Codebook:

We have built a new dataset on National High Courts (NHCs)' cooperation with the CJEU that covers the period between 1961 and 2018 for all 68 high courts in the EU (see table 1 at the end of the codebook). A high court is defined according to Pavone and Kelemen (2019, p. 359) coding criteria: "If the court (a) possesses appellate jurisdiction and (b) their judgments cannot be appealed, then the court is coded as a high court (Examples: Courts of Cassation, Councils of State). Constitutional Courts with constitutional review powers are automatically coded as high courts (Ex: French Constitutional Council, German Federal Constitutional Court)". While some Member States have more than one jurisdiction resulting in various high courts like in the case of Germany (e.g. Federal Constitutional Court, Federal Administrative Court, Federal Patent Court, and so on), other States have only one top-court such as Estonia, where its Supreme Court deals with all kinds of cases in last instance coming from ordinary and constitutional jurisdictions. The identification of these judicial institutions as high courts has been established using the website of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union,[1] which offers an exhaustive list of all the European judicial systems. Our preliminary categorization was then revised by national experts for all EU-28 consulted by the authors of this article, who confirmed the correct identification of high courts. The dataset contains evidence of the main variables of interest: number of preliminary references and judicial independence. Our dataset also included information about several other factors or control variables found in the scholarship relevant for national courts' dialogue with the CJEU. Next, we present the description, source and expected impact of those variables (the names of the variables in the dataset are indicated in the square brackets):

- Country [Country].

- Country ID [Countryid]: Individual numerical identification for each country.

- Year [Year].

- High court ID [courtid]: Individual numerical identification for each high court.

- High court's name in English [courtname].

[1] http://www.aca-europe.eu/index.php/en/

- Original High court's name [courtnameori].

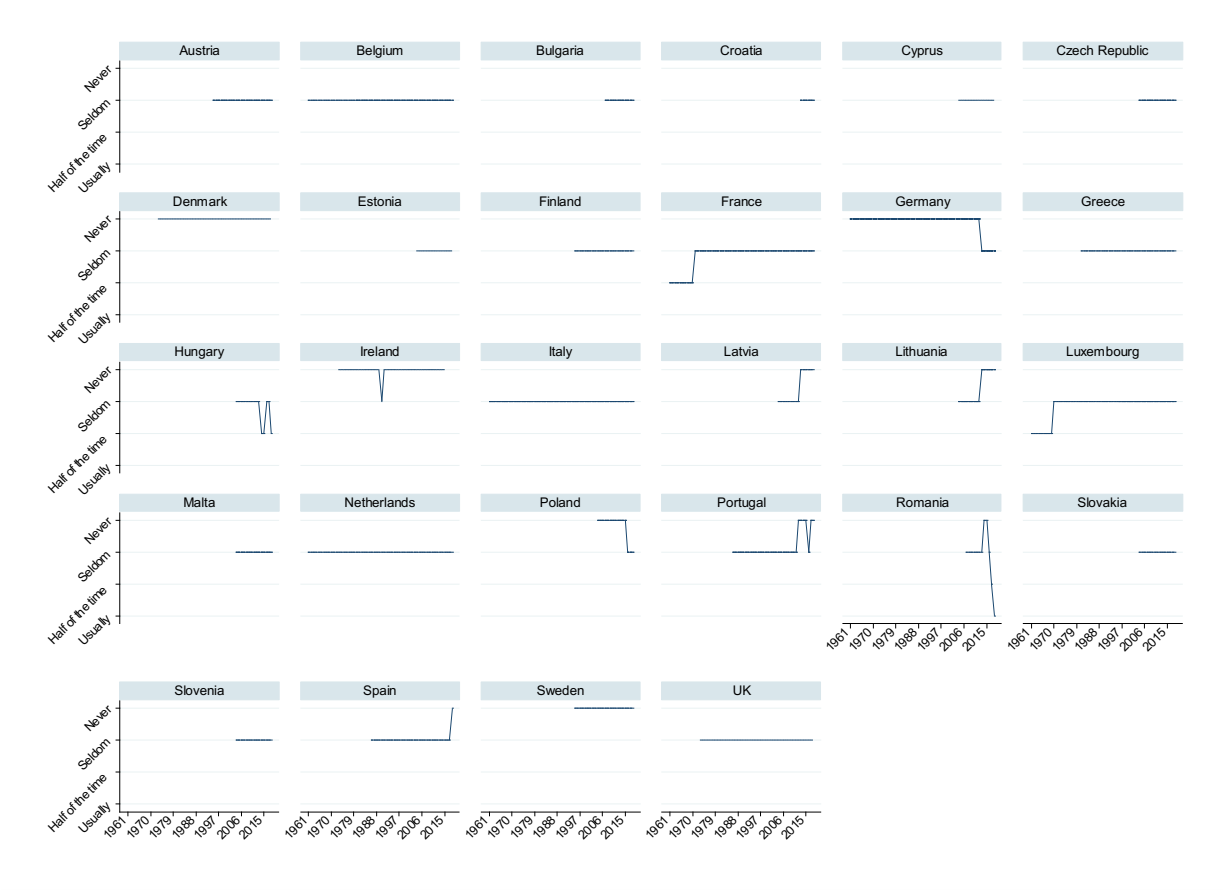
- Number of preliminary references [PR_court]: The variable indicates the number of preliminary references per year sent by each high court. Source: CJEU judicial activity reports (https://curia.europa.eu/jcms/jcms/Jo2_7000/) and InfoCuria database (http://curia.europa.eu/juris/).

