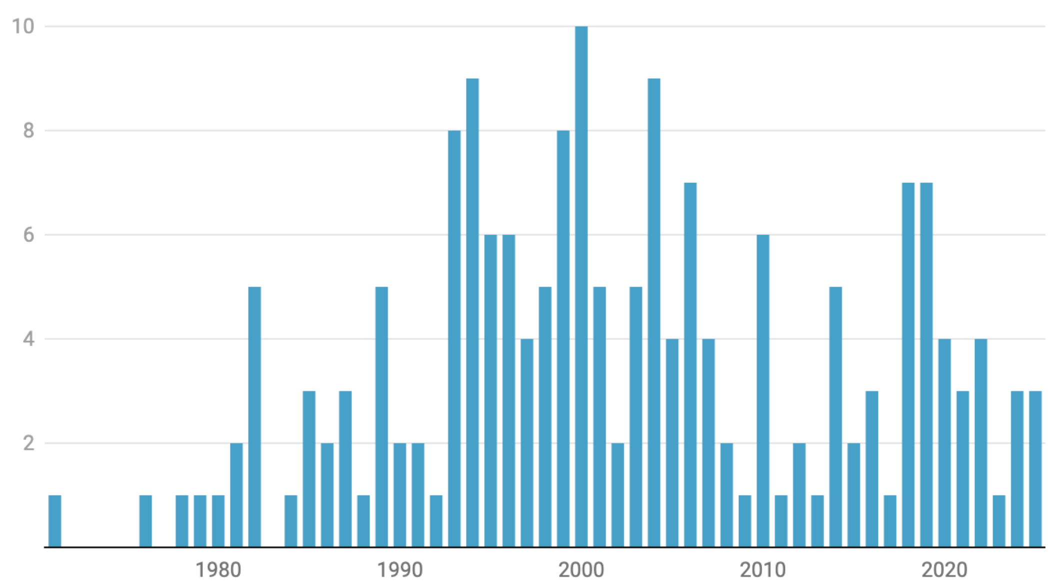
This chapter presents the results of the analysis in several sections. The first section describes the distribution of cases and during what time periods we see social policy cases come to the Court. After this, how the Court interpreted EU law is presented, followed by more detailed results on how these are distributed between direct action cases, preliminary references, and more. This is followed by examples of coded cases to display the wide range case law and results. Descriptive results based on treaty association, in particular the Lisbon Treaty, is discussed in the following section. Finally, there is a discussion on all of the results and why the conclusions are important for the conversation on competence creep and social policy case law in the EU.

6.1 The Distribution of Cases over time

The analysis, as described previously, aimed to cover the entire jurisprudence of cases in the EU's history in order to best show patterns of judicially expanded competences over time. As seen in Figure 1, the first case was ruled on in 1971, and from then a larger number of cases amounted in the 1980s and beyond. Peaks of cases can generally be seen in the late 1990s to early 2000s, as well as around 2020.

Figure 1

Table describes the distribution of social policy CJEU cases by year. Includes the total 180 cases selected for analysis



Overall, cases remained steady and recurring from the mid 1980s, which allows for data that can compare Court rulings from the Treaty of Rome, Maastricht Treaty, Treaty of Amsterdam, and Lisbon Treaty. Figure 1 also shows that no cases were found during the Treaty of Paris, or the years 1951-1970. Figure 1 also shows that no cases were found during the Treaty of Paris, or the years 1951-1970. From the first case in 1971, the figure includes all 180 cases from the Court of Justice, since the General Court was excluded, and describes the distribution of cases over time and that rather than viewing the case law as one undifferentiated body, the material is rather well distributed over time. Excluding the first span of 20 years. Further figures will describe the rulings of these cases and more specifically how the rulings compare to procedure, treaties, and other factors from the coding scheme.

6.2 The (not so) surprising interpretation of EU Law

To answer the research question on what patterns can be identified in EU social policy case law, the most striking feature of the data is the presence of competence creep. One can determine from the analysis that there is an overwhelmingly broad interpretation of EU law, reaffirming the Court as a central actor and perpetuator of competence creep.

As seen in Figure 2, the coding scheme and analysis determines that 101 (56.1%) of cases had a broad interpretation on the application of EU law, 55 (30.6%) were restrictive, and 23 (12.8%) moderate; totalling to 180 cases. These are the valid percentages when including the singular case in which the Court ruled that it had no jurisdiction, which makes up 0.6% of cases (*Nisttahuz Poclava*, Case C-117/14, 2015).

Figure 2

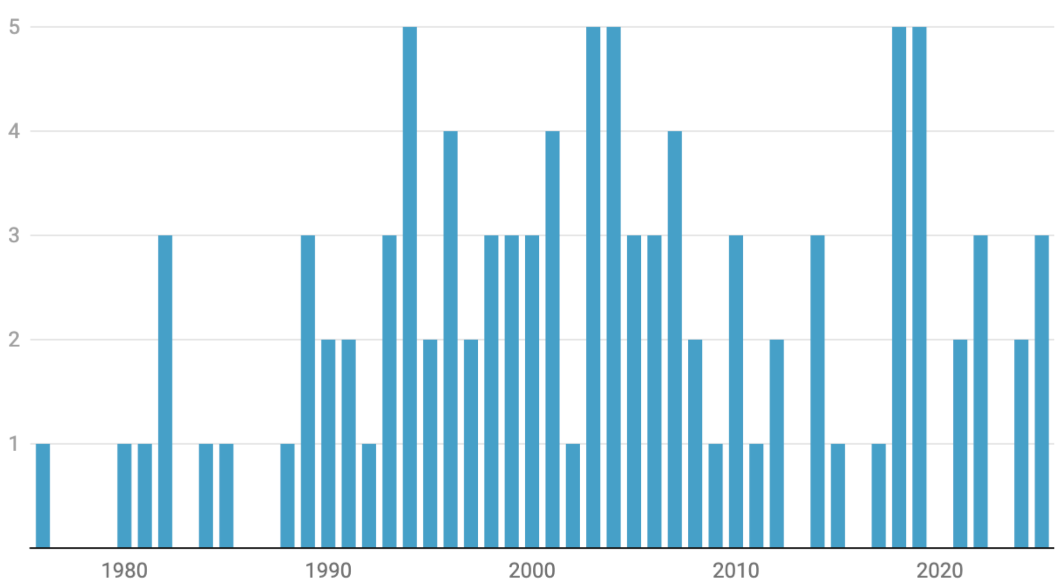
The figure represents the distribution and percentages of the how the Court interpreted and ruled on the 180 social policy cases.

The dominance of broad interpretations throughout the cases is the most striking, and yet the most ‘obvious’ feature of the data. As discussed earlier, the majority of researchers and academics agree that the CJEU has played an important role in advancing the EU's competences and legal impact in member states' national legislation (Polomarkakis 2022: 257); and the research data provided supports this. Seen in Figure 3, the distribution of cases that have a broad interpretation and application of EU law were spread over a similar time period as Figure 1. This distribution shown in Figure 3 means that there was not a specific time period that produced more broad interpretations compared to others.

