

# Shaping the Bench: The Effect of Ideology, Impact, and Information Quality on Judicial Reappointments

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## **Abstract**

Courts' institutional design has significant implications for judicial independence and accountability, particularly when terms are renewable. Policy-seeking selectors often consider judges' past service to predict their future policy impact. However, the same judicial record may carry more or less weight in the assessment, depending on the court's case-management process. Drawing on original data on reappointments to the Court of Justice of the European Union, we show that reappointments are made based on both ideology and impact. Transparent, selective allocation of influential positions in the court favors the retention of high-impact judges, while non-selective allo-

cations do not. Secret voting – conventionally seen as safeguarding judicial independence – also does not shield judges against ideological deselection. Our analysis unveils new insights into when judicial accountability incentivizes effort. It also challenges the prevailing belief that renewable terms decrease judicial independence, instead suggesting that selectors partially rely on evaluations by court members for reappointment decisions.

## Introduction

Democracy and the rule of law require a judiciary that is independent, but also responsive to society (Ferejohn et al., 1999; North and Weingast, 1989). Rules regarding judicial appointments seek to reconcile these competing values (Larsson, Squatrito, et al., 2022; Tiede, 2022; Gibson and Nelson, 2022; Kritzer, 2020; Melton and Ginsburg, 2014; Garoupa and Ginsburg, 2009; Hayo and Voigt, 2007). However, courts’ internal organization can fundamentally alter that balance, even when the rules governing selection remain unchanged. This article studies the moderating role of information provided by courts when judicial (re)selections are made.

Information is crucial because it helps selectors navigate the uncertain relationship between judges’ qualities and their influence over case law. When terms are renewable, selectors may consider judges’ past service to predict their future policy impact. The transparency of judicial records is therefore pivotal for judges’ independence and accountability (Dunoff and Pollack,

2017). We advance this research agenda by asking the following question: *To what extent does the type and quality of information provided by courts determine judicial (re)selections?*

We argue that policy-seeking selectors prefer candidates who are willing and able to move case law in the desired direction. They will thus look for cues from the court about both types of qualities. Furthermore, the presence and quality of new information is important. A court may withhold information altogether, leading selectors to maintain their old beliefs about incumbent candidates. Even when information is given, its quality matters. For example, division of labor within a court may bestow certain judges with more influence than their peers. Learning about such influence is only useful, however, if judges' personal qualities will lead to a similar situation in the future.

Renewable terms are common in two contexts: among U.S. state supreme courts (Geyh, 2019, p. 47) and international judiciaries (Dunoff and Pollack, 2017). In 2014, 17 out of 24 active international courts allowed their judges to seek reappointment (Squatrito, 2018). Yet research on judicial selection is sparse, compared to the extensive scholarship on judicial behavior. Moreover, a division exists within the literature. Students of judicial selection tend to focus on candidates' immutable qualities, such as ideology and legal competencies (i.e., adverse selection) (see, for example, Charles M. Cameron, Cover, and Segal, 1990; Epstein and Segal, 2005; Elsig and Pollack, 2014). In contrast, studies of judicial accountability have demonstrated how judges

adjust decisions in view of their future selectors' policy goals (i.e., moral hazard) (see, for example, T. Gray, 2017; T. R. Gray, 2019; Shepherd, 2009a; Shepherd, 2009b; Dunoff and Pollack, 2017; Stiansen, 2022). We bridge the two by arguing that retention decisions are also motivated by judges' personal qualities: specifically, their ideology and potential for impact.

This article breaks with the dominant view that renewable terms are mainly a sanctioning tool to induce desired behaviors (Ferejohn et al., 1999). Instead, we assume that retention decisions are explicitly forward-looking and target political impact (Fearon, 1999). However, behavioral adjustments may still occur because of the selector's reliance on new information. In so doing, we unite insights from the current literature in a single framework and illustrate how new predictions can be derived.

First, if reselection is driven by future gains, then selectors can only credibly commit to holding judges accountable if a replacement would improve their position. All else equal, ideologically motivated selectors would replace any incumbent judge if a potential new candidate has preferences closer to their own. Students of renewable terms nevertheless emphasize that judges often retain office even when the selector's preferences change (e.g., after an election). This is because judges subject to extensive monitoring adapt to their selector. More surprisingly, as we will show, retention levels are also high in courts that prevent monitoring by withholding information about judges' votes. This is because ideological deselection entails an opportunity cost. From the selector's perspective, judges' willingness to steer case law

in a specific direction is necessary but insufficient. Judges must also acquire influence to secure the selectors' desired outcomes. In most courts, judges' personal standing is instrumental to their influence. This may be due to strong seniority norms or a judge's recognition among their peers, for example. A selector may thus be willing to accept some policy drift to hit the sweet spot between ideology and impact.

Second, our focus on forward-looking selection generates new predictions about the importance of high-quality information. We term information "high quality" if it is indicative of a judge's future service, rather than simply describing their past behavior. As we will show, judges' records of case assignments and leadership positions are therefore valuable cues for reselection to courts where such positions are acquired in a selective process – due to the judges' personal qualities. By contrast, the same judicial record would provide 'low-quality' information if case assignments were random or administrative, since any new judge would be as likely to obtain similar positions as their predecessor.

To test our theory, we leverage a well-known conundrum in the study of judicial accountability; the Court of Justice of the European Union (hereafter, CJEU or the Court). CJEU judges are appointed by Member State governments for six-year renewable terms, yet the Court stands as an exceptionally independent international judiciary (Pollack, 2003; Alter, 2009). One explanation is that the Court protects judges' political independence by issuing judgments *per curiam*; without revealing judges' votes (Dunoff and

Pollack, 2017). However, the CJEU potentially reintroduces accountability by disclosing judges' roles in the decision making (Hermansen, 2020). While prior research on renewable terms examines judges' behavioral adaptations, our focus diverges. We address scenarios in which reselection hinges on external factors entirely or partially beyond judges' control – their ideology ('preferences') and impact ('performance'). In such cases, contemplating the selector's retention choices becomes pertinent.

The CJEU is an apt testing ground for several reasons. First, given its social and political significance, it is reasonable to expect that governments would make careful use of their reappointment powers. As the high court of the European Union (EU), the CJEU is at the top of the judicial hierarchy in a political and legal system that regulates the world's third-largest economy, with 450 million people. It guides domestic courts in the interpretation of EU law, including market regulations, trade, competition, monetary policy, environment, energy, migration, agriculture, and more. Over the years, it has earned a reputation as a 'political court' by striking down government policies and shaping the Union's constitutional development (Weiler, 1994; Stone Sweet, 2004). Yet, authors have argued that the appointment of a single judge yields insufficient influence for governments to care (Alter 2008, p. 46, see also Kelemen 2012).

Second, insights from the CJEU can inform us about judicial selection to other (international) courts. On the one hand – having inherited its internal organization from the French judicial system – it shares key features with

other European and international courts. Most importantly, influence is highly individualized. Today, it decides on approximately 1,500 cases per year. To address its heavy case load, it relies on a clear division of labor in which the responsibility of drafting judgements is delegated to a single judge (the 'reporting judge'), who acts as an agenda setter on the case. On the other hand, given its relative success, it has served as an institutional model for other international judiciaries. By 2011, some 11 international courts were operational copies of the CJEU (Alter, 2014b; Alter, 2014a).