- Share of preliminary references [PR_courtprop]: The variable indicates the number of preliminary references as a proportion of the total number of preliminary references per year sent by each high court. Source: CJEU judicial activity reports (https://curia.europa.eu/jcms/jcms/Jo2_7000/) and InfoCuria database (http://curia.europa.eu/juris/).

- High Courts' independence [v2juhcind & v2juhcind_ord]: Concerning our main explanatory variable, *high courts' judicial independence*, we make use of a new indicator launched by the V-dem or 'Varieties of Democracy' project[2] to operationalise the concept. In the V-dem project, national expert-coders have been asked to carefully consider whether high court in the country they are looking at: 'make decisions that merely reflect government wishes regardless of its sincere view of the legal record'? And answer whether this situation happens 'always', 'usually', 'about half of the time', 'seldom' or 'never' (see figure 1 below). The variable measures 'how often the high courts make decisions that merely reflect government wishes regardless of its sincere view of the legal record'. This indicator thus seeks "to identify autonomous judicial decision-making and its absence". In this understanding decisions "can reflect government wishes without 'merely reflecting' those wishes". This means as already suggested previously in this article, that a court obviously can be autonomous when its decisions support the government's position if it is persuaded or agrees with the government. By "merely reflect the wishes of the government" the V-Dem project – as well as we do here – measures whether the court's own view of the record has been irrelevant to the outcome or not. As Coppedge puts it, if a court is lacking independence it "simply adopts the government's position regardless of its sincere view of the record." (2016: 202).

[2] Coppedge, Michael, John Gerring, Carl Henrik Knutsen, Staffan I. Lindberg, Svend-Erik Skaaning, Jan Teorell, David Altman, Michael Bernhard, M. Steven Fish, Agnes Cornell, Sirianne Dahlum, Haakon Gjerløw, Adam Glynn, Allen Hicken, Joshua Krusell, Anna Lührmann, Kyle L. Marquardt, Kelly McMann, Valeriya Mechkova, Juraj Medzihorsky, Moa Olin, Pamela Paxton, Daniel Pemstein, Josefine Pernes, Johannes von Römer, Brigitte Seim, Rachel Sigman, Jeffrey Staton, Natalia Stepanova, Aksel Sundström, Eitan Tzelgov, Yi-ting Wang, Tore Wig, Steven Wilson, and Daniel Ziblatt. 2018. "V-Dem [Country-Year/Country-Date] Dataset v8". Varieties of Democracy. See more here: https://www.v-dem.net/en/

Figure 1: V-dem high courts' independence ordinal measure (1961-2018) [v2juhcind_ord]: "How often the higher courts make decisions that merely reflect government wishes regardless of its sincere view of the legal record?"



For the analysis, the variable 'v2juhcind_ord' adopts value 0 for options 'usually' and 'half of the time' (those options where merged due to the low number of observations), 1 for 'seldom' and 2 for 'never'. This new measure offers some advantages compared to the traditional ways of measuring judicial independence. Firstly, it is a measure of *de facto* judicial independence, and not a mere representation of the institutional design and rules governing the functioning of the courts. *De facto* independence measures are created to effectively check, whether a court demonstrates independent behaviour from the political branch in its daily activity. Even if *de jure* independence might be associated or correlated with levels of *de facto* or behavioural independence from the courts (Melton and Ginsburg 2014), *de jure* or formal measures are insufficient to account for real or de facto independence, as many other factors discussed above might also play a role.