Returning to the results in Figure 2, they do not just "preach to the choir" because of the empirical weight they hold. Legal scholarship combined with social science to conduct a SCA on the interpretation of EU law allowed for a gap to be filled within social policy research by providing a longitudinal overview. It is important to see an overview of cases on the influence and expansion of EU law through the Court over time and that goes beyond only observing and analysing a few "leading cases" (Hall & Wright 2008: 63-65). As outlined in Figure 2, the data provided covers 180 cases in which a majority adopt a broad interpretation by the Court. Having this quantity of cases provides a more overarching view of legal trends, and in this case those trends support competence creep by displaying that the cases trended towards a broad interpretation of EU law. Meaning effectively that the Court has in these cases expanded its overall political influence in social policy.

Figure 3

The figure displays the distribution of social policy cases that were broadly interpreted by the CJEU between 1971-2025.



Building on the trends identified, the importance of contributing to this field lies not only in reaffirming existing theoretical claims, but in grounding them in systematic and transparent empirical analysis. While the literature has long suggested that the Court plays an integrative and expansionary role, much of this understanding has been derived from qualitative assessments or a limited selection of influential cases (Polomarkakis 2022: 272-273). By contrast, the present findings offer a broader evidentiary base, demonstrating that the tendency toward expansive interpretation is not confined to landmark judgments, but is observable across a wider body of case law (Hall & Wright 2008: 78). This matters because it strengthens the reliability of claims regarding competence creep, shifting the discussion from illustrative examples to measurable patterns.

Moreover, these outcomes are significant for understanding the practical operation of EU law. If broad interpretation is consistently dominant, this suggests that the Court functions as a steady driver of legal integration, shaping the scope of EU competences in a cumulative and pervasive manner. As such, the data does not merely confirm existing assumptions but contributes conclusions towards a more robust empirical foundation for competence creep, allowing scholars to move beyond debate over whether the Court favours integration to a more precise consideration of how consistently and extensively this tendency manifests across its jurisprudence.

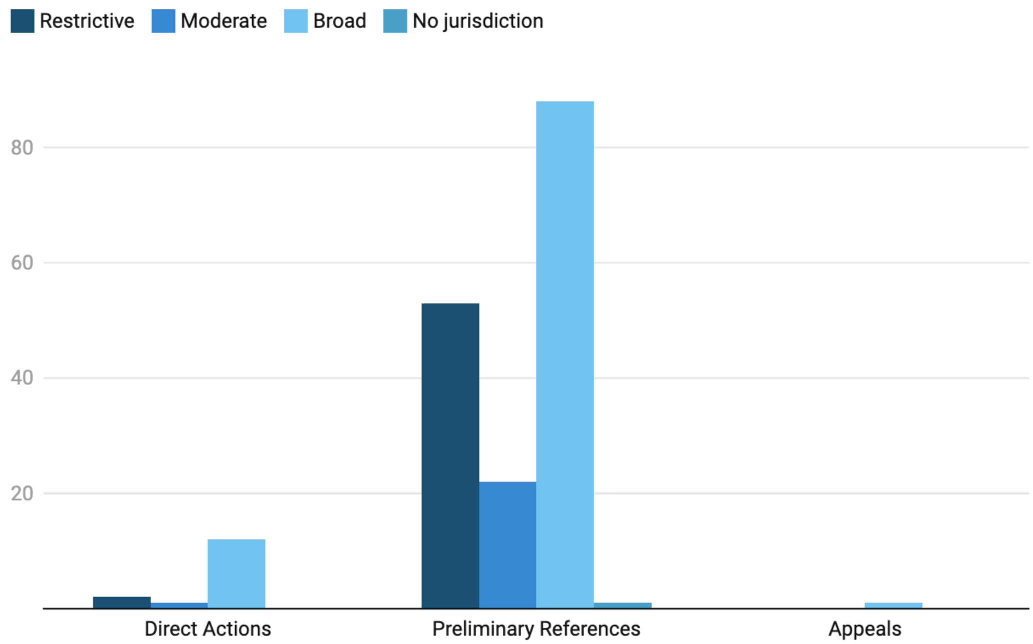
6.3 Does procedure type matter?

Out of the 3 categories for the procedure of cases (preliminary references, direct actions, and appeals), Figure 4 shows that there was only one appeal included in the case selection, and was discussed earlier for being the case that resulted in the exclusion of the only case from the General Court, since the two cases shared the same ruling (*EPSU v Commission*, Case C-928/19, 2021). Figure 4 also displays the dominance of preliminary references with 164 cases while direct actions represent 15 of the selected cases.

Most importantly, Figure 4 shows how the distribution of broad interpretations compared to restrictive was consistent across procedure types. Although preliminary references provide the most statistically solid base for distributions, the patterns are mimicked by the direct action cases. Ideally more cases in the case selection search would have been direct action cases since that is when the Court explicitly determines where the institutions have or lack the competence to act (Chalmers, Davies & Monti 2019: 365-369). However, in the following section, to create a more nuanced discussion and understand how different procedures apply to EU law, the direct action and appeal cases found in this body of social policy research will be investigated in depth.

Figure 4

The figure displays the interpretation of EU law across 180 cases based on the type of legal procedure.



6.4 A look into Direct Actions and the Appeal

Out of the 15 direct action cases found in the case selection, 10 of them were infringement procedures brought by the Commission against member states. Infringement procedures are an effective control mechanism for the EU to combat violations against agreements, legislation, or the treaties (König & Mäder 2014: 246). All but one of these cases, which was given a moderate interpretation (*Commission v Germany,* Case C-248/83, 1985), went in favor of the Commission where the Court ruled that the member state was at fault for the infringement procedure. These results hold in line with the argument that the Commission only brings forth infringement procedures to the Court when the legal arguments are incredibly solid and there is very little room for loss (König & Mäder 2014: 259). What is more interesting than the infringement procedures are the five direct action cases and one appeal where the Court was asked to review EU legislation that could potentially go beyond the EU's competences.

The Court Limiting Competences

When looking into the 5 direct action cases where the CJEU strictly interpreted the EU's competences, there were two cases where the Court limited the EU's competences. The first was *Germany v Commission* (1982) where Germany brought an action against the Commission in regards to the European Social Fund, for which the member states had applied for funds. The Commission rejected this application on the grounds that it had been submitted late, but Germany held that the rules regarding the application were unclear and unpredictable, thus claiming that the Commission withheld funds on an unfair basis (*Germany v Commission*, Case C-44/81, 1982: 1874). The Court ruled in favor of Germany and decided to void the Commission decision to withhold funds on the grounds that it violated the principle of legal certainty, and that the Commission does not have the competence to withhold funds. The Court did rule that it is the right of the Commission to supervise the spending or recovery of funds, but that it must do so with legitimate expectations, meaning that ultimately this case resulted in the Court restricting EU power and the Commission's Competences.