Third, the CJEU offers relevant institutional variation for testing whether the quality of information about judges' records of service matters for their reselection. The CJEU encompasses a higher- and a lower-level court. It has also undergone several reforms over the years. Although judges' records of service might appear similar across the two courts and over time, the extent of peer selection differs.

Our findings hold significant implications for courts' institutional design and the importance of information for judges' independence and accountability. Analyzing all 248 potential reappointments in the Court's 70-year history (1952-2020), we demonstrate that judicial (re)selection may lead to responsiveness in two ways. While a *per curiam* rule may increase judicial independence, it does not shield against politically motivated deselection. A shift in government during a judge's term – i.e., an increase in the ideological distance between the initial and current selectors – significantly reduces the incumbent's chances of reappointment. Regular appointments alter the

ideological make-up of a court and lead to court-level responsiveness without the threat of accountability (Dahl, 1957; Segal and Spaeth, 2002).

Additionally, we find that selectors care about judges' impact. Judges who have accrued many positions of influence are more likely to return to office, although only when these positions are acquired in a selective process in the court. Obtaining responsiveness through accountability is a double-edged sword. Certainly, judicial performance can be incentivized via case management procedures. When influential positions are selectively distributed and transparent, judges may exert additional effort in their work. However, controlling position allocations also becomes a potent tool in the hands of the court leadership, leading to less independence within the internal judicial hierarchy. Counter-intuitively, governments' quest for impact also means that renewable terms combined with transparency render selectors reliant on evaluations by court members for their selection of judges.

Our study furthermore speaks to the literature on international courts and their relationship to the states that created them. Scholars have debated whether international judges are best perceived as policy agents or expert trustees (Elsig and Pollack, 2014; Alter, 2008). Our argument implies that states seek to balance the two: Even when judicial appointments are motivated by policy goals – if judges themselves care about legal competence and professional reputation – selecting such candidates may be the best strategy to influence judicial decision making.

In the next section, we review the gaps in the existing literature on how



judicial (re)selections are made. After contextualizing our hypotheses in the case of the EU, we explain our research design and present our findings.

## **Selecting judges to international and domestic high courts**

Little scholarly attention has been given to judges' future impact (compared to ideology) when judicial appointments are made. The closest concept is judges' legal competence.

Most of the literature focuses on the United States. Studies of the Senate's confirmation of Supreme Court justices have found that both ideology and professional competence influence senators' votes. As Charles M. Cameron, Cover, and Segal (1990, p. 528) observe, 'Ideologically proximate nominees will be attractive, poorly qualified nominees unattractive, and nominees who are both ideologically distant and poorly qualified very unattractive'. The underlying motivation is assumed to be electoral concerns, although candidates' legal competence is also considered an intrinsic value (Charles M. Cameron, Cover, and Segal, 1990; Epstein and Segal, 2005). In one exception, the authors link legal competence – measured as candidates' prior experience – to 'policy reliability': A legal background enhances the precision of the candidates' ideological signal (Charles M Cameron, Kastellec, and Mattioli, 2019, p. 446).

Authors have also argued that the president's judicial nominations aim to influence Supreme Court outcomes. However, the focus on majority voting as a pivotal organizational feature of the court has led to a singular emphasis

on candidate ideology. In particular, authors have suggested that ideology mainly determines selection if an appointment would move the median on the court (Krehbiel, 2007; Moraski and Shipan, 1999). Recent research has nevertheless highlighted that other judges, including the majority opinion writer, may wield disproportionate influence over the decision-making process (Lax and Rader, 2015). Proper theorizing of how the prospects for such positions affect candidate selection remains to be seen.

A similar emphasis on ideology is evident in studies of U.S. state courts, in which authors have considered strategic shifts in judicial behavior. Judges who seek reappointment (T. Gray, 2017; T. R. Gray, 2019; Shepherd, 2009a; Shepherd, 2009b) or higher office (Black and Owens, 2016) signal policy alignment with their future selector by altering the direction of their decisions. To our knowledge, only one study has focused on the effect of legal competence on promotions. Choi, Gulati, and Posner (2015) argued that judges may signal competence through their judicial record, but found that neither the number of dissenting opinions nor how often they are cited helps district judges advance to circuit courts. Common to several of these studies is that null findings can be expected if obtaining information about judges is costly or the political rewards are too low (Charles M Cameron, Kastellec, and Mattioli 2019, pp. 471–472; Choi, Gulati, and Posner 2015, pp. 129–130), leading selectors to discount either ideology or competence.

The literature on international courts contains two main contenders for how to understand judicial appointments: These emphasize either ideology

or legal qualifications. The principal–agent model proposes that candidate selection is infused with strategic considerations concerning candidates’ preferences (Pollack, 2003; Elsig and Pollack, 2014). Empirical support for that view was found in a study of states’ appointments of judges to the World Trade Organization’s Appellate Body. The authors concluded that the process, ‘far from representing a pure search for expertise, is deeply politicized’ (Elsig and Pollack, 2014, p. 3). Considering judicial behavior, evidence that international judges follow the preferences of those who appoint them was found in a study of the International Court of Justice (ICJ) (Posner and de Figueiredo, 2005). One study of the European Court of Human Rights (ECtHR) also demonstrated that judges’ tendency to defer to their home states is strategic, decreasing significantly after the ECtHR shifted from renewable to non-renewable terms (Stiansen, 2022). At the same time, there were already large variations in judges’ deference before the reform (Voeten, 2008, p. 417).

The trustee model, by contrast, emphasizes that decision making unfolds differently in courts compared to political institutions. International judges are trustees rather than agents because they draw legitimacy from the rational-legal expertise that they hold and the normative ideal of impartial dispute resolution. Influence is obtained through legal arguments, which makes legal skills a key asset. The model expects appointing governments to focus less on political criteria, and more on finding the most competent candidates based on professional legal merits and personal reputation in the

legal community (Alter, 2008; Stone Sweet and Brunell, 2013). Accountability is considered minimal. According to Alter (2008, p. 34), tools like 'not reappointing the Agent' are 'less politically relevant in shaping Trustee behavior'.

Echoing the move-the-median literature, authors have emphasized that even if states attempted to use their power to appoint international judges for political purposes, the decentralized nature of the process – where no single state can control the ideological composition of the court – would render it a futile exercise. As a result, 'international judges are institutionally less subject to appointment politics than their domestic counterparts' (Alter 2008, p. 46, see also Kelemen 2012).

In contrast to current scholarship, we derive both our selection criteria from the same assumption: Selectors are policy seekers. Any selector – whether at the domestic or international level – should prefer a candidate who is both ideologically committed to its agenda and possesses the authority to persuade other judges. Along the lines of the principal–agent model, we assume that selectors take an instrumental view on judicial appointments. The trustee model may be correct that influence in court is determined by legal expertise. However, the two are not contradictory. If judges' standing among colleagues is related to their legal competence, then this will be reflected in the impact they gain. Leaving *how* judges acquire influence to future research, we instead measure incumbent judges' impact directly. We suspect that governments do the same.

Drawing on the example of the CJEU, we contribute theoretically by showing that forward-looking policy seekers only rely on the incumbent’s judicial record in specific circumstances. Empirically, we challenge the proposition that selectors refrain from making use of the influence they may gain, even if marginal for a single appointment. The reason for this is rooted in how judges acquire impact within a court.

## **Empirical expectations**

Judicial appointments aim to influence court policies by simultaneously selecting judges based on their presumed ideology and their predicted ability to impact the court’s decisions.

