The Internal Organization of the European Court of Justice: Discretion, Compliance, and the Strategic Use of Chambers

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Abstract

Overseeing the complex legal system of the European Union (EU), the Court of Justice of the European Union (CJEU) is an extraordinarily productive international court. To help the Court manage its substantial caseload, member states have given it discretion over which cases it can hear in small Chambers. The rules governing the Court’s use of Chambers have evolved substantially over time. The Chambers System may have a significant impact on the application of EU law, but we know remarkably little about it. This paper provides the first comprehensive description of the rules governing the Court’s use of Chambers and their evolution. We assess the degree to which the Court has complied with these rules, evaluate the Court’s strategic use of Chambers, and simulate the Court’s workload under counterfactual rules to demonstrate the impact of the Chambers System on the efficacy of the Court.
The European Union (EU) is a massive legal edifice governed by a set of complex and ever-evolving Treaties. It produces secondary laws that impact all aspects of the socio-economic structure of its member states. And these laws must work in conjunction with each of the twenty-eight member states’ domestic laws. Overseeing this complex legal structure is the Court of Justice of the European Union (CJEU). The member states have delegated extensive powers critical to the effective functioning of the EU to the Court (Pollack 2003). The Court issues rulings that fill the incomplete contract of the EU treaties and secondary legislation, it facilitates the harmonization of interpretation of EU law in national courts, and it helps monitor and enforce EU law.

By the standards of international courts, the Court has been tremendously active in these delegated areas. In fact, the case-load grew so large that by the early 1970s the Court claimed to be near capacity (Arnull 2001). To help manage the growth of its caseload, the member state governments have granted the Court increasing discretion to use a Chambers System to decide cases. The governments have gone from a very restrictive system in which the Court was only permitted to delegate very specific types of cases, to one in which the Court has tremendous discretion in what gets heard in Chambers.

The use of smaller Chambers is potentially far from innocuous. Procedures are often informative of political outcomes (Jupille 2004), and evidence from the Supreme Court of Canada, the Supreme Court of South Africa, and the Circuit Court of Appeals in the United States indicates that the distribution of cases among subsets of judges can have significant effects on the decisions of the Court (Atkins and Zavoina 1974; Heard 1991; Hausegger and Haynie 2003; Sunstein, Schkade and Ellman 2004; Peresie 2005; Kastellec 2007). Further, member state governments care about legal outcomes and try to influence CJEU jurisprudence (Martinsen 2015; Blauberger and Schmidt 2017). Since assigning cases to Chambers impacts which and how many judges hear the case, governments likely care about the assignment process as well.

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1 For example, Kelemen (2012) asserts that significant cases are heard in the Grand Chamber (a large formation of the Court), instead of small Chambers. While this may be true, we are not aware of a study that has shown this empirically.
Given the potential impact of using Chambers on the outcome of individual cases, and thereby the consistency of EU law across cases, it raises important questions over how this discretion has been implemented. One might suppose that the *de jure* rules of discretion provide all the information we need to know to answer this question. However, *de jure* rules and *de facto* behavior do not necessarily match. In this case, both the governments and the Court have incentives to not follow the *de jure* rules. Further, the *de jure* rules do not always provide a complete description of how every case must be handled.

In this paper, we ask several questions about the Chambers System. First, has the Court respected the *de jure* limits on the use of Chambers? Second, when does the Court forgo the use of Chambers even when the rules permit it? The standard claim is that the Court reserves for the full Court cases that are politically salient or legally complex. We take this claim seriously, specify when those conditions are met, and determine if those conditions lead to the use of Chambers. Third, how has the Chambers System affected the Court’s overall workload? The answers to these questions inform how closely the Court’s internal operations have followed the wishes of member state governments.

We begin with an overview of the Court and the rules governing its authority. We then describe the evolution of the rules governing the Chambers System. We believe this review to be valuable, as it provides the first comprehensive history of this institution.\(^2\) It also provides critical information for developing expectations about the Court’s use of the Chambers System over time. Based on those expectations, we conduct an evaluation of the Court’s use of the Chamber System. We look at the degree to which the Court has complied with the *de jure* rules, and the conditions under which it chooses to use Chambers, given discretion. After that, we analyze how the Chamber System has affected the Court’s workload by simulating several counterfactual scenarios, including what the Court’s workload would have been if it had never used Chambers. We conclude with a

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\(^2\) Existing research that considers the Chambers System does not provide an account of the development of the Chambers System that includes recent institutional developments (Guillaume 1990; Plender 1991; Brown and Kennedy 2000).
discussion of what our findings mean for the use of the Chamber System, and the role the Court plays in the EU’s political system.

The Organization and Functioning of the Court

The European Court of Justice (ECJ) was created by the Treaty of Paris (1952). Currently, the Treaty on the Functioning of the European Union (TFEU) defines the Court’s composition, organization, and functioning.

There are three basic mechanisms by which cases can come to the Court. First, the Court can hear direct actions, which are cases brought directly to the Court that involve an EU institution. Historically, the most common direct actions (in decreasing order) have been infringement proceedings brought by the European Commission against member states (Articles 258 and 260 TFEU), applications to annul decisions by EU institutions (Article 265 TFEU), actions by EU civil servants against EU institutions (Article 270 TFEU), and actions against EU institutions for failure to act (Article 263 TFEU).

In addition to direct actions, national courts can initiate references for a preliminary ruling (Article 267 TFEU). These are cases where a national judge considers a question of EU law pertinent to an open case before her court. She then stays the national proceedings while awaiting the Court’s ruling. Note that the Court stands out from most international courts because of the wide range of potential litigants — particularly the opportunity of private parties to engage the Court through the preliminary reference procedure. Finally, the Court can hear appeals from the General Court (Article 236 TFEU).

The Treaties do not allow the Court to refuse to hear references for preliminary rulings or direct actions. Thus, the Court has no capacity to manage its caseload, unlike many

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3 The Treaty of Lisbon (2009) created the Court of Justice of the European Union, which comprises the Court of Justice (formerly the European Court of Justice), the General Court, and the Civil Service Tribunal (dissolved in 2016).

4 The General Court (created as the Court of First Instance in 1988) now has primary jurisdiction over direct actions, but the Court of Justice can hear appeals on points of law.
constititutional courts, including the United States Supreme Court.\textsuperscript{5} This constraint has been highly impactful — the number of cases has increased dramatically over time. Some of this growth was due to expansion in the number of references for preliminary rulings, as national courts increasingly accepted and engaged EU law. Some of it was due to the expansion of EU membership.