The second case was an action for annulment brought by Germany, France, the Netherlands, and Denmark (supported by the United Kingdom) against the Commission in joined cases *Allemagne, France, Pays-Bas, Danemark and United Kingdom v Commission* (Case C-281/85, 1987; Case C-283/85, 1987; Case C-285/85, 1987; and Case C-287/85, 1987). The member states brought proceedings to the Court because of a 1985 Commission decision to create an information system on migration policies for third country nationals. The applicants argued that the Commission used the wrong legal basis, Article 188 of the EEC Treaty, as competence for its actions (ibid: 3250). The Court ruled that the Commission lacked competence in this area and declared the Commission's Decision (85/381/EEC) void, and that it could not use a social policy legal base to set up a communication and consultation procedure on migration policies for third country nationals (ibid: 3258).

The Court Expanding Competences

The remaining three direct action cases, and one appeal, were solid victories for the Commission with broad and extensive interpretations of EU law. The most recent was *Denmark v Parliament and Council*, which was an action for annulment brought by Denmark, supported by Sweden, to annul Directive 2022/2041 on adequate minimum wages in the EU (Case C-19/23, 2025). Although the Court did strike one sentence from the directive as a part of its ruling, it upheld the remainder of the directive, including the main points of contention on EU involvement in the setting of wage standards (ibid: 32). This is highly significant concerning the exclusion of 'pay' and the 'right of association' from the EU's social policy competences (Article 153(5) TFEU). The Court went against the opinion of Advocate General (AG) Emmilou, after she had proposed annulling the directive in its entirety on the ground that it would indirectly regulate 'pay'. By going against the AG opinion the Court expanded the realm of EU powers despite explicit competence exclusions, demonstrating an example of competence creep (Hurst 2026: 151).

The second case where the Court sided with an expanded understanding of competences was in the *United Kingdom v Council* (Case C-84/94, 1996) where the EU used its health and safety competence (now Article 153 TFEU) as the legal basis for the Working Time Directive (93/104/EC). The UK argued that working time does not fall under health and safety, and brought the case to the Court in hopes that it would strike down the directive. The Court ruled that working time did fall under EU competences, effectively expanding the EU's social policy competences and permitting the EU to regulate working hours in the Union.

Finally, the Court ruled in *United Kingdom and Others v Council* joined cases (Case C-51/89, 1991; Case C-90/89, 1991; Case C-94/89, 1991) that the EU has the competence to create a harmonized policy in vocational training under, then, Article 128 EEC. This came after the UK, France, and Germany questioned the EU's competence to establish binding, transnational measures with substantive effects, such as Comett I (ibid: 2760). Effectively the Court in this case expanded the EU's competences into areas of vocational training where it previously had no power.

In addition to these direct action cases, it is valuable to note the appeal case *EPSU v Commission* (Case C-928/19) from 2021, which is unique since the Commission 'won' the case already in the General Court before EPSU appealed on the question of the application of EU law in the General Court's ruling (Carre & Steiert 2022: 319-321). The case centered on the European Commission's refusal to enforce legal action on a union agreement that would have granted public sector workers the right to information and consultation (ibid: 315-316). The Court of Justice reaffirmed the General Court's judgement that the Commission possesses the competence to refuse the implementation of social partner agreements into binding EU law (*EPSU v Commission*, Case C-928/19, 2021: 21-22). All of these cases, whether they broadened or narrowed the EU's competences in social policy create a substantial display for the many different ways in which the treaties can be interpreted to either increase judicially constructed competence expansion or protect the autonomy of the member states' conferred competences.

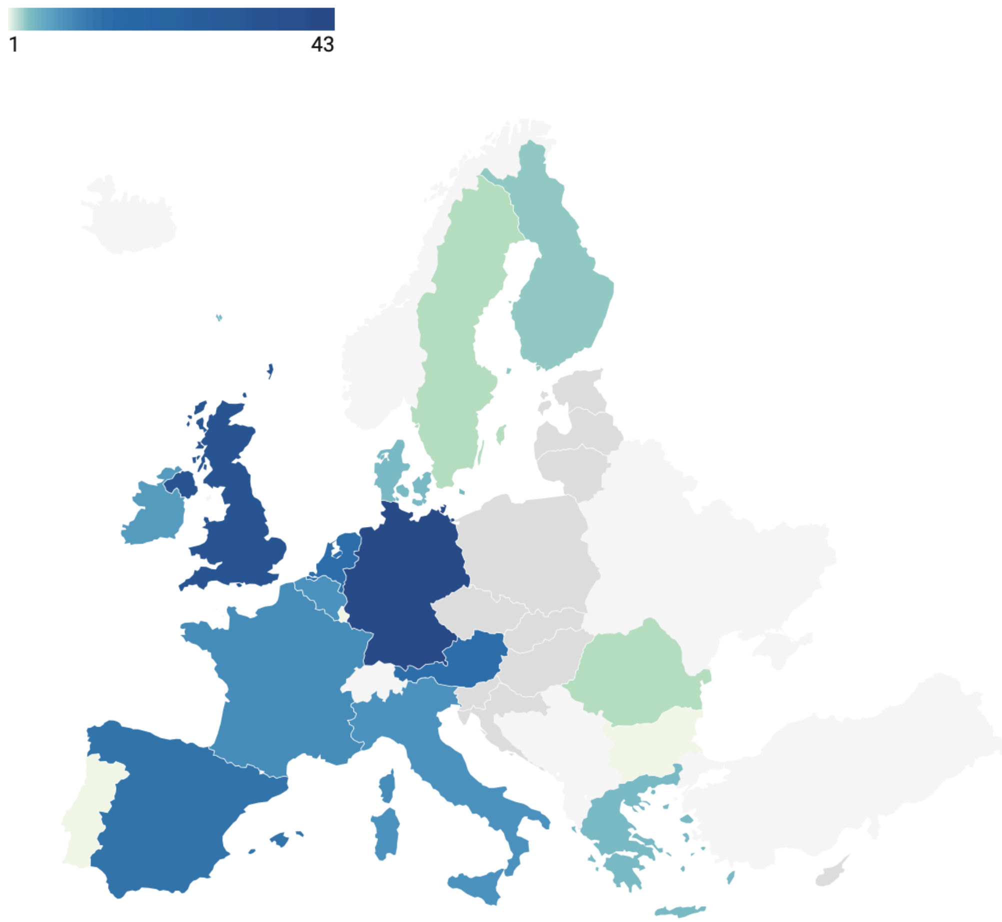
6.5 A look into Preliminary References

Given the number of preliminary references analyzed in the body of data (164), all of the cases will not be explained in depth. Instead one broad, one moderate, and one narrowly interpreted case will be described in order to explain the line of reasoning while coding the cases, as well as explain the significance of the rulings. These explanations are important in understanding why it matters that the number of broad interpretations, 88 cases, is substantially higher than the number of restrictive, 53 cases. In addition to these broad and narrow interpretations, 22 cases were coded as moderate interpretations. An example of a moderate case will also be included to provide an example of why moderate cases were coded as moderate and not as either broad or narrow.