Second, the present measure drawing on the V-Dem project concerns high courts, while other *de facto* measures used in the literature refer to the independence of the entire judiciary, like the extensively used methodology employed by Linzer and Staton (2012). The *V-Dem* indicator, also elaborated by Staton, exclusively refers to the independence of high courts, and therefore offers a much more accurate proxy of NHCs' true independence from the political branch. Nevertheless, the measure indicates the level of independence for the highest court in the entire judicial system. In this regard, in judicial systems where the highest court co-habits with other domestic high courts (e.g. like in the case of Sweden where they have a Supreme and an Administrative Supreme Court or Spain where they have a Constitutional Court and a Supreme Court), we use this measure as a proxy of the level of judicial independence of all high courts in the country. It is also important to note that the indicator has been coded by coders with appropriate national law expertise using evaluative questions about the *de facto* independence of high courts in a specific country that they know about.

The V-dem project combine expert ratings for a particular country-indicator-year to reduce the bias and reliability estimates to adjust estimates of the latent concept, and finally generate a single 'best estimate'[3]. Among these estimates, we have the 'relative scale' or 'measurement model output' version [v2juhcind] of this variable (see figure 2 below). This measure produces a probability distribution between -0.36 and 3.05 among EU countries that integrates disagreement and measure errors between multiple country experts.[4] As a result, this scale is useful to identify the situation in consolidated democracies where political power might still interfere in the judiciary to get favourable decisions. Hence, compared to the ordinal measure presented above, this measure better reflects the variation of judicial independence within the countries, making it more appropriate for time series analysis according to V-Dem.[5] For this reason, we use this indicator as a main reference for our discussions, figures and analyses of the level of judicial independence in EU-28 Members States in the article. In this regard, we first observe how Denmark, as well as Sweden, even if they have high levels of independence, do not reach the maximum score which is 3. Moreover, we observe some temporal variations. Hence, even if it

[3] https://www.v-dem.net/media/filer_public/5f/82/5f82bf93-251f-4b93-a2d6-2494810422ea/v-dem_methodology_v3.pdf
[4] "The measurement model aggregates the ratings provided by multiple country experts and, taking disagreement and measurement error into account, produces a probability distribution over country-year scores on a standardized interval scale. The point estimates are the median values of these distributions for each country-year. The scale of a measurement model variable is similar to a normal ("Z") score (e.g. typically between -5 and 5, with 0 approximately representing the mean for all country-years in the sample) though it does not necessarily follow a normal distribution." (V-Dem 2018: 41-42)
[5] https://www.v-dem.net/files/52/V-Dem%20Startguide.pdf

is less likely that in the case of Poland and Hungary, we might still expect situations where the governments in consolidated democracies would pressure judges in their decisions through some of the mechanism mentioned in the theoretical section. Finally, the judicial independence measure – while imperfect – was gathered by an expert team without any intention to use it to assess national courts' solicitations to the CJEU, which means that it is unlikely to be biased for the analysis in our research.

Figure 2: Relative scale of high courts' judicial independence (1961-2018) [v2juhcind]

- *Litigation rate/population [poplog]*: Numbers of inhabitants by country. The variable was transformed to its logged value. Source: Eurostat, accessed June 2020. According to Broberg and Fender (2013), using population as a proxy of litigation rate, argued how national courts with higher litigation rates and, as a consequence, to find conflicts or doubts in the interpretation of EU law, should be more likely to send preliminary references.

- *Type of the High Court [type_court]*: The variable distinguishes between diverse types of high courts based on their jurisdiction/s. Source: Association of the Councils of State or the Supreme administrative jurisdictions of the European Union:

0: Constitutional

1: Supreme Court (non-specialized jurisdiction).

2: Supreme Administrative Courts (specialized jurisdiction): e.g. French Council of State, Polish Supreme Administrative Court or similar.

3: Court of Cassation or Supreme Courts with civil, social, commercial or criminal jurisdiction (specialized jurisdiction): e.g. Italian Court of Cassation or the Polish Supreme Court.

4: Other: Other specialized jurisdictions like in the German Federal Patent Court and courts that integrates Constitutional and Supreme jurisdiction like the Estonian Supreme Court.