While the literature on political accountability has moved away from pure problems of moral hazard to include elements of adverse selection (Ashworth, 2012), students of judicial accountability still borrow insights from classical studies of retrospective voting (e.g., Fiorina, 1981; Ferejohn, 1999). In contrast, we expect that judicial (re)appointments are mainly driven by concerns of adverse selection. Candidate judges have different qualities that selectors seek to maximize. At the core of the selector’s problem is their limited information about these qualities.

Moral hazard is a design feature in courts with *per curiam* rule, such as the CJEU. It means that selectors can only approach judicial appointments as a problem of adverse selection. Candidate judges differ in their ideological

leanings. Without monitoring, the selector risks appointing a judge whose ideological views will lead to undesirable court policies. Governments therefore have an interest in minimizing the ideological distance between the judge and themselves. Absent information about judges' voting behavior, the selection and reselection stages are similar. In both instances, selectors have access to the same information about judges' backgrounds. At the reappointment stage, the government may even save resources by cuing in on the previous government's ideology, assuming that their screening was successful. As a result, we expect that different governments hold different preferences over the same judge.

**Hypothesis 1** *The probability that a judge will be replaced increases with the distance in preferences between the appointing and the reappointing governments.*

Candidate judges also vary in their ability to wield influence on the bench. During the initial screening, governments may form beliefs about whether candidates possess the qualities that would enable them to influence their peers. However, this assessment remains uncertain. At the reappointment stage, governments might then seek to update their beliefs based on the incumbent's performance in office. In contrast to judges' voting, the CJEU is transparent about the roles that judges hold during their term, enabling governments to directly access members' records of influential positions without making assumptions about the factors that led them there.

**Hypothesis 2a** *The probability that a judge will be replaced decreases with their past performance, understood as their observable influence over the decision making process.*

Building on canonical insights from theories of Bayesian updating, we also anticipate that the impact of new information on judges' performance hinges on the quality of that information. Specifically, even retention decisions are forward-looking rather than retrospective. Information about judges' past impact is therefore only valuable if judges' qualities will lead to the same result in the future. Consequently, the court's internal organization matters for judicial reappointments. Selectors will rely on judicial records when positions of influence are selectively allocated, but disregard past performance when positions are acquired through administrative or random allocations.

**Hypothesis 2b** *The effect of information about past influence only holds when it is attributable to the judges' personal qualities: i.e., when positions of influence are selectively allocated.*

Although our framework focuses on adverse selection, it can easily incorporate elements of moral hazard to yield new and old predictions about judicial behavior consistent with extant research. If the CJEU were to disclose judges' votes, we might see alterations in their decisions following overturns in governments and – possibly – a decreased emphasis on ideology. Furthermore, given governments' interest in court policies, judges may exert more efforts to acquire influence when such information is available.

Importantly, to conclude in favor of our argument that governments are primarily policy seekers, we need empirical support for both  $H_1$  and  $H_{2a}$ .

## **The Court of Justice of the European Union**

Despite its status as the motor of the much-debated judicialization of politics in Europe (Pollack, 2003; Alter, 2009; Kelemen, 2011; Schmidt, 2018), scholars have noted that 'there is shockingly little written on the process through which ECJ [CJEU] justices are appointed' (Kelemen, 2012, p. 50; see also Kenney, 1998, p. 104).

The CJEU also offers institutional variation that allows us to test our theoretical argument. This section provides an overview of the Court's judicial appointment procedure as well as the relevant features of its internal organization.

### **Appointments are governments' prerogative**

The appointment of judges to the CJEU is based on the decision of a single government. Specifically, each government nominates a judge for a six-year renewable term, while their formal appointment is made by the Council of Ministers. This latter stage has thus far been a mere formality (Dunoff and Pollack, 2017).

Unilateral nominations are a common feature for regional full-representation courts like the ECtHR and the CJEU, to which all Member States send an



equal number of judges. Governments therefore enjoy significant discretion in picking their nominee without the strategic considerations that influence appointments to the U.S. Supreme Court or global international courts, such as the ICJ and the WTO Appellate Body (Elsig and Pollack, 2014). Terms are staggered: Judges are appointed in batches every third year, while the election of the Court's president happens in the subsequent session. This means that governments have little possibility to predict and adjust to the political composition of the Court with regards to its future decision making (Krehbiel, 2007). In addition, a judge's appointment does not reflect any coalition of states but instead the political preferences of a single government. Today, each of the 27 Member States nominates one judge to the higher-level Court of Justice (CJ) and two judges to the lower-level General Court (GC).

## **How replacement decisions are informed**

We have argued that governments update their beliefs about incumbent candidates to the extent that new and high-quality information is available. Regarding judges' ideology, no new information is revealed by the Court, while the picture is more nuanced pertaining to judges' impact.

### **No information: ideology**

In contrast to earlier research which has focused on judges' and governments' attitudes towards European integration (e.g., Malecki, 2012; Kenney, 1998), we assume that the dominant dimension of conflict in European politics – the

economic left–right dimension – is also the most significant when governments seek to influence the Court’s policies.

Not only is the left–right dimension historically the central distinguishing feature of European national party systems, it is also highly relevant for EU policy. The role of the state in the economy, and individuals’ rights towards the state, is at the center of the creation of the single European market. The CJEU’s case law has often raised controversy along the left–right dimension. For example, while some observers have perceived the Court’s strengthening of individual citizenship rights as a progressive step towards embedded liberalism and social rights at the international level (Caporaso and Tarrow, 2009), others have lamented the ‘Hayekian’ bias inherent in the Court’s case law (Scharpf, 2010; Höpner and Schäfer, 2012; Schmidt, 2018). Scholars have also shown that the economic left–right dimension structures divisions among Member States in amici briefs (Larsson and Naurin, 2019) and that the Court’s leadership is sensitive to governmental economic left–right preferences when cases are allocated (Hermansen, 2020).

One of the few articles that have addressed the selection of CJEU judges directly posits that ‘some anecdotal evidence suggests Member States sought candidates who were perhaps less of a Euro-enthusiast in a general sense than their predecessors’ (Kenney, 1998, p. 128). However, large- $N$  studies of judges’ decision making have found mixed evidence for any relation in preferences towards European integration and national sovereignty, while more evidence exists for judges’ links with their appointing government (Malecki,

2012; Cheruvu, forthcoming). As we show in the Appendix, our findings are similar.

### **New information: Influential positions on the Court**

In contrast to judges' votes, the Court is transparent about the positions of influence that judges acquire. However, the allocation procedure determines the quality of that information. We consider two sets of positions commonly found in courts: the agenda setter in each case (the 'reporting judge') and the court's leadership.

The reporting judge acts as a case manager, and is a common feature in European and international courts (Pollack, 2018). However, this position entails a substantial number of tasks in the CJEU. The reporting judge is in charge of collecting information and presenting the case to their peers. They are appointed early in the process and write up a preliminary report to the General Meeting of the Court, in which all judges and Advocate Generals participate. The report highlights key questions and previous case law. It summarizes the parties' and governments' views and suggests important procedural steps for subsequent case management: such as whether a case is significant enough to include an opinion of an Advocate General (an advisor to the chamber) and an oral hearing, and whether it requires a decision in the Grand Chamber (with 15 judges) or if a smaller chamber of 3 to 5 judges is sufficient. The reporting judge takes a lead role in oral hearings, frames the debate to their peers, and pens both the first draft of the decision

– which forms the basis of the deliberations in the chamber – and the final judgment. It is commonly assumed that the reporting judge has a disproportional influence over court outcomes (Cheruvu, forthcoming). In the ECtHR, information about the reporting judge is in fact considered sufficiently sensitive that their identity is kept secret to protect their independence, even when votes and separate opinions are public.