The process by which the Court adjudicates this caseload is determined through the treaties and the Court’s Rules of Procedure. The Treaties (and the relevant protocols) define the Court’s ability to form subgroups of judges called Chambers (Guillaume 1990; Plender 1991; Brown and Kennedy 2000). The rest of the internal organization of the Court is defined in the Court’s Rules of Procedure. Importantly, the member states have final say on all matters related to the Court’s internal organization. The member states determine the content of the Treaties, and the Rules of Procedure require unanimous approval by the Council of the European Union.\textsuperscript{6}

The Court’s caseload has increased steadily over its history. Figure 1 shows the number of judgments issued by the Court per year. The Court has expressed concerns about its capacity to manage its caseload and has pursued amendments to the rules accordingly (Arnull 2001, 37). The Chamber System has helped the Court manage this challenge. As the Court’s docket has grown, the governments have selectively increased the discretion of the Court to decide cases in Chambers. The goal was for the Court to resolve more disputes without significantly increasing personnel or resources. The Court has taken advantage of this increasing latitude. Figure 1 compares the number of judgments issued by Chambers to the total number of judgments. Since the late 1970s, the majority of cases have been heard in Chambers.

\textsuperscript{5} The Court can rule that an action is inadmissible under the Treaties, but it can not refuse to consider a case because it does not want to issue a ruling.

\textsuperscript{6} See, for example: Rules of Procedure of the Court of Justice of the European Communities, Preamble. Official Journal of the European Communities, P 18, 21 March, 1959.
Figure 1. This figure plots the total number of judgments issued by the Court per year. It also shows the number of judgments issued by a Chamber.

The Evolution of the Rules of Assignment

Beginning with the original Rules of Procedure, the Chamber System has always had a formal role in the Court’s adjudication. Upon receiving an application, the President of the Court assigned each case to a Chamber, a judge in that Chamber to write the judgment (i.e., the Judge-Rapporteur), and an Advocate General. The Judge-Rapporteur worked with the Advocate General and the other members of the Chamber to generate a preliminary report, which she presented to the full Court for discussion. That report summarized the case, the written proceedings (which could include briefs from governments and EU institutions), and recommended any preparatory inquiries. The Court then reviewed that report, considered any advice from the Advocate General, and decided whether to open the oral inquiry stage or delay it for preparatory inquiry. The oral procedure was followed by a judgment by the

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Court. The members of the Court involved in deciding the case depended on whether the case was assigned to a Chamber or to the full Court.

Under the Treaty of Rome, the Court was allowed to create Chambers composed of three or five judges. In response to the Treaty, the Court established two Chambers of three judges (Brown and Kennedy 2000, 39). Under the Rules of Procedure, the Court could only use Chambers for actions against an Community institution by a Community official or civil servant (e.g., staff cases).

The Court first revised the rules (with the Council’s approval) in 1974 to allow Chambers to hear references for a preliminary ruling that were of “an essentially technical nature or concern matters for which there is already an established body of law.” However, the rules did not allow the Court to assign a reference for a preliminary ruling to a Chamber if a member state was a litigant in the case or if a member state had submitted a brief. The first preliminary reference heard in a Chamber was lodged in 1975. The rules also expanded the role of the Judge-Rapporteur, by assigning to her the responsibility of including in her preliminary report a proposal about whether the case should be heard in Chambers. The final decision on assignment was left to the full Court. The rules also allowed Chambers to refer a case to the full Court.

In 1979, the Court amended the Rules of Procedure again to allow a much broader set of cases to be assigned to Chambers. The stated motivation for these changes was, “the

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9 The exception was for staff cases that involved applications for the adoption of interim measures. As of March 3, 1959. Rules of Procedure of the Court of Justice of the European Communities, Article 24. Official Journal of the European Communities, P 18, 21 March, 1959.
11 Case 120/75 was heard by the Second Chamber, composed for Kutscher, Pescatore, and Sørensen.
12 According to Article 95(1), "The decision to assign shall be taken by the full Court following presentation by the Judge-Rapporteur and after the Advocate-General had been heard.” However, the President of the Court still assigned each case to a Chamber initially. According to Article 9(2): “As soon as an application originating proceedings has been lodged, the President shall assign the case to one of the Chambers and designate from that Chamber a Judge to act as Rapporteur and the Advocate-General.” Rules of Procedure. Official Journal of the European Union, L 350, 28 December, 1974.
considerable increase in the number of cases brought before the Court of Justice.”\textsuperscript{14} The 1979 rules allowed the Court to assign any cases to Chambers except infringement proceedings “in so far as the difficulty or the importance of the case or particular circumstances are not such as to require the court to decide in plenary session,” provided no participating member state or Community institution objected.\textsuperscript{15} The rules did not specify what kinds of cases or circumstances were difficult or important enough that the full Court would be required, leaving it up to the Court. This revision also modified the exception for cases involving member states. If a member state or a Community institution that was party to a proceeding wanted the case heard by the full Court, it had to make such a request. In other words, the default rule was changed so that a case could be assigned to Chambers, with the burden on the member state or Community institution to request that the case be heard by the full Court.\textsuperscript{16}

In 1989, the Council created the Court of First Instance\textsuperscript{17} and gave it primary jurisdiction over all direct actions except infringement cases.\textsuperscript{18} Decisions by the Court of First Instance can be appealed to the Court of Justice on points of law only.\textsuperscript{19} In 1991 (after the Council had approved the Rules of Procedure for the Court of First Instance),\textsuperscript{20} the

\begin{footnotesize}
\begin{enumerate}
\item The Court could assign to Chambers any reference for a preliminary ruling or any action institution by a natural or legal person under Articles 33(2), 34(2), 35, 36(2), 40(1), 40(2), and 42 of the ECSC Treaty, and Articles 172, 173(2), 175(3), 178, and 181 of the EEC Treaty, and Articles 144, 146(2), 148(3), 151, and 153 of the EURATOM Treaty. This included all cases except infringement proceedings. As of September 12, 1979. Article 95(1), Amendments to the Rules of Procedure of the Court of Justice of the European Communities of 12 September 1979. Official Journal of the European Union, L 238, 21 September, 1979.
\item The 1979 rules did not change the process for assigning cases to Chambers, but Article 95(4) did clarify that a Chamber can refer a case to the full Court at any stage of the process.
\item The Treaty of Lisbon (2009) renamed the Court of First Instance the General Court.
\item This included actions for annulment, actions for failure to act, actions for damages, actions based on an arbitration clause, and staff cases.
\end{enumerate}
\end{footnotesize}
Court responded by changing the rules to allow appeals from the Court of First Instance to be assigned to Chambers. This revision also prohibited member states or Community institutions from requesting that staff cases be heard by the full Court.\textsuperscript{21}

