

**Coding Protocol for the dataset entitled:**  
**Maher I Riordan R IRELAND EU LAW DATASET 2009 2018**

*Rónán Riordan<sup>1</sup> and Imelda Maher<sup>2</sup>*

The above dataset was utilised in the following paper:

Barry Rodger, Imelda Maher and Rónán Riordan, '*A decade of EU law in the courts of Scotland and Ireland: national legal systems compared*' *Legal Studies* (2021) 1 – 25 DOI: <https://doi.org/10.1017/lst.2020.46>

[Dataset on EU Law in the Superior Courts of Ireland 1.1.2009-31.12.2018](#)

The Excel dataset entitled **Maher\_I\_Riordan\_R\_IRELAND\_EU\_LAW\_DATASET\_2009\_2018** codes EU law cases before the Superior Courts between 1.1.2009 - 31.12.2018. The dataset includes only civil law cases. Criminal law cases, and related issues, were excluded from the dataset. Codes and coding methodology can be found in the following document; Rónán Riordan and Imelda Maher, Coding Methodology for dataset: **Maher\_I\_Riordan\_R\_IRELAND\_EU\_LAW\_DATASET\_2009\_2018**, accessible via [zenodo.org](https://zenodo.org).

The decisions of the lower courts (Circuit and District Courts respectively), in contrast to the Superior Courts, are not normally published by the Court Service and therefore the scope of the research was limited to the Superior Courts for which comprehensive reports of decisions are maintained and publicly accessible by via the Court Service and other organisations.

The data is based on targeted searches which narrowed results to an initial dataset of 852 cases which was subject to qualitative assessment. Cases where EU Law was mentioned but where there was no substantive discussion, were not included in the study. The initial search was carried out using [www.bailli.org/](http://www.bailli.org/) and each judgment was briefly reviewed to ascertain if it presented an issue of EU law. Results were cross-checked against [www.justis.com/](http://www.justis.com/). The research extends to all cases identified via the search in which EU law formed a part of the case, even where EU law was not a factor in the determination of the particular issue between the parties in dispute (for instance where the case was decided on a procedural issue).

For a working paper outlining how the search was constructed, and how results were narrowed down, see Maher, Imelda and Riordan, Ronan, *The Supreme Court and EU Law: Reshuffling Institutional Balance* (December 12, 2019). UCD Working Papers in Law, Criminology & Socio-Legal Studies Research Paper No. 16/2019, Available at SSRN: <https://ssrn.com/abstract=3502794> or <http://dx.doi.org/10.2139/ssrn.3502794>. A revised version of this paper is forthcoming in the *Irish Supreme Court Review*. Further information regarding the methodology used for this dataset also can be found in Rodger, Maher and Riordan, *A Decade of EU Law in the Courts of Scotland and Ireland: National Legal Systems Compared*, *Legal Studies* (2021) 1 - 25, in addition to the previously cited working paper above.

[Dataset of Irish Court References to the Court of Justice of the European Union under Article 267 of the Treaty on European Union 1.1.2009-31.12.2018](#)

The excel file entitled 'IE\_267\_REF\_DATA\_2009-2018.xlsx' compiles references from Courts and Tribunals in Ireland to the Court of Justice of the European Union via the preliminary reference procedure under Article 267 of the Treaty on the Functioning of the European Union. This dataset records references from the Superior Courts and from the lower courts and tribunals. Data was compiled using information available on the Court of Justice website [www.curia.europa.eu/](http://www.curia.europa.eu/). This dataset includes both civil and criminal law cases referred to the CJEU for clarification during the period.

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<sup>1</sup> PhD Researcher at the Hertie School and Research Associate at the Jacques Delors Centre Berlin. Email [riordan@hertie-school.org](mailto:riordan@hertie-school.org).

<sup>2</sup> Sutherland Full Professor of European Law, UCD Sutherland School of Law, Dublin, Ireland. Email: [imelda.maher@ucd.ie](mailto:imelda.maher@ucd.ie)

### Notice on dataset use;

These datasets are the property of the authors. Where other parties intend to use the dataset as part of their research, acknowledgement must be made as to the source of the dataset and of the original authors as having created the dataset. Data may not be used without consent of the authors. Contact authors via: imelda.maher@ucd.ie (University College Dublin) and r.riordan@phd.hertie-school.org (Hertie School Berlin).

### Coding Protocol for Dataset on EU Law in the Superior Courts of Ireland 1.1.2009-31.12.2018

**Note:** The coding was carried out over a period of one year. Coding was carried out by one author. To compensate for the absence of strict blind coding the authors worked closely together in a consultative and collaborative manner on determining how to code the cases. Where issues arose that resulted in uncertainty around the coding of a case, particularly with regard to the category a case should be assigned to, the case was examined by them jointly and a decision reached on how to proceed with the coding. Once coding was completed the dataset was fully re-examined to assess consistency throughout the coding process and make amendments where errors were identified. A number of categories were also specifically reassessed to ensure consistency of categorisation on a third occasion.