Before diving into the case explanations, Figure 5 is displayed to show the distribution of preliminary references across the member states. There is a rather uneven distribution of preliminary references submitted to the Court, including 10 EU countries that have not submitted a single reference. Out of 164 total cases, countries such as Portugal, Bulgaria, and Luxembourg only account for one case each, whereas Germany and the UK alone account for 75 cases, 43 and 32 respectively. National Court of origin is not further discussed when analysing the data, however, there is value in a transparency and representation of who the preliminary references were submitted by, information which is provided in Figure 5.

Figure 5

The number of preliminary references made to the CJEU 1971-2025 in social policy based on member state



The United Kingdom is included for cases before the withdrawal from the EU in 2020. The case with no jurisdiction (C-117/14) is included in the figure.

An example of a broadly interpreted case is *Max-Planck-Gesellschaft zur Förderung der Wissenschaften v Tetsuji Shimizu* (Case C-684/16, 2018), where the Court significantly strengthened the horizontal effect of fundamental social rights. The case concerned Mr. Shimizu and his previous employer who refused to reimburse Mr. Shimizu days of paid leave that he did not take before his contract was terminated (*Max-Planck-Gesellschaft zur Förderung der Wissenschaften v Tetsuji Shimizu*, Case C-684/16, 2018: 3-4). The Court ruled that EU law, specifically Article 7 of Directive 2003/88/EC and Article 31(2) of the Charter of Fundamental Rights, precluded national law that would prevent workers from losing their paid leave after termination. The Court held that these rights are directly effective and may be invoked in disputes between private parties, thereby obliging national courts to dismiss conflicting national law (*Max-Planck-Gesellschaft zur Förderung der Wissenschaften v Tetsuji Shimizu*, Case C-684/16, 2018: 13-14). This represents a broad interpretation of EU competences, as it effectively extends the reach of EU fundamental rights into private employment relationships within member states, reinforcing the Union's influence in an area closely tied to national law.

A narrow interpretation of EU law can be seen in *Chacón Navas* (Case C-13/05, 2006) where a woman in Spain was diagnosed with an illness, and effectively terminated from her employment. The employer did so knowing that the termination was illegal and offered a one time cash payment along with the termination as a result. Still, she brought an action to the national court on the grounds of discrimination as the reason for her termination, and that court then referred to the CJEU on the interpretation of the concept of 'disability' for the purpose of Directive 2000/78/EC. Essentially asking whether or not a non-permanent illness falls under the umbrella for discrimination according to EU law. The Court ruled that a "person who has been dismissed by his employer solely on account of sickness does not fall within the general framework laid down for combating discrimination on grounds of disability by Council Directive 2000/78/EC" (*Chacón Navas*, Case C-13/05, 2006: 6508). This ruling reflects a restrained judicial approach, where the Court does not use the opportunity to broaden the EU's reach into national regulatory autonomy.

A more moderate interpretation is reflected in *Defreyn* (Case C-166/99, 2000) where a woman in Belgium, Marthe Defreyn, claimed that the additional pre-retirement payments she received from her previous employer were lower than those of her male counterparts, alleging discrimination. The National Court referred three questions (*Defreyn*, Case C-166/99, 2000: 6180-6182) on the application of EU law, and the Court responded with two overarching answers (ibid: 6187-6188). Regarding the first question on whether or not pre-retirement payments constituted pay under, then, Article 119 of the EC Treaty, the Court answered that, yes, it did. Meaning that the Court expanded the integration and applicability of EU law by expanding the EU's definition of pay. To answer the second question submitted by the national court, the CJEU determined that this form of an additional payment is not covered by Article 5 of Council Directive 76/207/EEC, and as a result the applicant cannot make claims on equal treatment based on sex from EU law. This case, and the other coded as 'moderate' demonstrate how the Court can lean in multiple directions and make broad and narrow interpretations in the same ruling. This allows the Court through the preliminary reference procedure to both determine the validity of member states' national law while ruling on the meaning of EU law (Donnelly & de la Mare 2021: 234-235).

These cases were mentioned to explain and show that although the CJEU did not rule in the same way regarding competences for direct action cases, appeals, and preliminary references, the Court still made significant rulings pertaining to social policy and how it is applied in the member states. Where the Court holds the interpretive power over EU law, it can through preliminary references determine how law is practiced in the member states. The Court's interpretation of directives and other law has the potential for significant repercussions for competences which the member states would generally wish to control. So when a majority of preliminary references in social policy case law reflect an expansionist view of EU law and an increase of EU influence in member states' national practices, a different form of the competence expansion takes place which challenges the status quo of national law. Because the preliminary reference procedure provides perspectives and a platform for EU legal reasoning, the results produced by this analysis, and 56.1% of cases ruled broadly, hold weight in understanding the Court's behavior and the multifaceted legal interpretations that the Court can make to judicially construct competence expansion.

6.6 What about the Lisbon Treaty?

As previously explained, there are certain researchers that held that the Lisbon Treaty was drafted and specifically had as one of its goals to narrow what was considered the competence problem and limit the EU's powers (Craig 2013: 155; Garben 2019: 205, Oberg 2018: 695-697). The Lisbon Treaty was understood as shifting the entire constitutional structure by restructuring the three-pillar model and clarifying the EU's competences (Gasparini 2024: 1072), while simultaneously incorporating social goals and a social dimension (Dawson 2011: 2–3; Kenn 2025: 170). To test whether these treaty changes had any impact on Court rulings and its interpretation of competences in this study's case selection of social policy case law, trends and significance will be observed from the entire body of data, then take a closer look at the different variables to identify any potentially significant results.

To provide different perspectives on the impact treaty period has on the court rulings, Table 1 is included to display the Chi-square test on whether treaty association carries any significant relation to how the cases were interpreted by the Court, while Figure 6 is included to visualize the distribution of cases across Treaties. Important to note is that in Table 1, the one case ruled to have no jurisdiction by the Court is excluded to not screw the p-value, meaning that the number of cases analyzed is 179. Figure 6 shows the research covers a span of 54 years (1971-2025) which provides data over the span of four treaties, the Treaty of Rome, Maastricht Treaty, Treaty of Amsterdam, and Lisbon Treaty.