The next revision of the Rules of Procedure in 1995 further broadened the Court’s discretion by dropping the exception regarding infringement proceedings. Unless an EU institution or a member state that a party to the case (i.e., was a litigant or had submitted a brief) expressly requested the case be heard by the full Court, the Court had complete discretion as to which subset of judges would decide the case.\textsuperscript{22} The ability of a Member State or an EU institution to force a case before the full Court was removed in 2003, with the Nice Treaty. In place of the full Court, such a request could only put the case before the Grand Chamber (described below). The full Court was only required for cases brought under a set of treaty articles that generated a very small number of cases.\textsuperscript{23} The 2009 Treaty of Lisbon essentially maintained these provisions.\textsuperscript{24}

The rules for when a case was assigned to a Chamber stayed the same until 2003, when the Court specified that the President would assign each case to a 3-judge Chamber (as opposed to any Chamber) as soon as possible after the application was filed.\textsuperscript{25} Then, in 2005, the Court changed the rules more substantially: the President would assign a case to a Judge-Rapporteur, and then after the Judge-Rapporteur delivered her preliminary report, the Court would decide what formation of the Court to assign the case to (e.g.,

\begin{itemize}
  \item \textsuperscript{22} As of February 21, 1995. Amendments to the Rules of Procedure of the Court of Justice of the European Communities of of 19 June 1991.
  \item \textsuperscript{23} The full Court was required for cases pursuant to Articles 195(2), 213(2), 216, and 247(7) of the EC Treaty and Articles 107d(2), 126(2), 129, and 160b(7) of the EAEC Treaty. As of February 1, 2003. Treaty of Nice, Protocol on the Statute of the Court of Justice of the European Union, Article 16.
  \item \textsuperscript{24} Under the Treaty of Lisbon, the full Court is required for cases pursuant to Articles 228(2), 245(2), 247, and 286(6) of the Treaty on the Functioning of the European Union. As of December 1, 2009. Treaty of Lisbon, Protocol on the Statute of the Court of Justice of the European Union, Article 16.
\end{itemize}
a Chamber, the Grand Chamber, or the full Court). Thus, instead of assigning a case to a Chamber and a Judge-Rapporteur at the same time, the President only assigned a Judge-Rapporteur, and the assignment of the Chamber occurred later on after the Judge-Rapporteur had delivered her report to the Court.

In sum, the Court’s Rules of Procedure now require very few cases to be heard by the full Court. An EU member state or institution that is a party to the case may now only request that a case be heard by the Grand Chamber, but otherwise, the Court has complete discretion as to which subsets of judges hear each case.

The Expansion of the Chambers System

The number and sizes of the Chambers have evolved over the Court’s history, as has the size of the full Court. The full Court has expanded from 7 judges to 28. Originally, the Court only had two 3-judge Chambers. Currently, there are five 3-judge Chambers and five 5-judge Chambers. Figure 2 summarizes the evolution of each Chamber. The dashed line indicates the size of the Chamber according to the Court’s Rules of Procedure (i.e., de jure size). The solid line indicates the average number of judges assigned to new cases by year and by Chamber (i.e., de facto size). The quorum in a 5-judge Chamber is 3 judges, so some cases assigned to 5-judge Chambers are only heard by 3 judges. Figure 3 shows the number of 3- and 5-judge Chambers in each year. See the Supporting Information for a detailed account of the development of the Chamber System.

In many years, there were 3- and 5-judge Chambers that had more than 3 or 5 judges attached to them. For example, by the end of 2004, with a Court of 25 judges, there were three 3-judge Chambers and three 5-judge Chambers, and each had 7 or 8 judged attached to it. Obviously, that meant there was overlap in the membership of Chambers


27 Note that there is a lag between the de jure size and the average de facto size because cases are assigned to a Chamber after the Judge-Rapporteur’s report.

Figure 2. This figure summarizes the evolution of each Chamber. The dashed line indicates the *de jure* size of the Chamber as of December 31 of each year. The solid line indicates the average *de facto* size for all judgments issued each year. There is a lag between the *de jure* size and the average *de facto* size because cases are assigned to a Chamber after the Judge-Rapporteur’s report.
and rotation in which judges actually decided a case for a specific Chamber. This greatly increased the number of unique combinations of judges that could decide cases. The possible combinations of judges that could form to hear a case jumped dramatically as the number of Chambers expanded. To illustrate this point, Figure 4 shows the cumulative number of unique combinations by year.

Beyond the 3- and 5-judge Chambers, the Court now decides cases in a Grand Chamber, which was created in 2003 by the Treaty of Nice. The Grand Chamber originally consisted of 11 judges. The actual membership of the Grand Chamber varies by case and is based on a predetermined rotation, but it always includes the presidents of the Chambers. The Grand Chamber has since expanded to 15 judges.

The quorum rule has been important for determining the actual number of judges assigned to cases. The quorum for 3- and 5-judge Chambers has always been 3 judges. Both the full Court and the Grand Chamber can consist of any odd number of judges as long as
a quorum is achieved. The quorum for the full Court has increased from 5 judges to 17. The quorum for the Grand Chamber has increased from 9 judges to 11.

Figure 5 summarizes the development of the Chamber System. Panel A plots the number of member states, the maximum size of the full Court, and the quorum for the full Court. From 1957–1973 and from 1981–1995, there was one more judge than there were member states, which meant that one member state got to appoint two judges. Panel B plots the number of cases heard by the full Court by year against the total number of cases. Use of the full Court essentially ends after the Grand Chamber was created. Panel C plots the size of the Grand Chamber, the quorum for the Grand Chamber, and the average size of the Grand Chamber by year. Panel D plots the number of cases heard by the Grand Chamber by year against the total number of cases. The Grand Chamber is now used for almost all cases that would have previously gone to the full Court.

Panel E plots the proportion of cases heard by 3- and 5-judge Chamber. The Court’s usage of Chambers has clearly increased as the rules for assigning cases to Chambers have become more flexible. Since 2000, the Court has clearly preferred 5-judge Chambers over 3-judge Chambers. Finally, Panel F plots the average number of judges per case by year.
Figure 5. Panel A compares the number of member states, the size of the full Court, and the quorum of the Full Court. Panel B shows the number of judgments issued by the Full Court compared to the total number of judgments. Panel C compares the size of the Grand Chamber, the quorum of the Grand Chamber, and the average number of judges in the Grand Chamber. Panel D shows the number of judgements issued by the Grand Chamber compared to the total number of judgments. Panel E shows how frequently the Court uses small (3- and 5-judge) Chambers. Panel F shows the average number of judges assigned to each case compared to the total number of judges.
Even though the size of the Court has greatly increased, the average number of judges hearing any given case has remained remarkably constant for the Court’s entire history. This suggests that the Chambers System has allowed the Court to effectively manage its workload despite a growing docket and no docket control.