### The party that raised EU Law

Cases have been coded as being raised by the Appellant or the Respondent.

In this instance, cases were read, and we identified which party forwarded the EU law based argument in the case. The appropriate code was then assigned a code as outlined below.

*Codes for the party to a case that raised EU Law are as follows;*

<b>EU Law raised by Appellant</b>	1.00
<b>EU Law raised by Respondent</b>	2.00

### Judicial Review

#### *Petition variable*

This variable considers whether, and to what extent, EU substantive law has been the subject of consideration and application in Judicial Review petitions. To identify if the case sought a judicial review petition, we searched the case for references to 'judicial review', or orders of 'certiorari' and 'mandamus'. This is in addition to consulting data available on sites such as JustisOne which categorises whether a case involved judicial review arguments. Following from this we identified if the judicial review petition related to provisions of EU law. Results coded were coded as either 'Yes' or 'No'.

*Coded as;*

<b>Yes</b>	1.00
<b>No</b>	0.00

### Court of Origin

This was coded using string data gathered from the Irish Courts neutral citation for each case. For example, if the case's citation were '2018 [IEHC] 560', the case would be coded as being from the High Court. Likewise, if the citation were to read '[IESC]' or '[IECA]' the case would be coded as from the Irish Supreme Court or Court of Appeal as appropriate. This was of course cross checked against the case to confirm no errors had been made in the case citation.

*Codes for the court of origin;*

<b>High Court</b>	String
<b>Court of Appeal</b>	String

<b>Supreme Court</b>	String
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How determinative/relevant EU law was to the outcome of the case:

*'Determinative/Dispositive'* denotes case law where the EU law rule/provision was a key factor in the judgment and was central to the resolution of the case.

'Irrelevant' denotes cases where EU law was raised but EU Law was deemed to be immaterial, or the case didn't fall with the scope of the provision.

*'Relevant/Considered'* denotes case law where the judgment did not depend on an EU law provision per se, while nor was it unconnected or immaterial. This category can be more aptly described as 'the space between' the categories of EU law as 'determinative' or 'irrelevant'. Here, the relevance of EU law to the case under study is less clearly defined, and while not determinative, nor was it entirely irrelevant to the outcome.

In categorising cases as outlined, the case was read to try to identify which of the categories EU law fell into. Cases summaries, such as those available on JustisOne, were also consulted in reaching a decision.

*Coded as:*

<b>EU Law determinative factor in judgment</b>	1.00
<b>EU Law Relevant / Considered</b>	2.00
<b>EU Law Irrelevant</b>	3.00

EU Rules identified in the coding process:

The following EU rules and legislative instruments were identified during the coding process.

Treaties of the European Union, Regulations, Directives, The Charter of Fundamental Rights and Freedoms, General Principal of EU Law, a combination of any of these, and the category of others.

Expanding on the meaning of 'General Principals of EU Law', this refers to principals of European Union law expounded via case law or in the EU Treaties. Examples include direct effect, supremacy and effectiveness, three of the most distinctive principles of EU law. Accepted general principles of European Union Law include fundamental rights, proportionality, legal certainty, equality before the law and subsidiarity. Other essentially encompasses forms of law which fall outside the above categories, such as conventions or soft law. It is also important to recall that the implementation of EU law within the Irish domestic legal system, and concurrently the relevant act at issue in Irish case law, will vary depending on the EU legislative instrument under examination.

EU Regulations are directly applicable within EU Member States and do not require, per se, legislation to be enacted domestically by the Oireachtas (parliament) for implementation. As such, Courts will most commonly refer to the regulation directly. There may however be instances where domestic legislation is enacted, which deals with consequential matters arising from the coming into force of a regulation, and to which the Court may refer as a result.

Directives, by comparison, need to be transposed into domestic law; this is normally done via a statutory instrument. However, it may also require the passing of a bespoke act by the Oireachtas. As such the Court will often refer to the domestic act implementing the EU level directive, and not the directive itself by name. In such instances where a statutory instrument, or an act, is referred to, the relevant legislation was consulted during the coding process to see if it was implementing EU law. If this were the case, it would be treated as if it was the EU level legislative instrument. For example a statutory instrument would be treated as a directive, for the coding process, where it was enacted to implement an EU Directive under the European Communities Act (as this is the source legislation at EU level to be assessed).

Following from this, the main piece of EU legislation at issue in the case was identified, and the case coded on that basis. For example, where there was a statutory instrument referred to in the case, implementing an EU directive, but the primary concern of the case was an EU Regulation, the case would be coded as the primary legal instrument at issue as being a Regulation.