Table 1

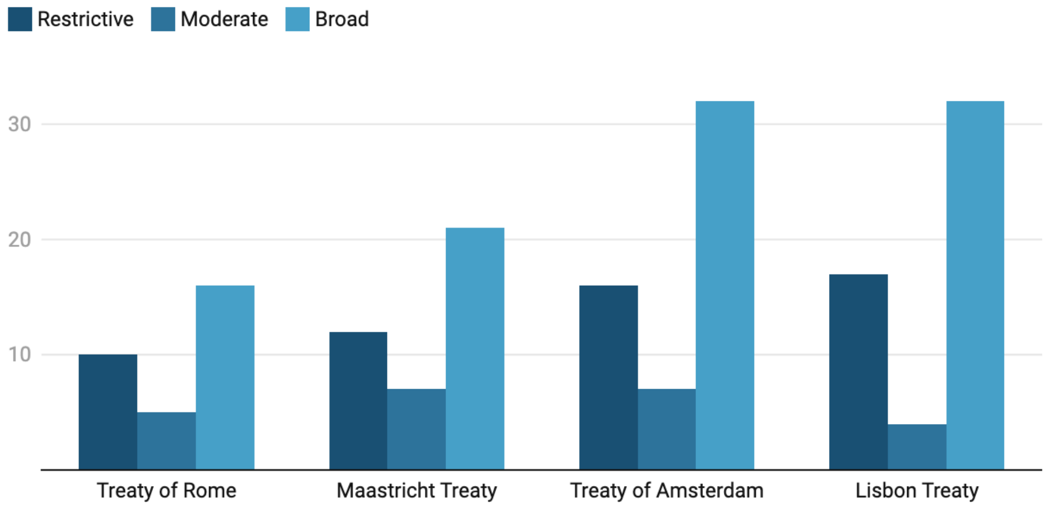
The Chi-Square Test on treaty association for the Treaty of Rome, Maastricht Treaty, Treaty of Amsterdam, and Lisbon Treaty

Test	Value	df	p-value
Pearson Chi-Square	2.616	6	0.855
Likelihood Ratio	2.734	6	0.841
Linear-by-Linear Association	0.264	1	0.608
N of Valid Cases	179.000		

As displayed in Table 1, we see that the p-value for the Chi-square test is **0.855**. Since the p-value is over 0.05, when looking across the entire body of selected case law, excluding the case with no jurisdiction, the p-value displays an insignificant correlation between the interpretation of EU social policy case law and its treaty association. The results presented suggest that the Lisbon Treaty had no impact on the interpretation of EU law in the Court's rulings since there is no linear increase or decrease in broad or restrictive interpretations which would confirm a trend or a relationship over time.

Figure 6

Figure displays the interpretation of EU Law from the CJEU based on Treaty across 179 social policy cases between 1971-2025.



Excludes the case the Court ruled to have no jurisdiction (C-117/14)

The data found in Figure 6 indicates that under the Lisbon Treaty the Court produced its most 'decisive' rulings, having the smallest percentage of moderately ruled cases, accounting for 4 out of the total 23 moderate rulings. However, these results should be taken with a grain of salt. The chi-square test works best when the expected number of cases in each category is not too small, because it relies on an approximation that becomes more accurate with larger values (Schay 2007: 253-254), meaning that the lack of significance cannot be taken as definitive evidence that Treaty reforms have no effect on judicial interpretation. Rather, it suggests that within this dataset, no clear or consistent pattern can be detected that the Lisbon Treaty changed how the Court interprets social policy case law.

Is there a significant pattern when only looking at Direct Actions and Appeals?

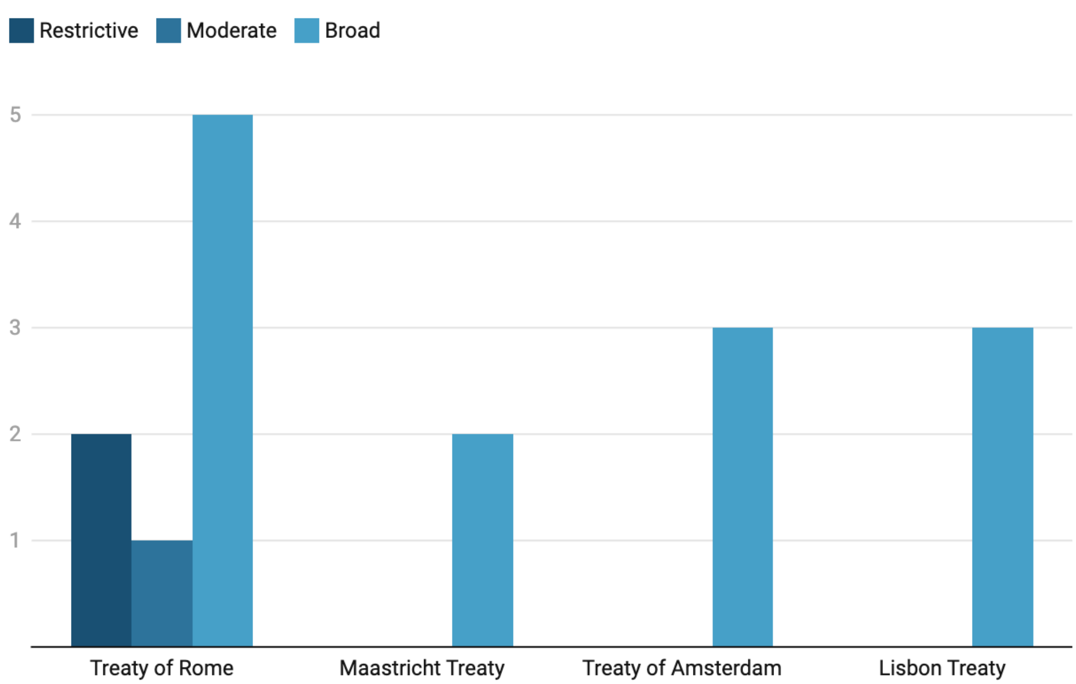
Given the significance placed earlier on the legal differences between preliminary references compared to direct action and appeals cases, it is worth noting if there is any change in patterns between the two groups. To investigate this, Figure 7 exhibits how direct actions and the appeal were interpreted over all of the four relevant treaties. The appeals case (*EPSU v Commission*, Case C-928/19, 2021) is included under the Lisbon Treaty.

The data displayed by Figure 6 shows that only direct actions and appeals cases that fell under the Treaty of Rome produced any restrictive or moderate interpretations of EU competences from the Court. Given that there are only 15 direct action cases and one appeal, it is difficult to produce any statistically significant results. However, half of the case selection (8 out of 16) were ruled on under the Treaty of Rome, and the remaining half was all broadly interpreted, potentially displaying a pattern.

It is worth noting that the last time the Court made a restrictive interpretation of a direct action case in this body of social policy case law dates back to 1987 in joined cases *Allemagne, France, Pays-Bas, Danemark and United Kingdom v Commission* (Case C-281/85, 1987; Case C-283/85, 1987; Case C-285/85, 1987; and Case C-287/85, 1987). All of the selected social policy direct action cases following this gave broad rulings from the Court, and although the body of case law is too small to draw any decisive conclusions from this, it hints at a potentially larger pattern. Should future research investigate this further, results that showed a dominant trend of broad interpretations could yield a significant body of empirical data for researchers to draw further conclusions on competence creep in the EU.

Figure 7

Figure displays the Court's interpretation of EU law in social policy cases according to Treaty in Direct Action and Appeal cases. Includes a total of 16 cases.



The singular Appeal case is found under the Lisbon Treaty. The remaining 15 cases are Direct Action cases.