In sum, the rules for assigning cases to Chambers have become more flexible over time. This has resulted in a dramatic increase in the Court’s use of Chambers. These changes to the internal organization of the Court have afforded the Court a great deal of discretion in determining how many judges decide a case, and which judges.

Compliance with the Rules

We turn now to our first question about the Court’s use of the Chambers System: Has the Court consistently complied with the rules that govern the use of the Chambers System? We have no clear priors about whether *de facto* behavior will follow *de jure* rules. On one hand, the member state governments, as documented above, have consistently and substantially expanded what can be heard in Chambers. One might suppose they would only do so if the *de jure* rules were being respected. Otherwise, why increase the Court’s opportunity to abuse its ability to delegate to Chambers? In addition, one might suppose they would only do so if the Court was delegating to Chambers when it was supposed to. Otherwise, what is the benefit of increasing an underutilized ability to delegate? On the other hand, we can imagine arguments for both over- and under-delegation. The Court could certainly try to push the margin and delegate to Chambers cases that are not supposed to be delegated. And, member state governments face a collective action problem. Any state could require a case be heard by the full Court. If some state always feels like its case is sufficiently critical, the result would be little gets delegated.

To assess whether the Court has complied with the limits member states have placed on its use of Chambers, we check whether the Court ever heard a case in a Chamber in violation of an objective aspect of the rules. Member states can reasonably disagree about
whether “the difficulty or the importance of the case or particular circumstances are not such as to require the Court to decide” the case in a large formation, but the rules are clear about when cases involving certain legal procedures can and cannot to be assigned to Chambers. As such, we assess compliance with these objective requirements.

To briefly summarize the rules, the Court could always assign staff cases (Article 270) to Chambers. It could assign preliminary references (Article 267) starting in 1974 (but, until 1979, only those in which no member state governments were party to the case), actions for annulment (Article 263) and actions for failure to act (Article 265) starting in 1979, appeals (Article 256) starting in 1991 (although there were no appeals prior to 1991), and infringement proceedings (Article 258) starting in 1995.

We use a comprehensive dataset of Court of Justice judgments based on Fjelstul (2018). This dataset includes all 10,350 judgments contained in EUR-Lex, the Commission’s online database of EU legal documents, from the creation of the Court in 1952 through December 31, 2015. For each case, the dataset includes the date of the judgment, the size of the panel hearing the case, whether the case was heard in a Chamber (and if so, which one), the composition of the Court, and the legal procedure. Of these, 10,169 judgments involve one of the six major procedures listed above.  

The empirical evidence shows that the Court has taken full advantage of the Chambers System, but within the boundaries that member states have set. Figure 6 shows the total number of judgments by legal procedure over time compared to the number issued by a Chamber. The vertical bar in each plot indicates the first year in which the Court was allowed to assign that type of cases to Chambers. As soon as the Court is allowed to hear a new type of case in Chambers, it begins to do so, but not before.  

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29 The excluded cases are mostly arbitration cases or appeals against a penalty.

30 We omit actions for failure to act (Article 265) from Figure 6. There have only ever been 45 and none were heard in Chambers in violation of the rules.

31 There is one small caveat. Infringement cases were eligible to be assigned to Chambers as of February 21, 1995, but 7 were decided in Chambers during the 1994-1995 term before the new rules officially went into effect. Two of these were decided after the Council had approved the new rules on December 22, 1994, but before they had actually gone into effect.
Figure 6. This figure shows the total number of judgments per year by legal procedure (the solid line) compared to the number issued by a Chamber (the dashed line). The vertical bars indicate the first year in which the Court was allowed to assign each type of case to Chambers.

The Court’s Strategic Use of Chambers

Next, we turn to our second question: When the Court has discretion, when does it choose to assign cases to Chambers, as opposed to the full Court? To generate plausible expectations about which kinds of cases get reserved for the full Court, we start from a canonical principal agent framework. First, we assume both the principal (the governments) and the agents (the judges) have policy goals. For the judges, we are agnostic about whether these policy goals...
arise from primitive preferences of ideology, or points of view about the proper interpretation of the law. We simply assume that they have some individual-based preferences, and thus that judges will naturally vary in how they might choose to resolve cases.

For the governments, we start from the principals described in Carrubba and Gabel (2015). Member state governments created the EU to achieve a set of policy goals. The policy goals were hard to achieve without the EU because they entailed collective action problems. For example, governments might mutually benefit from lowering trade barriers, but they each individually have incentives to keep their barriers high, or re-raise them after the other governments have lowered theirs. The EU codified agreements on how to resolve these collective action problems and thereby helped make it easier to monitor and enforce the policy coordination.

The Court was created to act as a fire alarm and information clearinghouse. It acts as a fire alarm by being a central venue in which concerned parties could draw attention to potential violations. It acts as an information clearinghouse because these cases allow all interested parties to make arguments over how the potential violation should be resolved. When the Court issues an adverse ruling, how rapidly and thoroughly it was obeyed would depend heavily upon whether governments — acting as third parties to the case — indicated a sufficiently strong willingness and capacity to punish the defendant government if the defendant did not obey the ruling.

This argument has two key assumptions. First, governments vary in terms of their preferences over outcomes and in terms of how much they care about them. Second, governments are going to care most about politically salient and/or legally complex cases being decided “correctly.” Interest in the most politically salient cases follows directly from the discussion above. Interest in the most legally complex cases arises because governments want EU law to resolve collective action problems, and that requires clarity and consistency (in general) in EU law. To these, we add one final assumption: That both the judges and member state governments assume that the likelihood of an error (e.g., a failure to “cor-
“directly” resolve a politically salient or legally complex case) declines as the number of judges deciding a case increases.

Together, these assumptions generate a testable implication: The Court should respect the implicit and explicit constraints on its use of its delegated discretion by not assigning politically salient or legally complex cases to Chambers. An agent that operates within constraints set by its principal, consistent with Carrubba and Gabel (2015), the Court has a strong incentive to faithfully follow the rules as intended by the member state governments until they have sufficient discretion to pursue their own agenda. Since any rule change requires unanimous support among governments, even one dissatisfied government could block an increase the Court’s discretion. Not assigning politically salient or legally complex cases to Chambers ensures that the potential costs of member states allowing the Court to have discretion are minimized.

The Court had little hope of gaining support for wider discretion if it did not faithfully anticipate the intent of the member states. Of course, once it was given broad discretion, it could deviate from the intent of the member states up to the point where it would provoke the member states to revise the rules. Given the unanimity requirement for changes to the rules, the Court could exercise a degree of independence from the member states that they would not have attempted earlier. Thus, once member states allowed the Court to assign all cases to Chambers (in 1995), the Court should have become less hesitant to assign politically salient and legally complex cases to Chambers.

