Appendix – The Questions that Never Came

Dataframes:

q_never_came_df_1 = observations except for third-party interveners and those r_actor coded as unknown. Used to create figures 1-2.

q_never_came_df_2 = observations for ex officio led initiatives. Used to create figure 3.

q_never_came_df_3 = observations for party led initiatives. Used to create figure 4 but also table 1.

Keywords

The initial query included overinclusive keywords, aimed at capturing as many judgments as possible that may be relevant. The query was "förhandsavgörande" OR "förhandsbesked" OR "artikel 267 FEUF".

From the relevant judgements found from the search above, the following keywords were used: "förhandsavgörande från EU-domstolen" OR "förhandsbesked från EU-domstolen" OR "förhandsyttrande från EU-domstolen" OR "förhandsavgörande från Europeiska unionens domstol" OR "förhandsavgörande hos EU-domstolen" OR "förhandsavgörande från EG-domstolen" OR "förhandsbesked från EG-domstolen" OR "acte clair" OR "acte éclairé" OR "klargöranden från EU-domstolen"

Codebook

dispute_id

Description: Dispute id. Used to identify the dispute.

Example: "ID1"

case_id

Description: Internal case number. Used to identify the case.

Example: "ad_2000_1234"

court_type

Description: Court type.

Codes: general, administrative, special.

court_level_fixed

Description: Court level in the logic of Article 267 TFEU dividing courts into those that "may" refer, being lower and intermediary courts, and the courts adjudicating as last instance that "shall" refer.

Codes: lower, intermediary, courts of last instance.

last_instance

Description: court_level_fixed made into a dummy variable with 1 for article 267(3), and 0 for article 267(2).

decision

Description: Did the court request a preliminary ruling?

Codes: 1 = yes; 0 = no.

request_actor

Description:

Example: 0 = ex officio, 1 = applicant, 2 = respondent, 3 = both applicant and respondent, unclear who brought the initiative first, 4 = third-party interveners, 98 = unclear

applicant position/respondent position

Description: 0 = not necessary, 1 = need to refer, 2 = needed other questions, 3 = does not object, 4 = not engaging (empty), 5 = not engaging but different view on the interpretation of EU law, 6 = not necessary, but other questions, 7 = need other questions but same as the other party presented, 8 = not winning the case on other grounds, 9 = not necessary but ok if send that question, 10 = if the court does not share our interpretation, 11 = not necessary, but no objection if the court finds it necessary, 12 = if the court finds uncertainty in how to interpret EU law, 13 = if the opposite party sticks with its interpretation of EU law, 14 = raised the issue but not PRP is needed, 15 = previously referred, 16 = raised the issue but should not be seen as a claim.

party_position

Description:

```
output_df_party <- output_df_party %>%
  mutate(party_position = case_when(

    app_position == 0 & resp_position == 0 ~ 1,# both against

    (app_position == 0 & !(resp_position %in% c(0, 1, 2))) |

      (!(app_position %in% c(0, 1, 2)) & resp_position == 0) ~ 2, # one against, the other not against or for

    (app_position %in% c(1, 2) & resp_position == 0) | (app_position == 0 & resp_position %in% c(1, 2)) ~ 3, # one for the other against

    (app_position %in% c(8, 10) & (resp_position %in% c(0,1,2,3,4)) | (app_position %in% c(0,1,2,3,4 )) & resp_position %in% c(8, 10)) ~ 4, # conditional, the other against, for, no objection, or no comment.

    app_position == 4 & resp_position == 4 ~ 5, # no position
```

(app_position %in% c(1, 2) & resp_position == 4) | (app_position == 4 & resp_position %in% c(1, 2)) ~ 6, # one for, other no position

(app_position %in% c(1, 2) & resp_position == 3) | (app_position == 3 & resp_position %in% c(1, 2)) ~ 7, # one for, other no objection

app_position %in% c(1, 2) & resp_position %in% c(1, 2) | r_actor %in% 3 ~ 8, # both for # hf_2016_5548 is coded as conditional claim instead of 8 (both for).

TRUE ~ 9 # the rest

))

Party opposition

Description:

output_df_party <- output_df_party %>%

 filter(party_position != "4") %>% # removing conditional positions

 mutate(party_opposition = case_when(

app_position == 0 | resp_position == 0 ~ 1,# against

(app_position %in% c(1, 2) & resp_position == 4) | (app_position == 4 & resp_position %in% c(1, 2)) ~ 2, # other no position

(app_position %in% c(1, 2) & resp_position == 3) | (app_position == 3 & resp_position %in% c(1, 2)) ~ 3, # other no objection

app_position %in% c(1, 2) & resp_position %in% c(1, 2) | r_actor %in% 3 ~ 4, # positive

TRUE ~ 5 # other

))

Regression Models

Table 1 as in the article but without coefficients as odds-ratio:

	Model 1	Model 2
no comment	-2.21 ***	-1.74 **
	(0.59)	(0.67)
does not object	2.33 ***	3.22 ***
	(0.57)	(0.74)
positive attitude	2.33 ***	3.03 ***
	(0.66)	(0.82)
administrative courts		-1.77 **
		(0.62)
special courts		-2.84 ***
		(0.75)
courts of last resort		2.38 ***

		(0.54)
N	532	532
AIC	168.22	138.59
BIC	185.33	168.53
Pseudo R2	0.35	0.51

*** $p < 0.001$; ** $p < 0.01$; * $p < 0.05$. The reference categories are 'against', 'general courts', and courts under art267(2) TFEU. The table only includes observations from the parties taking the initiative without 'conditional claims'.

Alternative regression table including the 'conditional claims' with coefficients as odds-ratio

	Model 1	Model 2
no comment	0.11 ***	0.19 **
	(0.55)	(0.62)
does not object	9.25 ***	27.50 ***
	(0.56)	(0.74)
positive attitude	6.85 **	15.14 ***
	(0.61)	(0.79)
administrative courts		0.14 **
		(0.61)
special courts		0.05 ***
		(0.72)
courts of last resort		11.32 ***
		(0.52)
N	617	617
AIC	183.91	147.11
BIC	201.60	178.08
Pseudo R2	0.33	0.51

*** $p < 0.001$; ** $p < 0.01$; * $p < 0.05$. The reference categories are 'against', 'general courts', and courts under art267(2) TFEU.