7 Conclusions and Discussion

This paper set out to find trends of judicially constructed competence expansion and add empirical data to the question on how competence creep presents itself in the EU's social policy case law. At a general level, the findings demonstrate a high degree of internal consistency. The predominance of broadly interpreted cases (56.1%) compared to restrictively interpreted cases (30.6%) appears stable across the dataset, which strengthens the reliability of the central descriptive claim that the Court tends to favour expansive interpretations of EU law within social policy case law. Moving beyond how previous research has opted for a more in-depth analysis of smaller cases, this broader empirical base enhances the robustness of observed patterns and allows for greater confidence that the findings reflect recurring judicial behaviour rather than isolated doctrinal developments. In this sense, the results provide a more reliable indication of how competence creep manifests across the Court's social policy jurisprudence as a whole.

In the ongoing debate on whether or not the EU makes competence grabs and goes beyond the treaty competences conferred to them, the data in this research suggests that the Court plays a vital role in perpetuating competence expansion and an integration of EU law into the member states' national legal frameworks. The patterns found in the analysis recognize a competence creep, more specifically one that indicates that the Court drives an expansive interpretation of social policy through both national courts and the EU institutions. This falls in tandem with the argument that competence expansion in the EU does not solely occur through formal treaty amendment, or legislative initiative, but also through judicial interpretations by the CJEU.

This has direct implications for the research gap. Despite claims that treaty changes have been made to clarify and constrain EU competences under the principle of conferral, specifically in the Lisbon Treaty, the findings do not indicate any significant pattern to support this argument. The reliability of this conclusion is reinforced by the consistency of broad interpretations across treaty periods, even if statistical confirmation remains limited. In short, the results are most reliable in providing credible empirical support for the existence of competence creep as a gradual and practice-based phenomenon within EU social policy law, despite Treaty changes in the Union.

There are a number of ways that future research could expand on these findings, and use the data set or similar methods to derive more results from the research. The first of which would be to incorporate and use multiple types of materials. These could include moving beyond case law and tracing how EU legislation and policies are produced alongside court rulings to see if there is a legislative significance to court judgements or conducting interviews with relevant actors. An additional way to expand on the research would be to classify the types of social policy the Court rules on and draw conclusions on what types of cases are most prominent drivers of competence creep. Such research could go hand-in-hand with claims made about the CJEU ruling differently in preliminary reference procedures submitted by different member states. Finally, future research could exclude preliminary references in their study and take an in depth look at direct action cases where member states ask for the annulment of EU legislation based on the principle of conferral. Research with that specific data set could yield more explanatory results and provide insights into why the Court rules in favor of the expansionist trends unveiled and established in this paper.

In short, this thesis has shown in empirical and systematic terms how the CJEU's social policy case law displays a clear overall tendency towards a broad interpretation of EU law. This allows the Court to influence or preclude questions of member states' law, as well as uphold EU law when challenged. The Court is found to have been an important actor in driving competence creep forward, and while this tendency is not absolute or uniform, it is overarchingly present. The findings suggest that competence expansion in social policy is not understood as a single dramatic shift, but an incremental and cumulative process that can be described through the Court's continuous interpretations. Ultimately, the constant power struggle between the member states and the EU cannot be understood solely through treaty negotiations or political compromise, but must also be viewed as continuously changing through judicial interpretation, legal integration, and competence creep.

8 Bibliography

EU Case Law

The order as it appears in the text:

Case C-19/23 (2025) *Denmark v Parliament and Council* ECLI:EU:C:2025:865

Joined Cases C-281/85, C-283/85, C-285/85, and C-287/85 (1987) *Allemagne, France, Pays-Bas, Danemark and United Kingdom v Commission* ECLI:EU:C:1987:351

Case C-84/94 (1996) *United Kingdom v Council* ECLI:EU:C:1996:431

Case T-310/18 (2019) *EPSU v Commission* ECLI:EU:T:2019:757

Case C-928/19 (2021) *EPSU v Commission* ECLI:EU:C:2021:656

Case C-117/14 (2015) *Nisttahuz Poclava* ECLI:EU:C:2015:60

Joined Cases C-397/01 to C-403/01 (2004) *Pfeiffer and Others* ECLI:EU:C:2004:584

Case C-248/83 (1985) *Germany v Commission* ECLI:EU:C:1985:214

Case C-44/81 (1982) *Germany v Commission* ECLI:EU:C:1982:197

Joined cases C-51/89, C-90/89, and C-94/89 (1991) *United Kingdom and Others v Council* ECLI:EU:C:1991:241

Case C-684/16 (2018) *Max-Planck-Gesellschaft zur Förderung der Wissenschaften v Tetsuji Shimizu* ECLI:EU:C:2018:874

Case C-13/05 (2006) *Chacón Navas* ECLI:EU:C:2006:456

Case C-166/99 (2000) *Defreyn* ECLI:EU:C:2000:411

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9 Appendix

Appendix 1: Case Selection

Case ID	Case Name	Year
C-80/70	Defrenne v Belgian State	1971
C-43/75	Defrenne v SABENA	1976
C-149/77	Defrenne v Sabena	1978
C-47/79	Nehlsen	1979
C-129/79	Macarthys v Smith	1980
C-96/80	Jenkins v Kingsgate	1981
C-69/80	Worringham and Humphreys v Lloyds Bank	1981
C-61/81	Commission v United Kingdom	1982
C-91/81	Commission v Italy	1982
C-44/81	Germany v Commission	1982
C-19/81	Burton v British Railways Board	1982
C-12/81	Garland v British Rail	1982
C-23/83	Liefting v Academisch Ziekenhuis bij de Universiteit van Amsterdam	1984
C-248/83	Commission v Germany	1985
C-143/83	Commission v Denmark	1985
C-135/83	Abels v Bedrijfsvereniging voor de Metaalindustrie en de Electrotechnische Industrie	1985
C-237/85	Rummler v Dato-Druck	1986
C-170/84	Bilka v Weber von Hartz	1986
C-281/85, C-283/85, C-285/85, C-287/85	Allemagne, France, Pays-Bas, Danemark and United Kingdom v Commission	1987
C-192/85	Newstead v Department of Transport	1987
C-126/86	Giménez Zaera v Instituto Nacional de la Seguridad Social and Tesorería General de la Seguridad Social	1987
C-157/86	Murphy v An Bord Telecom Eireann	1988
C-242/87	Commission v Council	1989
C-322/88	Grimaldi v Fonds des maladies professionnelles	1989
C-109/88	Handels- og Kontorfunktionærernes Forbund i Danmark v Dansk Arbejdsgiverforening, agissant pour Danfoss	1989