**Data and Measurement**

To evaluate our theoretical expectations, we draw on information about rulings by the Court from 1960–1999 available from Carrubba and Gabel (2015), supplemented with information about the assignment of cases to Chambers from Fjelstul (2018). Fjelstul (2018) collects data on Chamber size and composition by scraping the text of cases (and associated metadata) from EUR-Lex. This combined dataset allows us to examine the assignment of cases to Chambers over three periods: 1974–1979 (235 cases), 1979–1995 (2,129 cases), and 1995–
1999 (1,061 cases). During the first two periods, we expect the Court to avoid assigning politically salient or legally complex cases to Chambers. In the third period, once the Court had full discretion over the use of Chambers, we expect the Court to be less hesitant to do so. We do not consider the period from 1952–1973 because only staff cases could be assigned to Chambers during that period.

The dependent variable in our analysis is whether the Court assigned the case to a 3-judge Chamber. The option of assigning a case to a 3-judge Chamber was always available to the Court, regardless of the number of member states or the configuration of Chambers, which changed over time. Recall that 5-judge Chambers did not exist until 1982. Moreover, it is assignment to 3-judge Chambers where the potential gains from the division of labor are the greatest, but also where concerns over the abuse of discretion are highest. Thus, we consider this coding of particular interest.

We develop several measures of the complexity of a case. Our first measure is the number case law citations in the Court’s judgments (i.e., the number of citations to Court of justice judgments, Court of First Instance judgments, and Advocate General opinions), the number of citations to EU secondary law (directives, regulations, and decisions), and an indicator of whether the case refers to the EU Treaties. Case law citations are an indicator of complexity in the sense that cases with more case law citations are cases in which the Court is having to synthesize more legal documents. We expect case law citations to be negatively correlated to the assignment of a case to a 3-judge Chamber.

Our second measure is an indicator of whether the judgment in the case references the EU treaties. Cases that involve interpretation of the EU Treaties are more complex in the sense that the Court’s decision could have broader-reaching implications than if the case only involved interpreting secondary law (i.e., regulations and directives). We code these measures based on EUR-Lex metadata, which includes information on citations.

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32 For each period, we include all cases in which the judgment was published after the date the rules went into effect and before the date the next set of rules went into effect.
Our third measure is an indicator of whether the case concerns a general principal of law (e.g., legal certainty, proportionality, double jeopardy, *force majeure* events, etc.). Such cases are complex in the sense that they can have far-reaching implications for how national courts in EU member states must decide cases. EUR-Lex classifies cases according to a case law directory, and there are a set of directory codes (A-01.02.00 through A-01.02.15) that concern general principals of law.\textsuperscript{33} If EUR-Lex assigns one of these directory codes, we code the case as concerning a general principal of law.

Our final measure of legal complexity is a count of the number of policy areas involved in the case. Cases that cross multiple policy areas are more complex because the Court ruling’s has a wider scope. The Court either has to develop coherent legal rules across multiple substantive areas of law or else apply existing legal rules consistently across those areas. Doing this effectively requires a broader range of technical expertise. When more policy areas are involved, it is more likely that the Court’s ruling will have unintended consequences. To develop a measure, we identify 14 major policy areas in section B of the EUR-Lex case law directory (section B concerns the European Communities) and, for each case, count how many policy areas the case concerns.\textsuperscript{34}

Next, we develop several measures of the political salience of the case. Our first measure is whether a member state government is a litigant. Originally, the rules prohibited the Court from assigning preliminary references to Chambers if the case involved a government litigant. And, once that constraint was relaxed, governments maintained special prerogatives to demand a ruling by the full court. Thus, when the Court has discretion, we expect a politically sensitive Court to be less likely to assign a case to a 3-judge Chamber when a government is a litigant. We create a dummy variable that indicates whether a government is a plaintiff or a defendant in the case.

\textsuperscript{33} EUR-Lex updated the coding scheme for its case law directory in response to the Treaty of Lisbon. We use the pre-Lisbon coding scheme.

\textsuperscript{34} The policy areas we include are: the free movement of goods (B-02), agriculture (B-03), the free movement of services and persons (B-04), transport policy (B-06), competition policy (B-07), state aid (B-09), taxation (B-10), approximation of laws (B-11), economic and financial policy (B-13), commercial policy (B-14), social policy (B-15), environmental policy (B-21), public health (B-35), and consumer protection (B-36).
Our second measure is the number of briefs filed by the member states. During the written procedure, the member states and Community institutions (e.g., the Commission) are permitted to submit briefs related to the case. These briefs are part of the written record that the Judge-Rapporteur reviews before recommending an assignment to Chambers. The data on rulings by Carrubba and Gabel (2015) includes information about these government briefs by legal issue. We aggregate to the case level by counting the number of member states that weigh in on at least one legal issue. We normalize this count by the number of member states to account for the enlargement of the EU. If the Court considers the political salience of cases in assigning them to Chambers, we expect the Court will be less likely to send a case to a 3-judge Chamber as this variable increases.

Our third measure is whether the case concerns the relationship between the Community legal order and the national legal order in each member state. We expect these cases to be especially salient to member states because they deal with the constitutional structure of the Community. We code this measure using the EUR-Lex directory, which has a code for cases deal with the respective powers of the Community and member states and a code for cases that deal with the relationship between Community law and national law (e.g., cases the deal with direct effect, primary, the uniform application of Community law, or the implementation of Community law by member states). We create a dummy variable that indicates whether EUR-Lex assigns one of these two codes. We expect this variable to be negatively correlated with the assignment of a case to a 3-judge Chamber.

Our last two measures of political salience are based on the notion that the Court will prefer to avoid a 3-judge Chamber when it anticipates making a politically controversial ruling. Recall that, at the end of the written procedure, the Judge-Rapporteur submits a preliminary report to the Court, which then decides whether to send the case to Chambers. The Judge-Rapporteur and Advocate General will typically be the only attendees who have carefully reviewed the written submissions, which include any briefs (Jacobs 2000). Regardless of whether the case is assigned to Chambers or not, the Judge-Rapporteur will continue as the leading judge on that case and will participate in the decision. Thus, we
expect the Judge-Rapporteur to have a good sense of what the Court’s ultimate ruling will be. If the Court is politically sensitive, we would expect that the Judge-Rapporteur’s recommendation about which formation of the Court to assign the case to will reflect her expectations about whether the Court’s ruling will be politically controversial.