According to the Dyevre et al. (2020), constitutional courts should be less likely to use preliminary references than other courts as they resist legal integration and defend the prevalence of the national constitutional legal system to safeguard their power. Moreover, Conant (2001) argues how civil and commercial courts should be more likely to send preliminary references than administrative courts due to the high access costs for litigation.

- *Doctrinal limits to EU law [Counterlimit]*: The variable achieves the value of 1 after national constitutional courts, supreme courts or similar instances have established national doctrinal limits to the supremacy of EU law, and 0 otherwise. According to Mayoral (2019), national courts are more likely to cooperate with the CJEU when the highest national court has adopted the doctrine of counter-limits. The national rulings limiting the application of EU law are: **Italy** (based on the judgments of the Italian Constitutional Court in Frontini [Decision No. 183 (1973)], Granital [Decision No. 170 (1984)], and Fragd [Decision No. 168 (21.04.1989)]), **Germany** (Judgments of the German Constitutional Court (BVerfGE) in Solange I [BVerfGE 37, 271 (29.05.1974)], Solange II [BVerfGE 73, 339, 2 BvR 197/83 (22.10.1986)], the Brunner case in Maastricht [BVerfGE 89 (12.10.1993)] and Lisbon Treaty [BVerfGE, 2 BvE 2/08 (30.6.2009)]), **Belgium** (Cour d'arbitrage's judgment No. 12/94, Ecoles Europeenes (01.02.1994)), **France** (Conseil Constitutionnel in Maastricht (02.09.1992), in Amsterdam (31.12.1997) and in the Constitutional Treaty [Décision No. 2004-505 DC (19.11.2004)), the **UK** (House of Lords

Factortame judgments: 1st judgment [Regina v. Secretary of State for Transport Ex Parte Factortame Limited and Others (18.05.1989)] and 2nd judgment (11.10.1990)), **Denmark** (Danish Supreme Court of the Maastricht Treaty in Carlsen v. Rasmussen case (06.04.1998)), **Greece** (Greek Council of State decision in Bagias v. DI KATSA [Decision No. 2808/1997)]), **Spain** (Judgment of the Spanish Constitutional Court in Maastricht [Decision nº 1236 (01.07.1992)], Constitutional Treaty [Declaration No. 1/2004]), **Poland** (Polish Constitutional Court judgments on the Polish Accession Treaty [Case K 18/4 (11.05.2005)], and on the European Arrest Warrant [Case P 1/05 (27.04.2005)]), the **Czech Republic** (Czech Constitutional Court's Post-Accession Decision [Pl. ÚS 50/04 (08.03.2006)] and the Decision on the ratification of the Lisbon Treaty [Pl. ÚS 29/09 (03.11.2009)]), and **Cyprus** (Cyprus Supreme Court (Ανώτατο Δικαστήριο Κύπρου) Judgment of 7 November 2005 (Civil Appeal no. 294/2005) on the Cypriot European Arrest Warrant Law).

- *Type of judicial review of legislation*: These variables code the type of judicial review and the kind of courts that can review the constitutionality of laws within a country. We have created two variables distinguishing abstract and concrete judicial review:

- ***Abstract judicial review [abstractjud]:*** This variable assumes the value of 1 in countries where abstract judicial review exists, and 0 otherwise. Abstract judicial review relates to the review of laws *in abstracto*, so not in the context of a concrete case or controversy. Abstract review is exercised by the highest court in the country, like in Austria, Germany, Greece, Italy, France or Ireland.
- ***Concrete judicial review [concretejud]*:** This variable assumes the value of 1 in countries where concrete judicial review exists, and 0 otherwise. Concrete review takes place in the context of litigation and a specific case and can be exercised not only by constitutional courts but also by other higher and lower courts.

Carrubba and Murrah(2005) described two effects: 1) states with only abstract judicial review make less references than those without abstract review; 2) states with concrete judicial review make more references than those without concrete review. The information for old members was collected from Vink et al. (2009), while the values for CEE countries were gathered from the Comparative Constitutional Analysis Project http://concourts.net/comparison.php

- *Years of membership [years_member]:* This variable measures the duration of EU membership of a country. This variable is used as a proxy for the experience of national courts with CJEU's jurisprudence

and their acquaintance with PR proceedings. More experience makes it more likely that a court will send preliminary references or cite the CJEU (Ramos, 2006).