C-171/88	Rinner-Kühn v FWW Spezial-Gebäudereinigung	1989
C-48/88, 106/88, & 107/88	Achterberg-te Riele e.a v Sociale Verzekeringsbank	1989
C-33/89	Kowalska v Freie und Hansestadt Hamburg	1990
C-262/88	Barber v Guardian Royal Exchange Assurance Group	1990
C-51/89	United Kingdom and Others v Council	1991
C-184/89	Nimz v Freie und Hansestadt Hamburg	1991
C-360/90	Arbeiterwohlfahrt der Stadt Berlin v Bötel	1992
C-173/91	Commission v Belgium	1993
C-152/91	Neath v Steeper	1993
C-110/91	Moroni v Collo	1993
C-189/91	Kirsammer-Hack v Sidal	1993
C-132/92	Birds Eye Walls v Roberts	1993
C-127/92	Enderby v Frenchay Health Authority and Secretary of State for Health	1993
C-109/91	Ten Oever v Stichting Bedrijfspensioenfonds voor het Glazenwassers- en Schoonmaakbedrijf	1993
C-72/91	Sloman Neptun v Bodo Ziesemer	1993
C-399/92 & C-409/92, C-425/92, C-34/93, C-50/93, and C-78/93	Stadt Lengerich and Others v Helmig and Others	1994
C-297/93	Grau-Hupka v Stadtgemeinde Bremen	1994
C-128/93	Fisscher v Voorhuis Hengelo and Stichting Bedrijfspensioenfonds voor de Detailhandel	1994
C-200/91	Coloroll Pension Trustees v Russell and Others	1994
C-7/93	Bestuur van het Algemeen burgerlijk pensioenfonds v Beune	1994
C-28/93	Van den Akker and Others v Stichting Shell Pensioenfonds	1994
C-343/92	Roks and Others v Bestuur van de Bedrijfsvereniging voor de Gezondheid, Geestelijke en Maatschappelijke Belangen and Others	1994
C-57/93	Vroege v NCIV	1994
C-408/92	Smith and Others v Avdel Systems	1994
C-444/93	Megner and Scheffel v Innungskrankenkasse Vorderpfalz	1995
C-317/93	Nolte v Landesversicherungsanstalt Hannover	1995
C-449/93	Rockfon v Specialarbejderforbundet i Danmark, agissant pour Søren Nielsen and Others	1995
C-479/93	Francovich	1995
C-137/94	The Queen v Secretary of State for Health	1995

C-400/93	Specialarbejderforbundet i Danmark v Dansk Industri	1995
C-84/94	United Kingdom v Council	1996
C-435/93	Dietz v Stichting Thuiszorg Rotterdam	1996
C-278/93	Freers and Speckmann	1996
C-342/93	Gillespie and Others	1996
C-457/93	Kuratorium für Dialyse und Nierentransplantation v Lewark	1996
C-280/94	Posthuma-van Damme and Oztürk	1996
C-246/96	Magorrian and Cunningham v Eastern Health and Social Services Board and Department of Finance	1997
C-1/95	Gerster v Freistaat Bayern	1997
C-147/95	Dimossia Epicheirissi Ilektrismou v Evrenopoulos	1997
C-139/95	Balestra v Istituto nazionale della previdenza sociale	1997
C-326/96	Levez v Jennings Ltd	1998
C-66/96	Høj Pedersen and Others	1998
C-411/96	Boyle and Others	1998
C-243/95	Hill and Stapleton v The Revenue Commissioners and the Department of Finance	1998
C-249/96	Grant v South-West Trains	1998
C-187/98	Commission v Greece	1999
C-273/97	Sirdar	1999
C-333/97	Lewen	1999
C-281/97	Krüger	1999
C-309/97	Angestelltenbetriebsrat der Wiener Gebietskrankenkasse	1999
C-167/97	Seymour-Smith and Perez	1999
C-218/98	Abdoulaye and Others	1999
C-249/97	Gruber	1999
C-457/98	Commission v Greece	2000
C-166/99	Defreyn	2000
C-50/99	Podesta	2000
C-78/98	Preston and Others	2000
C-236/98	JämO	2000
C-50/96	Schröder	2000
C-234/96 and 235/96	Vick	2000
C-235/96	Conze	2000

C-270/97 and C-271/97	Sievers	2000
C-271/97	Schrage	2000
C-366/99	Griesmar	2001
C-379/99	Menauer	2001
C-381/99	Brunnhofer	2001
C-173/99	BECTU	2001
C-206/00	Mouflin	2001
C-351/00	Niemi	2002
C-476/99	Lommers	2002
C-4/02 and 5/02	Schönheit	2003
C-5/02	Becker	2003
C-151/02	Jaeger	2003
C-160/01	Mau	2003
C-77/02	Steinicke	2003
C-19/02	Hlozek	2004
C-284/02	Sass	2004
C-313/02	Wippel	2004
C-397/01, C-398/01, C-399/01, C-400/01, C-401/01, C-402/01, and C-403/01	Pfeiffer and Others	2004
C-285/02	Elsner-Lakeberg	2004
C-147/02	Alabaster	2004
C-256/01	Allonby	2004
C-117/01	K.B.	2004
C-220/02	Österreichischer Gewerkschaftsbund	2004
C-191/03	McKenna	2005
C-207/04	Vergani	2005
C-196/02	Nikoloudi	2005
C-14/04	Dellas and Others	2005
C-13/05	Chacón Navas	2006
C-124/05	Federatie Nederlandse Vakbeweging	2006
C-257/04 & C-131/04	Clarke and Others	2006
C-17/05	Cadman	2006
C-484/04	Commission v United Kingdom	2006

C-187/05	Agorastoudis and Others	2006
C-131/04	Robinson-Steele and Others	2006
C-341/05	Laval un Partneri	2007
C-300/06	Voß	2007
C-307/05	Del Cerro Alonso	2007
C-385/05	Confédération générale du travail and Others	2007
C-267/06	Maruko	2008
C-265/06	Impact	2008
C-116/08	Meerts	2009
C-577/08	Brouwer	2010
C-471/08	Parviainen	2010
C-194/08	Gassmayr	2010
C-395/08 and C-396/08	Bruno and Others	2010
C-486/08	Zentralbetriebsrat der Landeskrankenhäuser Tirols	2010
C-149/10	Chatzi	2010
C-147/08	Römer	2011
C-124/11, C-125/11 & C-143/11	Dittrich and Others	2012
C-385/11	Elbal Moreno	2012
C-427/11	Kenny and Others	2013
C-476/12	Österreichischer Gewerkschaftsbund	2014
C-311/13	Tümer	2014
C-173/13	Leone	2014
C-167/12	D.	2014
C-363/12	Z.	2014
C-65/14	Rosselle	2015
C-117/14	Nisttahuz Poclava	2015
C-443/15	Parris	2016
C-335/15	Ornano	2016
C-122/15	C	2016
C-174/16	H.	2017
C-147/17	Sindicatul Familia Constanţa and Others	2018
C-684/16	Max-Planck-Gesellschaft zur Förderung der Wissenschaften	2018
C-569/16	Bauer	2018