In contrast to the U.S. Supreme Court and some international courts, such as the Inter-American Court of Human Rights and the ECtHR, the responsibility for writing up the judgement applies even if the reporting judge is in the minority. This means that Member State governments cannot be sure that the preferences of the reporting judge are reflected in the decision. However, being selected for this role in many important cases signals that the judge often finds themselves in a position of influence.

A second set of influential positions common to all courts are leadership roles. The Court’s organizational hierarchy includes top- and mid-level leadership positions. The top-level leaders – the Presidents and Vice-Presidents of the Court – manage the Court’s day-to-day life, preside over Grand Chamber cases and represent the Court to the outside world. They monitor the rank-and-file judges and distribute key positions on the Court. Specifically, the President assigns judges to the chambers and, in each proceeding, they play a role in matching cases with judges. In the CJ, the President (assisted by the Vice-President) has full discretion in appointing the reporting judge. In the GC, the President assigns the case to a chamber.

The mid-level leadership includes the Presidents of the chambers of five judges. This position comes with enhanced influence over case outcomes. They preside over chamber deliberations and decide when the debate is over and it is time to call a vote. They also have a special responsibility to ensure consistency in the Court's case law. Thus, the Chamber President, in principle, participates in all panel deliberations under their purview, while rank-and-file judges often rotate. The presence of Chamber Presidents is also guaranteed in all Grand Chamber cases. Finally, in the GC, the middle-management also selects the reporting judge.

### **Information quality: Selective versus non-selective allocation of positions**

The extent to which information about judges' past service speaks to their future impact depends on how the positions are acquired.

**The assignment of the reporting judge** is done differently in the two formations of the Court. A judge's personal qualities is more important for case allocations in the CJ than in the GC. Specifically, allocations in the CJ follow a logic of selection, in which the reporting judge enjoys considerable autonomy. Once they are appointed, the President leaves the monitoring of the case management to the checks and balances of the General Meeting and the chamber deliberations (RoP of CJ, 2012 art. 15). The President of the Court makes the choice early in the process, and – unless the case

goes to the Grand Chamber – the composition of the chamber follows from that initial decision. The President is well-informed about the case and has few restrictions in their choice of judge. Upon the filing of a case, the Registry drafts a brief memo outlining relevant aspects for the President. In preliminary reference cases, a second (more exhaustive) memo is produced by the Research and Documentation Directorate. At this point, the President has a fair view of the domestic and EU-level political and legal contexts, and may proceed to appoint a suitable judge.

The competences judges bring to the Court are relevant for the cases they acquire (Cheruvu, 2019). In office, the President favors individual-level policy specialization, effectively allowing judges to capture a disproportional influence over certain issue areas (Hermansen, 2020). Research on majority opinion assignments in the U.S. Supreme Court shows that the President balances organizational needs – such as expertise and equity – with ideological motivations (Maltzman and Wahlbeck, 2004).

We may reasonably believe that the President of the CJ is also a policy seeker, selecting judges that are willing and able to influence specific court outcomes. By appointing judges who are perceived as competent, governments seize a political opportunity. However, it is difficult for governments to predict the ideological congruence between judges and the President. First, the President is elected by their peers, and has an incentive to distribute spoils to different factions on the Court, in view of re-election. Second, in recent decades, Presidents have served multiple terms, meaning past alloca-

tions also subsume potential ideological congruence in the future. Last, in the event of an open-seat presidential election, it is difficult to anticipate the outcome. The election takes place after the Court's renewal, and information about alternative candidates is kept under wraps. In short, past allocations in the CJ are governments' best information about how future influence will be allocated.

In contrast, case allocations in the GC follow a logic of monitoring. Cases are allocated to chambers immediately after their filing. The reporting judge is then appointed by the Chamber President from among the more restricted number of judges at their disposal (RoP of GC, 2015 art. 26). The top leadership is instead kept informed throughout the deliberation. Once the reporting judge has a final draft of the judgment, it is communicated to the Vice-President. Their assessment is then returned to the author, with the rest of the chamber's judges in copy. In short, reporting judges in the GC are – to some extent – treated as interchangeable, with less autonomy than their counterparts in the CJ. Their assignment to cases is less selective, thus less indicative of future influence.

**Acquisition of leadership positions** in the CJEU have varied over time. The President of the Court has always been elected by his peers by a secret ballot vote, for a three-year renewable period. Since 2003, the Presidents of the Chambers of five judges are elected in the same way: for a three-year term, renewable once (RoP of CJ, 2003art. 10(1); RoP of CJ, 2012 art. 12,

RoP of GC, 2015 art. 18). Conversely, before 2003, these positions were distributed on a rotational basis (RoP of CJ, 1991art. 10(1)). Important for our analysis, the elected positions signal an endorsement by the judge's peers, in contrast to the non-elected positions in the old system.

## **Empirical strategy**

Our empirical analyses rely on an original data set listing all 422 appointment decisions to the Court since its inception (1952–2019). Information on names, appointment dates, duration of mandates, and cause of exit was collected from the *Official Journal of the European Union*.

Judges exit the Court for several reasons. While many appointments (51%) coincided with the end of a mandate and may therefore have result in reappointment, a large number of judges (37%) also resigned before the end of their term. Early departures have also occurred because the judge died (4%) or was promoted to other positions at the CJEU (6%).

We use this information to identify situations in which a government had the opportunity to replace a sitting judge: That is, we consider only potential reappointments. There are two reasons for this. First, we are interested in governments' selection criteria, but have no data on the alternative candidates. For each decision, we measure the difference in preferences between the initially appointing and the reappointing governments. In this way, we test whether two governments from the same Member State have different



preferences over the same judge.

Second, we seek to isolate governments’ decisions to replace a judge from the judges’ own (voluntary) decision to leave the Court. We therefore only retain exit decisions that were due to the expiration of a mandate. For the same reason, the analysis also includes controls that capture the judges’ career stage. We further verify the findings in a placebo test comparing judges’ resignations during their term with governments’ reappointment decisions at the end of a term. We expect that our explanatory variables – government preferences and judges’ impact – will have no bearing on decisions in which governments are not involved (the placebo).

We end up with a final data set of 248 reappointment decisions to the CJ (61%) and the GC (39%).

	Min.	1st Qu.	Median	Mean	3rd Qu.	Max.
Replacement	0	0	0	0.27	1	1
Preference distance (economic issues)	0	0.08	0.24	0.35	0.47	2.52
Preference distance (integration issues)	0	0.05	0.13	0.2	0.24	1.69
Preference distance (general left-right issues)	0	3.77	10.85	13.13	20.32	58.58
Performance (cases in larger panels)	-1	-0.08	-0.01	-0.03	0.05	0.74
Performance (cases of interest to the legal community)	-5.61	-0.8	-0.15	-0.21	0.29	4.54
Performance (selective leadership positions)	0	0	0	0.25	0.25	1
Non-selective leadership positions	0	0	0	0.28	1	1
Change of prime minister	0	0	1	0.51	1	1
Age	37.72	54.52	59.93	59.99	65.64	83.75
Length of tenure	1	3.67	6	7.23	9.44	26.1
Change in attendance	-49	-8	5	6.53	19	72

Table 1: Descriptive statistics

## Variables

Our dependent variable, *Replacement*, captures all government decisions that could lead to a judge’s retention and flags those resulting in a replacement. From the descriptive statistics in Table 1, we see that – given the opportunity

– governments most often retain their judge (73%).