- *Support for the European Union [Eusupport]*: This variable measures the support of Member States' citizens for the European Union. The percentages are taken from the Eurobarometer, considering the question of whether citizens think that membership of the EU is a "good thing". Data available from 1973 onwards. Source: Eurobarometer and Parlameter, accessed in June 2020. Carruba and Murrah (2004) argued how national courts were more likely to send preliminary references when the support for the EU is higher in their countries. By the contrary, Krehbiel and Cheruvu (2021) have recently find that national courts are more likely to refer cases as the risk of noncompliance increases due to the lack of public support and trust in EU institutions.

- Intra EU trade [intralog]: This variable calculates the total volume of both import from and export in millions of Euro to EU countries. According to Stone Sweet and Brunell (1998), we expect high courts where great economic exchange to be more likely to send preliminary references. In this regard, national courts cooperate with the CJEU out of the necessity in order to manage otherwise complex EU legal issues generated by this transnational economic exchange. The data is limited for some countries like Luxembourg where the series starts in 1999. Source: Eurostat (online data code: EXT_LT_INTRATRD) and EUTHORITY judiciary dataset https://www.law.kuleuven.be/euthority/EN/euthority-judiciary-dataset. Access provided by the principal investigator Arthur Dyevre. The variable was transformed to its logged value.

- *Nordic legal culture [nordiccul]*: This variable assumes the value of 1 in countries belongs to the Nordic legal culture or tradition (Denmark, Sweden and Finland), and 0 otherwise. According to Wind et al. (2009), Nordic judges are less likely to send preliminary references due to their democratic aversion to judicial review powers granted by the preliminary references system over national legislation. Source: Wind et al. (2009).

- *Common law [commonlaw]*: This variable assumes the value of 1 in countries belongs to the common law legal culture or tradition (UK, Ireland, Cyprus and Malta), and 0 otherwise. European countries with a common law tradition are attached to the general rule of binding precedent more than countries with other legal traditions (e.g. civil law, Scandinavian law, etc.). Judges socialized in this culture are more familiar with and are used to the application of CJEU precedents, and hence may be less likely to use

preliminary references. Similarly, Hornuf and Voigt (2014) state that judges in common law countries play a more active role in the developing of law. That behaviour is extended to the application of EU law, where judges are more prone to solve EU legal conflicts and doubts without the intervention of the CJEU.

- *Dualist legal system [Dualistleg]:* It is a dummy variable that achieves the value of 1 if a Member State has a dualist legal system and 0 otherwise. Poland, the Czech Republic, the Slovak Republic, Romania, Bulgaria, Slovenia, Estonia, Lithuania, Latvia, Cyprus, Belgium, France, Luxembourg, the Netherlands, Spain, Portugal, Greece and Austria were coded as monists, while Hungary, Italy, Germany, the UK, Ireland, Malta, Sweden, Finland, and Denmark were coded as dualists. The information on legal systems was gathered from Hoffmeister (2002) and Ott (2008). Theoretically, dualist orders treat national and international law (even European) as two separate sources of law, while monist systems integrate international legal orders into the national normative system with binding force (Hoffmeister 2002; Ott 2008). As a result, while monist legal orders integrate international and European legal systems as part of the national norms, implying the unconditional acknowledgment of EU law primacy; states with a dualist system emphasize the difference between national and international law and do not automatically accept European legal supremacy. Under this context, national judges might be more likely to engage in legal disputes on the applicability of EU law over national law and, consequently, less willing to apply EU law when they suspect that EU law may contradict the principles of their national legal systems.

Table 1: List of High courts in the EU (68)