C-41/17	González Castro	2018
C-312/17	Bedi	2018
C-338/17	Guigo	2018
C-451/16	MB (Change of gender and retirement pension)	2018
C-192/18	Commission v Poland (Independence of ordinary courts)	2019
C-450/18	Instituto Nacional de la Seguridad Social (Pension supplement for mothers)	2019
C-171/18	Safeway	2019
C-366/18	Ortiz Mesonero	2019
C-486/18	Praxair MRC	2019
C-258/17	E.B.	2019
C-450/18	Instituto Nacional de la Seguridad Social (Pension supplement for mothers)	2019
C-463/19	Syndicat CFTC	2020
C-681/18	KG (Missions successives dans le cadre du travail intérimaire)	2020
C-223/19	YS (occupaional pensions of managerial staff)	2020
C-177/18	Baldonedo Martin	2020
C-928/19	EPSU v Commission	2021
C-624/19	Tesco Stores	2021
C-129/20	Caisse pour l'avenir des enfants (Emploi a la naissance)	2021
C-392/21	Inspectoratul General pentru Imigrări	2022
C-257/21	Coca-Cola European Partners Deautschland	2022
C-426/20	Luso Temp	2022
C-405/20	BVAEB	2022
C-52/22	BVAEB (Adaptation des penions de retraite)	2023
C-314/23	Air Nostrum	2024
C-184/22 and C-185/22	KfH Kuratorium für Dialyse und Nierentransplantation	2024
C-649/22	Randstad Empleo and Others	2024
C-19/23	Denmark v Parliament and Council	2025
C-543/23	Gnattai	2025
C-728/22	Anib and Play Game	2025

Appendix 2: Treaty Articles used in Grounds of Judgement

Treaty	Article number	CELEX number
Treaty establishing the European Coal and Steel Community	Article 71	11951K071
Treaty establishing the European Coal and Steel Community	Article 72	11951K072
Treaty establishing the European Coal and Steel Community	Article 73	11951K073
Treaty establishing the European Coal and Steel Community	Article 74	11951K074
Treaty establishing the European Coal and Steel Community	Article 75	11951K075
Treaty establishing the European Economic Community	Article 117	11957E117
Treaty establishing the European Economic Community	Article 118	11957E118
Treaty establishing the European Economic Community	Article 118A	11957E118A
Treaty establishing the European Economic Community	Article 118B	11957E118B
Treaty establishing the European Economic Community	Article 119	11957E119
Treaty establishing the European Economic Community	Article 120	11957E120
Treaty establishing the European Economic Community	Article 121	11957E121
Treaty establishing the European Economic Community	Article 122	11957E122
Treaty establishing the European Economic Community	Article 123	11957E123
Treaty establishing the European Economic Community	Article 124	11957E124
Treaty establishing the European Economic Community	Article 125	11957E125
Treaty establishing the European Economic Community	Article 126	11957E126
Treaty establishing the European Economic Community	Article 127	11957E127
Treaty establishing the European Economic Community	Article 128	11957E128
Treaty establishing the European Economic Community	Article 130A	11957E130A
Treaty establishing the European Economic Community	Article 130B	11957E130B
Treaty establishing the European Economic Community	Article 130C	11957E130C
Treaty establishing the European Economic Community	Article 130D	11957E130D
Treaty establishing the European Economic Community	Article 130E	11957E130E
Treaty establishing the European Community (Maastricht codified)	Article 117	11992E117
Treaty establishing the European Community (Maastricht codified)	Article 118	11992E118
Treaty establishing the European Community (Maastricht codified)	Article 118A	11992E118A
Treaty establishing the European Community (Maastricht codified)	Article 118B	11992E118B
Treaty establishing the European Community (Maastricht codified)	Article 119	11992E119
Treaty establishing the European Community (Maastricht codified)	Article 120	11992E120

Treaty establishing the European Community (Maastricht codified)	Article 121	11992E121
Treaty establishing the European Community (Maastricht codified)	Article 122	11992E122
Treaty establishing the European Community (Maastricht codified)	Article 123	11992E123
Treaty establishing the European Community (Maastricht codified)	Article 124	11992E124
Treaty establishing the European Community (Maastricht codified)	Article 125	11992E125
Treaty establishing the European Community (Amsterdam consolidated)	Article 136	11997E136
Treaty establishing the European Community (Amsterdam consolidated)	Article 137	11997E137
Treaty establishing the European Community (Amsterdam consolidated)	Article 138	11997E138
Treaty establishing the European Community (Amsterdam consolidated)	Article 139	11997E139
Treaty establishing the European Community (Amsterdam consolidated)	Article 140	11997E140
Treaty establishing the European Community (Amsterdam consolidated)	Article 141	11997E141
Treaty establishing the European Community (Amsterdam consolidated)	Article 142	11997E142
Treaty establishing the European Community (Amsterdam consolidated)	Article 143	11997E143
Treaty establishing the European Community (Amsterdam consolidated)	Article 144	11997E144
Treaty establishing the European Community (Amsterdam consolidated)	Article 145	11997E145
Consolidated Treaty on the Functioning of the European Union	Article 151	12008E151
Consolidated Treaty on the Functioning of the European Union	Article 152	12008E152
Consolidated Treaty on the Functioning of the European Union	Article 153	12008E153
Consolidated Treaty on the Functioning of the European Union	Article 154	12008E154
Consolidated Treaty on the Functioning of the European Union	Article 155	12008E155
Consolidated Treaty on the Functioning of the European Union	Article 156	12008E156
Consolidated Treaty on the Functioning of the European Union	Article 157	12008E157
Consolidated Treaty on the Functioning of the European Union	Article 158	12008E158
Consolidated Treaty on the Functioning of the European Union	Article 159	12008E159
Consolidated Treaty on the Functioning of the European Union	Article 160	12008E160
Consolidated Treaty on the Functioning of the European Union	Article 161	12008E161

Appendix 3 - Codebook

Variable	Code	Definition
Treaty	1	**Treaty of Paris**
Treaty	2	**Treaty of Rome**
Treaty	3	**Maastrict Treaty**
Treaty	4	**Treaty of Amsterdam**
Treaty	5	**Lisbon Treaty**
Procedure	1	**Direct Action**: Under this category falls Actions for annulment, actions for failure to fulfil obligations, and actions for failure to act
Procedure	2	**Preliminary Reference Procedure**: Questions asked by national courts on how to interpret EU law.
Procedure	3	**Appeals:** Appeals sent up by the General Court to the Court of Justice
Reference country	1-28	Countries that submitted preliminary references were coded 1-28 for all EU member states ranging from Austria - Sweden. With the addition of number 28 to represent the UK prior to withdrawing from the Union.
InterpretationEUlaw	0	**Restrictive**: The Court identifies a lack of EU competences and emphasizes member state autonomy
InterpretationEUlaw	1	**Moderate:** Court confirms established doctrine and applies no major shift in influence of EU on member states
InterpretationEUlaw	2	**Broad**: EU law is upheld when challenged, or EU law is permitted to influence or preclude questions of member states' national law.
InterpretationEUlaw	3	**The court had no jurisdiction to rule**
Applicant	1	**EU Institution (**European Parliament, Council of the European Union, & European Commission)
Applicant	2	**EU Member State**
Applicant	3	**EU Body** (Committees, EEAS, EIB, EPPO, etc...)
Applicant	4	**Other** (companies, individuals, NGOs, etc…)
Defendent	1	**EU Institution (**European Parliament, Council of the European Union, & European Commission)
Defendent	2	**EU Member State**
Defendent	3	**EU Body** (Committees, EEAS, EIB, EPPO, etc...)
Defendent	4	**Other** (companies, individuals, NGOs, etc…)