To test the expectation that the probability of replacement increases with the distance between successive governments' preferences ( $H_1$ ), we place cabinets in a single policy space using party manifestos (Döring and Manow, 2018; Volkens et al., 2017; Gabel and Huber, 2000).

*Preference distance - economic left-right issues* is a continuous measure of the distance between the initially appointing and the reappointing governments on economic left–right issues. It is calculated as the absolute difference between the factor scores estimated from cabinet parties' electoral manifestos. The bivariate statistics already give an indication that economic policy preferences matter for replacements. While the median distance between governments that prefer the same judge is 0.17, it increases to 0.38 when the incumbent judge is replaced. In the Appendix, we report two alternative operationalizations of policy preferences: divisions along a general left–right axis and preferences regarding EU integration.

We furthermore expect that the probability of a replacement is lower for 'high-performing' judges ( $H_{2a}$ ) who acquired positions of influence through selection ( $H_{2b}$ ). We test our argument in three different ways by considering two important positions that judges may hold within the internal judicial hierarchy: the position as reporting judge and leadership positions. For each position, we then distinguish whether it was allocated by selection.

Case significance is measured in two alternative ways. The first operationalization uses chamber size; the second considers the level of attention

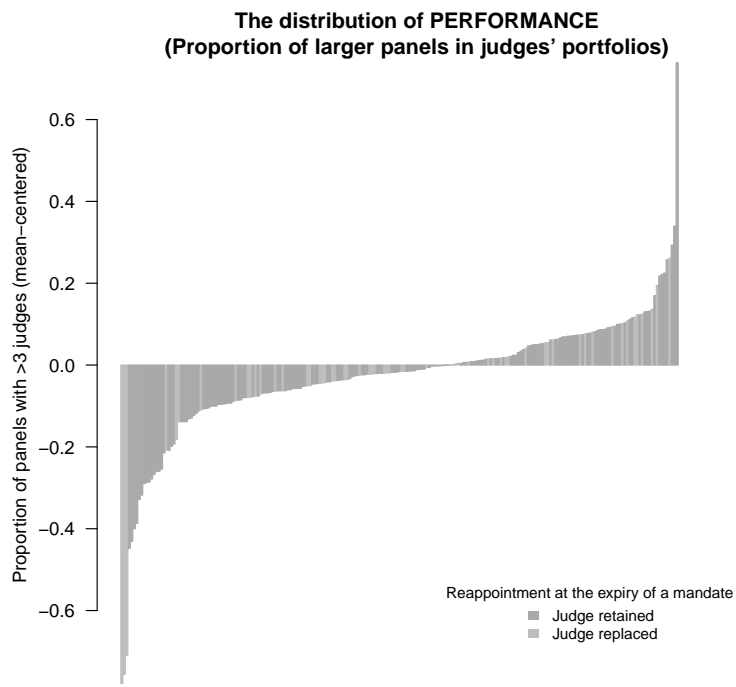


Figure 1: Variation in the proportion of salient cases that judges handle compared to the average Court member.

that cases have attracted in the legal community.

*Performance – cases of interest to the Court* reflects the proportion of cases in a judge’s portfolio that were decided by a chamber of more than three judges. While the Court’s reliance on small chambers has increased over time, the least important cases have always been delegated to chambers of three judges. Figure 1 illustrates a substantial variation in judges’ performance, as measured in this way. Each bar represents a potential reappointment decision. Bars above the x-axis indicate judges whose portfolio includes disproportionately more significant cases, while those below show judges who handle disproportionately fewer such cases. Despite these differences, the bivariate replacement rate among the high performers is marginally *higher* (29%) than the low performers (27%). One reason may be that senior members are both more likely to take up influential positions and more likely to retire. The multivariate analysis is designed to distinguish these effects.

*Performance – cases of interest to the legal community* reports the mean number of annotations (i.e., journal articles) that a judge’s portfolio of cases has attracted since their last appointment. The legal community regularly comments on judgments in academic journals. Information on such annotations is collected and reported by the CJEU. The annotations are thus reflective of the academic salience of cases with which the judge has been entrusted.

The general level of these two measures has changed over time and may vary according to the length of each judge’s term in office. Both variables

are therefore reported as ratios of the type of cases handled by the Court during the judge's term. In other words, by comparing the impact of each judge with their peers, we approximate the benchmarking that governments can reasonably do themselves when assessing the incumbent's performance.

The reporting judge is the most important member of the Court, in each case. However, this role is more selective in the CJ compared to the GC. Occupying this role for many significant cases is therefore a higher-quality signal of potential impact in the CJ. When considering judges' past impact, we analyze the two formations of the Court separately, expecting only an effect in the CJ.

Our third measure of performance captures leadership positions. While all Chamber Presidents prior to 2003 were appointed following a principle of rotation, they became positions acquired in competitive elections. Again, we argue that their election conveys high-quality information to the appointing governments about judges' future influence. *Performance - selective leadership positions* is a binary variable that identifies the President and Vice President of the Court and the Presidents of Chambers of five judges post 2003. It is included in a separate analysis, together with an indicator of all judges who have held such a position prior to the reform (labelled *non-elective leadership positions*).

## Controls

Other factors might affect either judges' decisions to exit the CJEU or governments' assessments of the incumbent. The multivariate analyses account for these.

First and foremost, there are instances when judges might complete their term, but do not wish to continue. There are few positions more appealing to European judges than serving as a judge at the CJEU. Very few alumni have pursued high-ranking, work-intensive jobs upon their exit. Except for government de-selection, therefore, the most likely reason for a judge to leave the Court is retirement. Judges often signal their intent to stay in office to their government in a letter of motivation. While we do not have access to these letters, we control for the judge's career stage and judicial behavior immediately prior to the reappointment decision.

Thus, *Length of tenure* approximates the judge's career stage. The average tenure upon exit was 10 years, with the median judge sitting for two 6-year periods. Similarly, we control for a judge's *Age* at the time of the reappointment decision. The average age of judges exiting the court was 65 years. At the next reappointment decision, the judge would be 71 years of age: well beyond the retirement age in most Member States. Both variables are mean-centered and we expect them to correlate positively with exit decisions.

We furthermore control for changes in a judge's investment in their mandate. A judge who plans on an exit may decrease their participation in Court

activities. *Change in attendance* therefore measures the change in the number of deliberations in which a judge has participated in the year immediately preceding the official exit decision (as compared to the previous year). In the multivariate analysis, the variable is centered around the median judge, and we expect that, when attendance decreases, the odds of replacing the judge increase.

The models testing  $H_1$  also contain an indicator of whether there has been a change in the prime minister's party between appointments (*Change in PM*). This variable controls for the possibility that the ruling party uses appointments to distribute spoils to political friends or coalition partners. A spoils system might affect both preference distance between successive governments and the decision to replace an incumbent judge. The logic behind the control is that new spoils are unlikely to be distributed unless there is a change in the prime minister's office.

Finally, the models exploring judges' performance also include an indicator of whether the judge held the position as President or Vice-President at the time of the reappointment (*(Vice-)President*), since these positions clearly come with influence – although the division of labor implies that, as a reporting judge, they handle few cases themselves.