Our fourth measure is whether the Court disagrees with the Advocate-General on at least one legal issue in the case. The Advocate General’s opinion generally reflects the legal merits of the case (Carrubba and Gabel 2015). The Advocate General’s opinion is extensively researched (Jacobs 2000) and is often better anchored in EU case law than the Court’s judgment. Disagreeing with the Advocate General’s opinion signals the Court is breaking from the legal merits, which will make the Court’s ruling controversial among member states who agree with the Advocate General. Relatedly, our fifth measure is whether the Court’s ruling runs counter to the balance of member state briefs (if member state briefs favor the plaintiff or the defendant). We expect these variables to be negatively correlated with the use of a 3-judge Chamber.

We also include dummy variables for legal procedures that we consider to be particularly salient to member states (or not). In the 1974–1975 model, we include an indicator for staff cases (Article 270). We expect the Court to be far more likely to assign staff cases to 3-judge Chambers. In the 1979–1994 and 1995–1999 models, we include an indicator for annulments (Article 263). In the 1995–1999 model, we also include an indicator for infringement proceedings (Article 258). We consider these types of cases to be particularly salient to member states because they involve annulling acts that member states might support or enforcing acts that member states might oppose.

Finally, we control for the Court’s caseload. Perhaps the most important motivation for enhancing the use of Chambers was to mitigate the growing caseload of the Court. For each case, we measure the Court’s caseload as the number of judgments that the Court publishes in the same year the case is decided.
Table 1. Results

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<td>(0.583)</td>
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<td>−0.490**</td>
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<td></td>
<td>(1.211)</td>
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<td>(0.591)</td>
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<td>(0.353)</td>
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<tr>
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<td>0.297</td>
<td>0.094</td>
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Notes: Logit models with robust standard errors. The dependent variable is whether the case was assigned to a 3-judge Chamber. * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.

Empirical Analysis

In our analysis of the 1979–1995 and 1995–1999 periods, we include all of the variables described above. In our analysis of the 1974–1979 period, however, we drop the following variables: whether a government was a litigant, the number of government briefs, and whether the Court disagreed with the balance of member state briefs. This is because the rules during that period required all cases involving a government to be heard in Chambers.
We also drop the indicator of whether the case deals with the relationship between the Community legal order and national legal orders, which perfectly predicts assignment to larger formations of the Court.

We estimate logit models with robust standard errors. Table 1 presents our results. Starting with 1974–1979, we find some evidence that the Court assigns more complex cases to Chambers, but no evidence that the Court assigns more politically salient cases to Chambers. We find that cases that refer to a treaty article are less likely to be heard in a 3-judge Chamber ($\beta = -1.678; p < 0.01$). Cases that concern a general principle of law are considerably less likely likely to be heard in a 3-judge Chamber ($\beta = -3.858; p < 0.01$). Unsurprisingly, staff cases are almost always heard in a 3-judge Chamber ($\beta = 5.310; p < 0.01$). We do not find statistically significant effects for the remaining variables.

Looking at 1979–1995, we find significant evidence that the Court is hesitant to assign politically salient cases and legally complex cases to 3-judge Chambers. In terms of complexity, we find that cases that cite more case law ($\beta = -0.176; p < 0.01$), cases the refer to the EU Treaties ($\beta = -0.939; p < 0.01$), cases that concern general principals of law ($\beta = -0.490; p < 0.05$), and cases that involve multiple policy areas ($\beta = -0.557; p < 0.01$) are all less likely to be heard in a 3-judge Chamber.

In terms of political salience, we find that cases in which more governments files briefs ($\beta = -10.790; p < 0.01$) and cases that deal with the relationship between the Community legal order and national legal orders ($\beta = -0.826; p < 0.05$) are both less likely to be heard in a 3-judge Chamber. Cases in which the Court invites controversy by disagreeing with the Advocate General’s opinion ($\beta = -0.339; p < 0.05$) or the balance of government briefs ($\beta = -0.382; p < 0.05$) are also less likely to be heard in a 3-judge Chamber. The same is true for annulments ($\beta = -2.187; p < 0.01$). We do not, however, find any evidence that cases involving a government litigant are more likely to be heard by the full Court. Since the Court could not assign infringement cases to Chambers during this period, the only type of case with a government litigant that could be assigned to Chambers were preliminary references, but these were relatively rare.
Looking at 1995–1999, many of these relationships no longer hold. This is consistent with our expectation that the Court will become less politically sensitive once it achieves full discretion over the use of Chambers. It no longer needs the Council to expend its discretion, and the unanimity voting rule makes it difficult for member states to reign in the Court by threatening to take away discretion. We find some evidence that the Court still reserves some legally complex cases for larger formations: Cases that cite more case law ($\beta = -0.096; p < 0.01$) and cases that refer to the EU Treaties ($\beta = -0.698; p < 0.01$) are still less likely to be assigned to a 3-judge Chamber. Importantly, the Court is still sensitive to the number of government briefs filed ($\beta = -6.919; p < 0.01$), although the effect is somewhat smaller, and it still prefers to hear annulments ($\beta = -1.053; p < 0.01$) and infringement cases ($\beta = -1.980; p < 0.01$) in larger formations.

In sum, the empirical evidence suggests that the Court respected the implicit constraints that member states placed on its use of Chambers by reserving politically salient and legally complex cases for larger formations. However, once the Council granted the Court full discretion, the Court become less politically sensitive, and started assigning cases to Chambers that we would not have expected it to before.

**Chambers and the Court’s Workload**

Finally, we turn to our third question: How has the Chambers System affected the Court’s workload? We break this question down into three parts. First, if the Court could not have assigned cases to Chambers, to what extent would its workload have increased? Second, if the Court had assigned cases to Chambers whenever possible, under the rules, to what extent could it have reduced its workload? Third, how big of an effect has each rule change had on the Court’s workload? To answer these questions, we conduct a set of simulations in which we compare the Court’s actual workload to an estimate of its workload under certain counterfactual scenarios.
To measure the Court’s workload, we use the total number of judge-cases per term, where a judge-case is the assignment of one judge to one case. Thus, the number of judge-cases that each case contributes is the number of judges in the Chamber hearing the case. Assigning a case to a Chamber (of 3 or 5 judges), as opposed to the full Court or the Grand Chamber (of 7 or more judges) reduces the number of judge-cases that case contributes, thereby reducing the Court’s overall workload.

We simulate the Court’s usage of the Chambers System for a 46-year period starting in 1970 and ending in 2015. We start the simulation in 1970 because we need there to be enough judgments per year that we can calculate the empirical probability distributions we need to run the simulation (more on that below). We calculate judge-cases for each year, assuming any rule changes happen at the beginning of the year.