*Codes assigned for the source of the EU legal instrument are as follows;*

<b>Treaty(s)</b>	1.00
<b>Regulation(s)</b>	2.00
<b>Directive(s)</b>	3.00
<b>CFRF's</b>	4.00
<b>General Principal(s) of EU Law</b>	5.00
<b>Combination</b>	6.00
<b>Other(s)</b>	7.00

#### Categories of EU Law

At the outset it should be noted these categories are an adapted version of the categories used in Barry Rodger, *The application of EU law by the Scottish courts: an analysis of case-law trends over 40 years*, *Juridical Review* (2017) 2 pp. 59 – 84 given this research was carried out in the context of comparative legal research.

The category of EU law identified in each case is based on the substantive EU law issue at the heart of the dispute, even where the ruling was related to a procedural aspect. For example, if the substantive issue in the case generally relates the Locus Standi, but the primary issue of EU law in the case relates to the Habitats Directive, the case was assigned to the Planning & Environmental Law category in the coding process. A complete list of categories and the corresponding codes are listed below.

A number of caveats apply to the categorisation of the cases identified. In particular, this database was created in the context of a cross comparative legal study between two jurisdictions, the Scottish and Irish legal systems, which raised issues as to the cross comparability of various areas of law between the two jurisdictions. In addition, the coder is not an expert in every field touched upon as part of the research, and while best efforts have been made to consult with other experts where necessary, the categorisation cannot be said to be absolute and without dispute.

With particular reference to the cross comparative nature of the research, and the impact this had upon the classification of cases, the following examples are highlighted as indicative of just some of the issues encountered. Intellectual Property and Data Protection law were categorised together to accommodate cross comparison with the Scottish legal systems. This would not normally have been the case had the research only been carried out for the Irish jurisdiction. The Irish dataset also removed a constitutional law category from its research to fit with the Scots law, and the lack of a single constitutional document in the UK. Equally the Scottish research had to adapt its coding to include categories such as Public, Administrative and Procedural law, Immigration, Asylum and Refugee Law and Planning and Environmental Law.

*Codes assigned to the cases are as follows;*

<b>Agriculture &amp; Fisheries Law</b>	8
<b>Citizenship Law</b>	1
<b>Competition Law</b>	2
<b>Consumer Law</b>	16
<b>Contract/Commercial Law</b>	14
<b>Discrimination and Equality Law</b>	21
<b>Employment Law</b>	7
<b>Family Law</b>	20

<b>Free Movement Law</b>	5
<b>Human Rights</b>	9
<b>Immigration, Asylum and Refugee Law</b>	4
<b>IP Law</b>	10
<b>Planning/Environmental Law</b>	3
<b>Private International Law - Civil &amp; Commercial</b>	19
<b>Private International Law - Family &amp; Children</b>	18
<b>Public Procurement Law</b>	13
<b>Public, Administrative and Procedural Law</b>	12
<b>Revenue/Tax Law</b>	11
<b>State Aid Law</b>	15
<b>Tort Law</b>	6

Coding Protocol for Dataset of Irish Court References to the Court of Justice of the European Union under Article 267 of the Treaty on European Union 1.1.2009-31.12.2018

Court from which the reference originated

This identifies the court or tribunal from which the request for a preliminary reference originated. This was coded based on the CJEU's documents recording requests issued to it for a preliminary ruling under Article 267 of the Treaty on the Functioning of the European Union. Only courts or tribunals which issued requests during the period of study, and which were identified via a search of Curia, are including in the coding.

*Codes for the court of origin;*

<b>Supreme Court</b>	4
<b>Court of Appeal</b>	2
<b>Court of Criminal Appeal</b>	3
<b>High Court</b>	1
<b>Dublin Circuit &amp; District Courts</b>	6
<b>Dublin Metropolitan District Court</b>	9
<b>Labour Court</b>	5
<b>The Equality Tribunal</b>	8
<b>Appeal Commissioners</b>	7

Article 267 Reference Procedure.

This records the reference procedure under which the Article 267 reference to the Court of Justice was made by the national court or tribunal. References can be made as either ordinary references under Article 267 or Urgent Preliminary Ruling Requests where there is a need for a speedy answer to the questions raised. Where made under the urgent procedure the Court of Justice uses the abbreviated term 'PPU' (from the French 'Procédure préjudicielle d'urgence') in documents to identify the request was made under the urgent procedure by the referring national court or tribunal.

In the excel file the column entitled 'PPU' records if a reference was issued by the national court or tribunal to the Court of Justice via the urgent procedure via a yes or no answer as indicated in the below table. If the

corrosonding code indicates the urgent procedure was not used by the referring body the request was therefore made via the standard 267 reference procedure.

*Codes for PPU Procedure;*

<b>Yes</b>	1
<b>No</b>	2

Year

The excel file also indicates the year in which the reference was made.

Citation

This records the official citation number assigned by the CJEU to the identified request.

Case Name

This records the parties to the case.