An incumbent judge can either stay in office or exit the Court. Given

that our dependent variable is binary, we use a binomial logistic model.

$$\begin{aligned} Pr(y_i = 1) &\sim \text{Bernoulli}(\pi_i) \\ \text{logit}(\pi_i) &= \alpha + \beta_k \times X_i + \beta_k \times Z_i \end{aligned} \tag{1}$$

The definition of the variables of interest,  $X$ , varies across models because we explore different operationalizations of the two hypothesized selection criteria: ideology and impact. However, all models include the same controls,  $Z$ .

The results are obtained from Bayesian models with Markov chain Monte Carlo (MCMC) estimation (Plummer, 2003). Some observations lack information on governments' preferences, as well as judges' birth or entry dates. These are imputed in parallel with the estimation of the main model. In the Appendix, we verify that these results are robust to a range of alternative modelling strategies.

## Results

The results reported in Tables 2 and 3 support our expectations.

The probability that a judge will be replaced increases as the political distance between successive governments grows ( $H_1$ ). Table 2 shows that this holds in both courts. The effect is illustrated for the CJ in Figure 2, and its size is non-trivial. Even a median change in a government's attitudes on economic policies implies a 40% increase in the odds of a replacement. As a



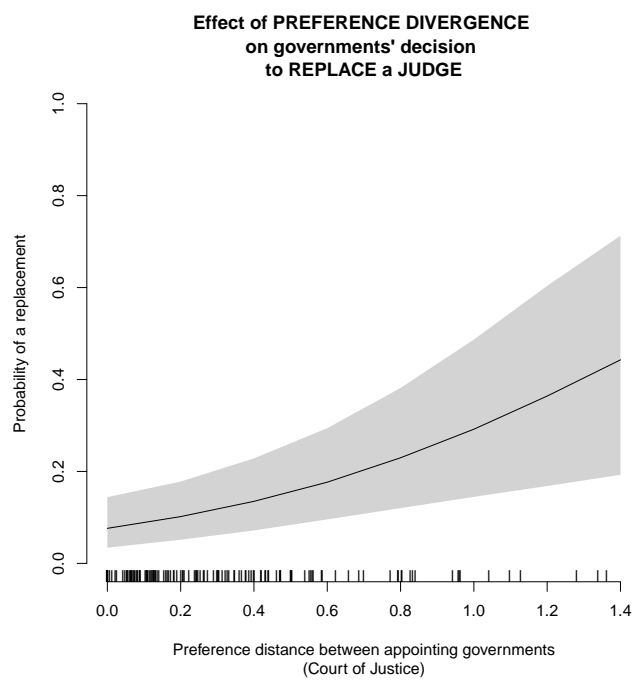


Figure 2: Predicted probability of replacement when there is a change in the appointing government's economic preferences in the Court of Justice.

way to illustrate the effect, we may consider situations in which a Member State has shifted from a conservative to a social democratic prime minister<sup>1</sup>. Such a shift would more than double the odds of a replacement.

In the Appendix, we explore alternative operationalizations of government preferences. Divisions on a general left–right dimension yield similar, but more moderate effects compared to economic left–right issues. However, we find no support for earlier suggestions that governments prioritize preferences related to the distribution of competence between national and European governance levels.

Dependent variable: 'Replacement'	Court of Justice	Court of Justice	General Court	General Court
Intercept	-0.41	-1.24	-2.06	-1.82
	(-2.19,1.33)	(-2.33,-0.16)	(-3.34,-0.94)	(-3.3,-0.42)
Preference distance (economic issues)	1.63	1.68	1.53	1.64
	(0.48,2.82)	(0.52,2.9)	(0.06,3.13)	(0.11,3.25)
Performance (cases of court interest)	-2.08		-0.1	
	(-4,-0.24)		(-0.83,0.6)	
Performance (cases of interest to legal community)		-1.37		-0.4
		(-2.55,-0.35)		(-1.61,0.63)
Change of PM party	0.37	0.39	0.77	0.8
	(-0.63,1.39)	(-0.64,1.44)	(-0.3,1.98)	(-0.35,1.98)
(Vice-)President	1.07	1.5	-3.62	-3.66
	(-0.73,2.86)	(-0.3,3.42)	(-8.18,-0.58)	(-8.34,-0.66)
Length of tenure	0.05	0.06	0.14	0.14
	(-0.08,0.17)	(-0.06,0.19)	(-0.02,0.3)	(-0.01,0.31)
Age	0.19	0.19	0.09	0.09
	(0.11,0.28)	(0.11,0.28)	(0,0.17)	(0.01,0.17)
Change in attendance	-0.02	-0.02	-0.01	-0.01
	(-0.04,0)	(-0.05,-0.01)	(-0.05,0.02)	(-0.05,0.02)
Number of observations	151	151	97	97
Proportion of correct predictions	0.78	0.78	0.76	0.75
... correct positive predictions	0.76	0.8	0.85	0.81
... correct negative predictions	0.79	0.77	0.73	0.73

Median effects with 95% symmetric posterior density interval in parenthesis.

Table 2: Replacement of judge as a function of CASE ALLOCATIONS. The models explore different operationalizations in the two courts.

We have argued that selecting judges with the right ideological compass is only one part of the selector’s calculus – the other part concerns the se-

<sup>1</sup>There are 35 instances in the data in which the prime minister’s party has shifted from social democratic to conservative (or vice versa) between appointments. The median distance in their estimated economic preferences is 0.51.

Dependent variable: 'Replacement'	Both courts
Intercept	-2.03 (-2.84,-1.31)
Preference distance (economic issues)	0.87 (-0.23,1.92)
Elected leadership	-0.72 (-1.73,0.16)
Non-elected leadership	0.31 (-1.18,1.7)
Change of PM party	0.84 (0.03,1.66)
Length of tenure	0.09 (-0.01,0.18)
Age	0.09 (0.04,0.15)
Change in attendance	-0.01 (-0.03,0.01)
Number of observations	197
Proportion of correct predictions	0.68
... correct positive predictions	0.66
... correct negative predictions	0.69

Median effects with 95% symmetric posterior density interval in parenthesis.

Table 3: Replacement of judge as a function of LEADERSHIP positions. The models explore different operationalizations in the two courts.

lecting of judges who are likely to translate these preferences into influence on the court’s decisions ( $H_{2a}$ ). In doing so, governments will moderate their response according to the quality of the information available to them ( $H_{2b}$ ). We find support for both statements.

First, handling high-impact cases as a reporting judge in the CJ – where such positions are selective – is clearly linked to the judge’s chances of being replaced. This relationship holds, regardless of how we measure the importance of judges’ portfolios (Models 1 and 2). Conversely, we find no indication of a similar effect in the GC, where judges are treated as interchangeable (Models 3 and 4).

Model 1 shows that the more large-chamber cases a judge has obtained in the CJ, the less likely they are to exit office. All else equal, if a judge’s portfolio contains 10 percentage points more large-chamber cases than the

overall distribution in the Court, their odds of replacement decrease by 87%. Model 2 then considers the mean number of academic articles discussing cases in the CJ where the judge has acted as reporting judge. Here, too, we find support for our hypothesis. If we consider the difference between a typical under-performing (20<sup>th</sup> percentile) and a typical over-performing judge (80<sup>th</sup> percentile), the most influential judge has a 54% higher probability of retaining their seat.