Country	ID	Name of the court	References period
Spain	1	Tribunal Supremo – Supreme Court	1986-2018
	2	Tribunal Constitucional – Constitutional Court	1986-2018
Germany	3	Bundesverfassungsgericht – Federal Constitutional Court	1961-2018
	4	Bundesgerichtshof – Federal Court	1961-2018
	5	Bundespatentgericht – Federal Patent Court	1961-2018
	6	Bundesarbeitsgericht – Federal Labour Court	1961-2018
	7	Bundessozialgericht – Federal Social Court	1961-2018
	8	Bundesverwaltungsgericht – Federal Administrative Court	1961-2018
	9	Bundesfinanzhof – Federal Financial Court	1961-2018
Ireland	10	Supreme Court	1973-2018
UK	11	House of Lords/ Supreme Court	1973-2018
Poland	12	Sąd Najwyższy – Supreme Court	2004-2018
	13	Naczelny Sąd Administracyjny – Supreme Administrative Court	2004-2018
	14	Trybunalu Konstytucyjnego – Constitutional Court	2004-2018
Greece	15	Arios Pagos – Supreme Court	1981-2018
	16	Symvoulio tis Epikrateias – Council of State	1981-2018
Italy	17	Corte Constituzionale – Constitutional Court	1961-2018
	18	Corte di Cassazione – Court of Cassation	1961-2018
	19	Consiglio di Stato – Council of State	1961-2018
Cyprus	20	Ανωτάτου Δικαστηρίου – Supreme Court	2004-2018
Austria	21	Verfassungsgerichtshof – Constitutional Court	1995-2018
	22	Verwaltungsgerichtshof – Supreme Administrative Court	1995-2018
	23	Oberster Gerichtshof – Supreme Court	1995-2018
France	24	Cour de Cassation – Court of Cassation	1961-2018
	25	Conseil d'État – Council of State	1961-2018
	26	Cour Constitutionelle – Constitutional Court	1961-2018
Denmark	27	Højesteret – Supreme Court	1973-2018
Sweden	28	Högsta Domstolen – Supreme Court	1995-2018
	29	Högsta förvaltningsdomstolen/ Regeringsrätten – Supreme Administrative Court	1995-2018
Latvia	30	Augstākā Tiesa	2004-2018
	31	Satversmes tiesu	2004-2018
Estonia	32	Riigikohus	2004-2018
Luxembourg	33	Cour Administrative – Administrative Court	1961-2018
	34	La Cour Supérieure de Justice – Supreme Court of Justice	1961-2018
	35	Cour Constitutionnelle – Constitutional Court	1996-2018
Portugal	36	Supremo Tribunal Administrativo – Supreme Administrativo Court	1986-2018
	37	Supremo Tribunal de Justicia – Supreme Court of Justice	1986-2018

	38	Tribunal Constitucional – Constitutional Court	1986-2018
Hungary	39	Magyar Köztársaság Legfelsőbb Bírósága – Supreme Court	2004-2018
	40	Magyarország Alkotmánybírósága – Constitutional Court	2004-2018
Belgium	41	Cour de Cassation/ Hof van Cassatie – Court of Cassation	1961-2018
	42	Conseil d'État/ Raad van State – Council of State	1961-2018
	43	Grondwettelijk Hof/ Cour constitutionelle/ Cour d'arbitrage – Constitutional Court	1980-2018
Bulgaria	44	Върховен административен съд – Supreme Administrative Court	2007-2018
	45	Върховен касационен съд - Vărhoven kasatsionen săd – Supreme Court of Cassation	2007-2018
	46	Конституционният съд – Constitutional Court	2007-2018
Czech Republic	47	Ústavního soudu – Constitutional Court	2004-2018
	48	Nejvyšší Soud – Supreme Court	2004-2018
	49	Nejvyšší správní soud – Supreme Administrative Court	2004-2018
Romania	50	Înalta Curte de Casaţie şi Justiţie – High Court of Cassation and Justice	2007-2018
	51	Curtea Constitutionala – Constitutional Court	2007-2018
Slovenia	52	Vrhovno sodišče – Supreme Court	2004-2018
	53	Ustavno sodišce – Constitutional Court	2004-2018
Slovakia	54	Najvyšší súd – Supreme Court	2004-2018
	55	Ústavný súd – Constitutional Court	2004-2018
Finland	56	Korkein Oikeus/ Högsta Domstolen – Supreme Court	1995-2018
	57	Korkein Hallinto-Oikeus/ Högsta Förvaltningsdomstolen – Supreme Administrative Court	1995-2018
Netherlands	58	Hoge Raad – Supreme Court	1961-2018
	59	Raad van State-Afdeling bestuursrechtspraak – Council of State	1961-2018
Malta	60	Court of Criminal Appeal	2004-2018
	61	Court of Appeal	2004-2018
	62	Constitutional Court	2004-2018
Lithuania	63	Konstitucini Teisma – Constitutional Court	2004-2018
	64	Aukščiausiasis Teismas – Supreme Court	2004-2018
	65	Vyriausiasis Administracinis Teismas – Supreme Administrative Court	2004-2018
Croatia	66	Ustavni sud – Constitutional Court	2013-2018
	67	Vrhovni sud – Supreme Court	2013-2018
	68	Visoki upravni sud – Supreme Administrative Court	2013-2018

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