**Simulation Algorithm**

Our simulation has three basic steps. First, we simulate a number of judgments per year based on empirical information. Second, we assign each case to a Chamber (3 or 5 judges) or to the full Court of Grand Chamber (7 or more judges) based on some set of rules (which we vary). Third, we calculate the total number of judge-cases per term. We run 1000 iterations of the simulation, average the total number of judge-cases per term across the iterations, and compute 95% confidence intervals.

First, we simulate incoming cases for each year. For each year, we calculate the number of judgments per year for a 5-year period centered on that year.\(^{35}\) We calculate the mean and standard deviation of those values. Then, we draw a number of judgments for that year from a normal distribution with that mean and standard deviation. This introduces empirically plausible variability in the number of judgments per year.

Next, we simulate two attributes of each case that affect whether it is eligible to be assigned to a small Chamber: (1) the procedure (relevant for all versions of the rules), and (2) whether a member state was party to the case or submitted an observation (relevant for

\(^{35}\) We use truncated periods near the boundaries of the time span where necessary.
the 1974–1978 rules). We assume that the legal procedures are mutually exclusive. We assign a legal procedure to each simulated incoming case using the empirical distribution of legal procedures. Conditional on the simulated legal procedure for each case, we then simulate whether the case involves a government litigant and whether there is at least one government brief. We use the joint empirical probability, conditional on the legal procedure. We update all of these (conditional) empirical distributions every year, so all of these probabilities can change over time.

Finally, we assign each case to a Chamber or not based on a set of rules. We assume that the Court always assigns cases to Chambers whenever possible under the rules. Since there can be considerable variation in the number of judges assigned to a case, we assign a specific number of judges, conditional on the case going to a Chamber or not. If a case is assigned to a Chamber, we assign 3 or 5 judges based on the empirical distribution of Chamber sizes. If a case does not go to a Chamber, on the other hand, we assign a number of judges based on the empirical distribution of non-Chamber panel sizes (i.e., panel sizes for the full Court and the Grand Chamber). Again, we update these conditional empirical distributions every year.

Findings

We start by calculating judge-cases based on the Court’s empirical usage of the Chambers System. This serves as a baseline. Then, we simulate judge-cases under two counterfactuals: (1) assuming the Court never assigns cases to small Chambers and (2) assuming the Court always assigns cases to small Chambers whenever possible, under the historical rules. Comparing the Court’s empirical usage of Chambers to these counterfactuals allow us to identify the degree to which the Court took advantage of the Chambers system under each

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36 Recall that there are six major legal procedures: references for preliminary rulings (Article 267), actions for annulment (Article 265), actions for failure to act (Article 263), actions for failure to fulfill obligations (Article 258), appeals (Article 256), and staff cases (Article 270).

37 In reality, there are some cases that involve multiple legal procedures. In calculating the empirical probability of each procedure by term, we drop the small number of cases that involve multiple legal procedures.
Figure 7. This figure shows empirical judge-cases compared to simulated judge-cases for two counterfactual scenarios: (1) if the Court had used Chambers whenever possible under the historical rules and (2) if the Court had not used Chambers at all.

set of rules. It also allows us to calculate how the Court’s workload would have changed if it had never used Chambers or always had (whenever possible).

Figure 7 shows the total average judge-cases for each of these scenarios compared to empirical judge-cases. We include 95% confidence intervals. We find that, for nearly the entire period of the simulation, the Court’s empirical usage of Chambers is closer to our simulation of maximum usage than minimum usage, indicating that the Court is taking advantage of the Chambers System to a large degree.

In Figure 7, the difference between empirical judge-cases and our estimate assuming the Court always uses Chambers indicates the reduction in judge-cases that would have occurred if the Court had assigned cases to Chambers whenever possible, under the rules. In 2000, the reduction in judge-cases would have been 528. The average judge was assigned to 103 cases that year, so the Court could have been reduced by 5 judges and the total number of judge-cases would have stayed the same. Looking at 2015, the reduction in judge-cases
Figure 8. This figure shows simulated judge-cases for counterfactual sets of rules compared to simulated judge-cases for two baseline scenarios: (1) if the Court had used Chambers whenever possible under the historical rules and (2) if the Court had not used Chambers at all. The simulations assume that the Court uses Chambers whenever possible. Confidence intervals have been omitted for clarity. The vertical height of the shaded areas indicates, for each rule change, the impact of the rule change on judge-cases for each year until the next rule change.

would have been 283. The average judge heard 77 cases that year, so the Court could have been reduced by 3 judges. The difference between our estimate assuming the Court never uses Chambers and empirical judge-cases indicates the increase in judge-cases that would have occurred if the Court had not assigned any cases to Chambers. In 2000, the increase would have been 1,089. To absorb this increase, Could would have had to expand from 15 judges to 26. In 2015, the increase in judge-cases would have been 3,597. The Could would have had to expand from from 28 judges to 75.

Next, to identify which rule changes have had the biggest impact on the Court’s workload, we simulate judge-cases under various counterfactual rules, assuming the Court assigns cases to Chambers whenever possible under those rules. We compare minimum usage of the Chambers System (i.e., a scenario in which the Court never assigns cases to Chambers) and maximum usage (i.e., a scenario in which the Court assigns cases to Chambers whenever
possible) under the historical rules to four sets of counterfactual rules: (1) the original rules staying in effect past the 1974 rule change;\textsuperscript{38} (2) the 1974 rules staying in effect past the 1979 rule change;\textsuperscript{39} (3) the 1979 rules staying in effect past the 1991 rule change; and (4) the 1991 rules staying in effect past the 1994 rule change.

Figure 8 shows simulated total average judge-cases for each of these six scenarios. The vertical distance between the line for each of the four sets of counterfactual rules and the line for the historical rules indicates the degree to which the Court’s workload would have increased had those counterfactual rules been in effect instead of the historical rules. We are particularly interested in the impact that each rule change has had. The impact of each rule change is the difference between judge-cases under the new rules (i.e., the historical rules) and judge-cases under the old rules (i.e., the rules that would have been in effect had the new rules not been implemented). The vertical height of the shaded area in Figure 8 indicates, for each rule change (i.e., each vertical bar), the subsequent impact of that rule change on judge-cases (by year) until the next rule change, at which time it switches to indicate the impact of that rule change. We find that the 1979 and 1995 rule changes had a roughly similar immediate impact on simulated judge-cases.

Conclusion

Our analysis indicates that the Court has been careful to use the Chambers for relatively low-salience cases and case where the legal issues involved are relatively straightforward and uncontentious. This suggests that the Court did not use the Chambers System to advance a pro-integration agenda. The Court may still have been advancing such an agenda, but it was through rulings in larger formations, not small Chambers.