Second, Table 3 and Figure 4 report the effect of being trusted with a leadership position in either of the two formations of the Court. Once again, the effect of past influence is sizable, although less precise ( $p < 0.06$ ). The odds of replacing an elected leader is 50% lower than that of a rank-and-file judge. Conversely, the effect is indistinguishable from zero for non-elected leaders.

There are two immediate takeaways from these findings. The presence of easy-to-access, high-quality indications about judges' future service have bearing on governments' replacement decisions. Because governments are forward-looking, only judicial records that reflect peer selection – and thus potential future influence – inform the decision to replace incumbent judges. Furthermore, ideology is a clear predictor for replacement decisions in both courts, despite their reliance on *per curiam* rulings. This stands in contrast to the emphasis on the cost of screening judges as a reason to neglect certain selection criteria. One explanation may be the accessibility of information about the initial government's ideology – even in the GC, where the cases

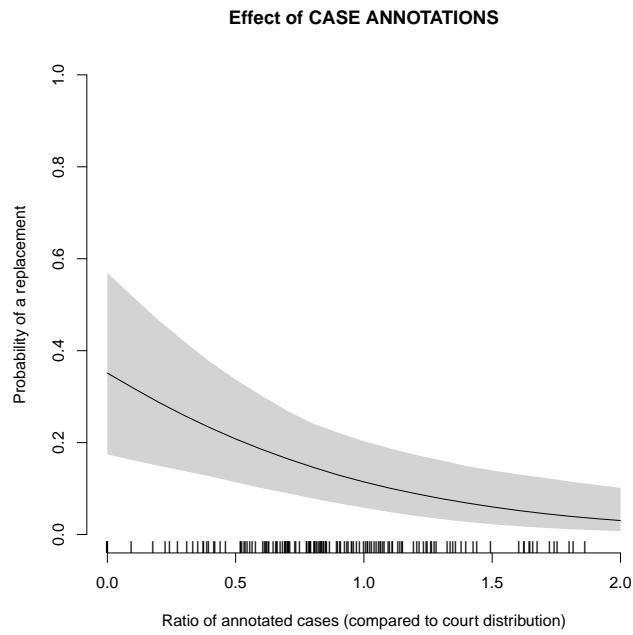
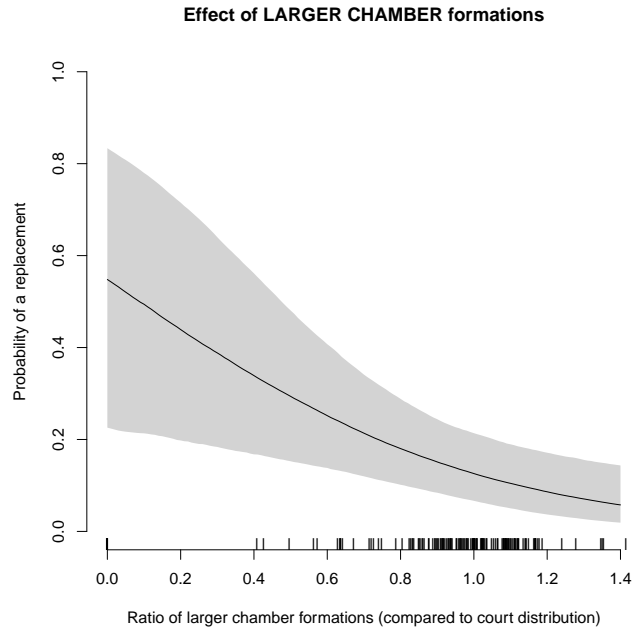


Figure 3: Predicted probability of replacement as a function of case portfolio among judges in the Court of Justice.

are more run-of-the-mill.

Another takeaway is that selectors balance ideology and impact. We have argued that this is because both are required to move the Court's policy closer to the selector. Both criteria are therefore important, and the effect of one does not influence the effect of the other: i.e., we show in the Appendix that there is no interaction effect between the two. However, balancing the two does mean that governments may be willing to forego some ideological congruence to retain influence on the Court.

Conditional on positions being selective, high-performing judges are partly shielded against politically motivated deselection. If we consider the same scenario as before, in which there has been a change in government preferences from a social democratic to a conservative prime minister, a judge who can signal high performance by achieving a selective leadership position would have about the same probability of being replaced (17%) as a low-performer in a situation where no change in government has taken place (19%).

Our results thus speak to the opportunity cost that governments incur when replacing an experienced judge with a newcomer. On the one hand, the Court tends to reserve the most influential positions for senior judges. For example, in our data, most of the high-performing judges were in their second term. On the other hand, case allocation also allows judges to specialize, letting members gain a disproportionate influence over certain policy areas, which governments would lose if the judge is replaced.

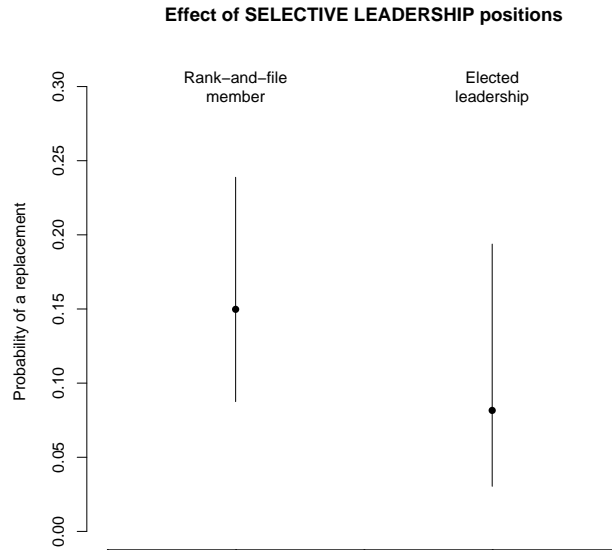


Figure 4: The effect of elected and non-elected leadership positions on governments' choice to replace their incumbent judge.

The importance of seniority and experience for gaining influential positions in the Court helps to explain why replacing a judge is a relatively rare event. The reappointing government would need to trade the gains from selecting a judge with more similar policy preferences against the probability that it may take several years before their investment pays off in terms of impact. An additional moderating factor for governments to consider – working against rapid, easy replacement on ideological grounds – is the likelihood that the opposition will in turn replace such a candidate should they come to power, thus nullifying the longer-term investment.

## **Robustness tests**

The models provide a fair description of the data, with an in-sample correct prediction rate of 77%. They are also robust to several alternative specifications, relating to variation over time and between Member States (reported in the Appendix). However, there are three challenges to our claims that we address here.

It could be that our findings are not related to governments' deselection of judges but are instead driven by the incumbent members themselves. Table 4 reports results from a placebo test, where we substitute occasions when a judge was replaced at the end of a term with instances when a judge exited for other reasons. In line with our expectations, we only find an effect of ideology and impact in the CJ for the subset of the data in which governments were involved in the exit decision. Furthermore, career-related predictors – outside of governments' control – have a bearing on both voluntary exits and replacements at the end of the term: Older judges, judges with long tenure, and judges whose attendance levels have decreased are more likely to exit the Court.

A second challenge is the possibility that governments use appointments to distribute political spoils. This would be compatible with the effect of ideology, but is contradicted by our findings on judges' impact. We could, potentially, imagine that two alternative rationales dominate judicial appointments, whereby governments either distribute spoils (explaining the effect of ideology) or select judges based on their competencies (potentially linked



Dependent variable: 'Replacement'	Mandate expired	Resignation
Intercept	-0.41 (-2.19,1.33)	-0.94 (-3.05,1.01)
Preference distance (economic issues)	1.63 (0.48,2.82)	-0.41 (-2.13,0.99)
Performance (cases of interest of court interest)	-2.08 (-4,-0.24)	-0.88 (-2.83,1.16)
Change of PM	0.37 (-0.63,1.39)	-0.18 (-1.27,0.88)
(Vice-)President	1.07 (-0.73,2.86)	0.3 (-1.72,2.1)
Length of tenure	0.05 (-0.08,0.17)	0.15 (0.03,0.27)
Age	0.19 (0.11,0.28)	0.17 (0.07,0.27)
Change in attendance	-0.02 (-0.04,0)	-0.03 (-0.06,-0.01)
Number of observations	151	140
Proportion of correct predictions	0.78	0.76
... correct positive predictions	0.76	0.73
... correct negative predictions	0.79	0.77

Median effects with 95% symmetric posterior density interval in parenthesis.

Table 4: Placebo test on appointments to the Court of Justice: Reference level for both is instances where the term is expired and the judge is reappointed. Results from two logistic regressions.

to impact). If this was true, we would find a negative interaction effect between preferences and impact: As the ideological congruence increases, we would see a decrease in the effect of impact. However, as we show in the Appendix, we find no indication of such a division. While there may be a subset of judges who have acquired their position on such grounds, it does not dominate judicial reselection in the EU.

A final challenge to our claims that deselection is the prerogative of governments comes from a recent reform of the Court. Since 2010, the appointment procedure also includes an intermediate stage by which new and incumbent nominees are screened by an advisory merit selection committee

(the Article 255 Committee). The reform spurred some commentators to hope that the committee would provide a check on governments' political influence (Pérez, 2015). However, the committee's first president has argued that it is more akin to an agent advising on judges' competence (Sauvé, 2015). As we show in the Appendix, the emphasis on ideology and impact did not change following the reform.

One explanation may be that the committee is an additional informational tool for governments to gauge judges' competence and efforts in office, but not their impact. It decreases the cost of screening, but does not run counter to governments' policy seeking. Central to our argument about political deselection, governments also retain the possibility to deselect any incumbent judge, since only their nominees can be considered.

The committee is well-informed about the requirements of office and remains in close contact with the Court throughout its work. It is composed of seven high-ranking national judges and former CJEU judges. Most members are proposed by the President of the CJEU and then appointed by governments in the Council of the EU, while one member is proposed by the European Parliament.

All new judicial nominees are screened on the basis of their legal and linguistic competences, including via an in-person interview (Dumbrovsky, Petkova, and Van der Sluis, 2014). Incumbent candidates are in turn evaluated primarily on their productivity, as reflected in their judicial record. To flag manifest shirking, the committee has – in collaboration with the Court

– devised several quantifiable measures of judges’ case-management expediency (7th Activity Report, 2022 pp. 12–14). Although it has warned that it can advise governments to deselect incumbent candidates, the committee has not yet done so; as of 2022, all 28 unfavorable opinions (out of 214) have related to new nominees (Panel, 2022, p. 10). Interestingly, however, there are indications that judges have reacted by increasing their efforts in office (Cheruvu et al., 2022).

Important for the current study, while judges’ behavior may eventually lead to influence in office, the committee does not discriminate between the relative importance of tasks. If anything, the closer monitoring of judges’ effort post 2010 would increase the quality of the information that we expect governments seek: judges’ ability to garner recognition by their peers. In an environment where judges exert similar effort, it is easier for governments to distinguish and compare impact attributable to personal qualities.

Governments reaffirmed their intent to hold on to their prerogative five years later, when the GC was reformed to address its growing caseload. The Court and the European Commission suggested increasing the number of judges by 12 and supplementing any further needs with legal clerks. This suggestion was summarily rejected by the Member States, who instead insisted on the more costly option to double the number of judges (from 27 to 54) and thus retain their right to an equal number of seats (Commission of the European Union, 2011; Ministers, 2015).

## Discussion

We have explored how the availability, type, and quality of information impact judicial reselection. Our account of how the power to reappoint judges is exercised challenges previous – disparate – conceptions that the selector’s choice is either politically motivated or based on (genuine or reputational) concerns about professional competence. Instead, we have relied on a single, unifying assumption that policy-seeking selectors seek candidates who are both willing and able to take the court’s case law in the desired direction.

By shifting the focus away from the retrospective sanction of judicial behavior to conceiving reselection as forward-looking, we have generated new insights into how renewable terms and institutional design combine to define judges’ independence and accountability. Judges have different qualities, and reselectors learn about these by drawing on the incumbents’ judicial record.

The extent to which new information is available depends on the organization and transparency of the court. We have argued that secret voting may protect judges’ personal political independence, but it does not shield them against ideologically motivated deselection. Without the means to monitor the direction of individual judges’ decisions, the selector will limit policy drift by minimizing the ideological distance between themselves and the judge. In the context of the CJEU, we have shown that government changes between a social democratic and a conservative prime minister more than doubled the probability of a replacement.

From the judges' perspective, the possibility is limited to curtail deselection by pandering to the selectors' policy preferences. However, there is an opportunity cost to ideological deselection that may play to their advantage. In most courts, the ability to move policy hinges on judges' personal standing or seniority. Selectors may therefore forego some ideological congruence to retain influence. This helps to explain why most incumbent candidates in the CJEU are retained despite overturns in government.

The way in which influence is obtained may vary across courts, and selectors will be uncertain about candidates' ability to successfully wield this influence once in office. Incumbent candidates' judicial record may provide selectors with valuable information to that effect. For past impact to matter, two conditions must be present, both of which depend on the court's institutional design.

First, past service must be indicative of future impact. That is, influence cannot be distributed merely based on judges' availability, or through predetermined (e.g., geographical) quotas; Rather, it must be the result of a deliberate choice by other members of the court. In other words, the court has to enjoy autonomy in how it organizes its work, then actively use this autonomy when it distributes influence.

Second, the information must be available to the selector. The pre-reform ECtHR exemplifies a court that only satisfies the first of the two criteria. Despite being a court with renewable terms in which each case is allocated to a reporting judge in a non-random way, the name of that judge was never

published. Thus, while voting decisions were known, the relative influence of judges was not. In contrast, the large variation in influence among judges of the CJEU is at times both informative and observable.

The result is 'performance accountability', a concept long neglected in the literature on judicial accountability. However, performance accountability – conceived as impact – is a double-edged sword for judges' personal independence. While judges do not control the trust they earn from their peers, they may work to acquire it, thus mitigating the effect of ideological deselection. For example, we have found that an incumbent CJEU leader whose appointing government has shifted from a social democratic to a conservative prime minister runs the same risk of deselection as a rank-and-file member whose home government has remained constant. Nonetheless, from the judges' standpoint, the potential increase in external independence also implies a new dependence on the hierarchy within the court. Judges are consequently agents of two principals: their leaders within the court and their political selectors to the court.

This article contributes new insights to the long-standing research on how to balance judicial independence, accountability, and transparency. We argue that judicial selection aims for responsiveness and have shown how courts' internal organization can both constrain and empower judges. Judicial selection shapes the bench, but while renewable terms are often perceived as a constraint on judicial independence, we demonstrate that the selector's need for information also makes them responsive to the court's priorities. We leave

to future research further exploration of the strategic interactions between courts and governments.

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