\textsuperscript{38} Starting in 1991, this counterfactual collapses into the counterfactual in which the Court never uses Chambers. In 1991, jurisdiction over staff cases was transferred to the Court of First Instance, which meant the Court of Justice no longer received any incoming staff cases.

\textsuperscript{39} This counterfactual ends in 1997 because, past that year, we do not have data on whether a government was a litigant in the case or whether any governments submitted briefs. Recall that under the 1974 rules, the only cases that could be assigned to Chambers were staff cases and preliminary rulings that did not involve a member state government.
However, the member states may not see the use of Chambers as strictly benign. Once the Court obtained broad discretion in 1994, we find that the Court became less politically sensitive to the member states’ interests. When the Court ruled in cases involving governments or ruled counter to governments’ public positions, the Court gave those cases no special consideration by assigning them to larger Chambers. As a result, any heterogeneity in the preferences of the different Chambers could have direct consequences for rulings that are salient to the member states.

This raises an important further question about the Chamber System: How does the Court determine the assignment of cases to Judge-Rapporteurs and to particular formations of the Court? Given that the Judge-Rapporteur likely has special influence over the ruling and will certainly participate in its deliberation, that assignment decision would appear important to understanding the character of the Court’s rulings. But we also might expect some systematic differences in the policy preferences, expertise, and experience of judges in different Chambers. Does the Court take this into account when assigning cases to Chambers? Does the Court encourage policy specialization among the Chambers? These are all intriguing questions and relevant to understanding how the System of Chambers affects the Court’s rulings. We have relevant data to explore these questions and intend to address them in future research.

Looking forward, the management of the caseload at the Court remains an important issue. The Court will soon implement an extraordinary reform: the number of judges will increase from 28 (one per member state) to 56 (two per member state). This could help with the productivity of the Court, particularly with a high use of Chambers. However, as the number of judges increases, the heterogeneity across Chambers in terms of preference distribution and experience likely grows. Thus, the price of greater productivity could be more variance in rulings and less coherence in the case-law of the EU. A better understanding of the distribution of cases to Judge-Rapporteurs and particular Chambers would help us evaluate whether this price is worth paying.
References


Supporting Information

The possible compositions of the Court have changed dramatically over time. The size of the full Court was 7 judges until the United Kingdom, Ireland, and Denmark acceded in 1973, at which time it increased to 9. The size of the full Court has increased 4 more times since then: to 11 judges when Greece acceded in 1981; to 13 when Spain and Portugal acceded in 1986; to 15 when Austria, Finland, and Sweden acceded in 1995; to 25 when 10 central and eastern European countries acceded in 2004; and to 27 when Bulgaria and Romania acceded in 2007. The size of the full Court stayed at 27 when Croatia acceded in 2013. No cases were heard by the 25-judge Chamber before it was increased to 27. Only one case has been heard by the 27-judge Chamber (in 2012).  

The number and sizes of the 3- and 5-judge Chambers have also changed over time. From 1959 to 1978, the Court had two Chambers of three judges. In 1979, the Court moved to three 3-judge Chambers. In 1982, it added two larger Chambers (the Fourth and Fifth), constituted from members of the smaller Chambers. In response to the 1986 enlargement, the Court created six Chambers: four 3-judge Chambers (the First, Second, Third, and Fourth) and two 5-judge Chambers (the Fifth and Sixth). The larger Chambers were again composed of the members of smaller Chambers.

This arrangement continued until 2003. Starting in 2003, the Court formed two 5-judge Chambers (the First and Second) and three 3-judge Chambers (the Third, Fourth, and Fifth). Members of the large Chambers were drawn from all three small Chambers. In response to the 2004 enlargement, the Court formed three 3-judge Chambers (the Fourth,

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40 According to our data on the composition of the Court.


Fifth, and Sixth) and three 5-judge Chambers (the First, Second, and Third).\textsuperscript{46} In 2006, the Court formed four 3-judge Chambers (the Fifth, Sixth, Seventh, and Eighth) and four 5-judge Chambers (the First, Second, Third, and Fourth).\textsuperscript{47} Then, in 2012, the Court formed five 3-judge Chambers (the Sixth, Seventh, Eighth, Ninth, and Tenth) and five 5-judge Chambers (the First, Second, Third, Fourth, and Fifth).\textsuperscript{48}

Beyond the 3- and 5-judge Chambers, the Court now decides cases in a Grand Chamber, which was created in 2003 by the Treaty of Nice. The Grand Chamber originally consisted of 11 judges, drawn from all of the smaller Chambers.\textsuperscript{49} The actual membership of the Grand Chamber varies by case and is based on a predetermined rotation, but it always includes the presidents of the Chambers. In response to the 2004 enlargement, the Council increased the size of the Grand Chamber to 13.\textsuperscript{50} The Council increased the size of the Grand Chamber again to 15 in 2012.\textsuperscript{51}

The quorum rule has been important for determining the actual number of judges assigned to cases. The quorum for 3- and 5-judge Chambers has always been 3 judges.\textsuperscript{52} Both the full Court and the Grand Chamber can consist of any odd number of judges as long as a quorum is achieved. The quorum for the full Court increased from 5 judges to 7 when the size of the Court increased to 9 judges in 1973.\textsuperscript{53} The Treaty of Nice expanded the quorum

\textsuperscript{52} As of July 23, 1952. Treaty establishing the European Coal and Steel Community, Protocol on the Statute of the Court of Justice of the European Coal and Steel Community, Title II, Article 18.
\textsuperscript{53} As of January 1, 1973. Documents Concerning the Accession to the European Communities of the Kingdom of Denmark, Ireland, the Kingdom of Norway, and the United Kingdom of Great Britain and Northern Ireland, Act Concerning the Conditions of Accession and the Adjustments to the Treaties, Part Two, Title I, Chapter 4, Article 20.
from 7 judges to 11. The Council increased the quorum to 15 in 2004, and again to 17 in 2012. The quorum for the Grand Chamber was originally 9 judges. The Council increased the quorum to 11 in 2012 at the same time it increased the size to 15.

Once the Court had expanded to 9 judges, the 7-judge panel became known as the petit plenum. The petit plenum was not formally defined in the Court’s Rules of Procedure or the treaties, but the Treaties did explicitly allow the Court to hear cases in Chambers of 7 judges. The Court routinely used it and even formally reported its decisions as a separate formation in their annual report of the work of the Court.

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58 As of January 1, 1973. Documents Concerning the Accession to the European Communities of the Kingdom of Denmark, Ireland, the Kingdom of Norway, and the United Kingdom of Great Britain and Northern Ireland, Act Concerning the Conditions of Accession and the Adjustments to the Treaties, Part Two, Title I, Chapter 4, Article 20.