Politics and Governance
2024 • Volume 12 • Article 7473
https://doi.org/10.17645/pag.7473

cogitatio

ARTICLE

Open Access Journal

Annulment Actions and the V4: Taking Legislative Conflicts Before the CJEU

Marton Varju [1], Veronika Czina [2], Katalin Cseres [3], and Ernő Várnay [1]

[1] Institute for Legal Studies, HUN-REN Centre for Social Sciences, Hungary
[2] Institute of World Economics, HUN-REN Centre for Economic and Regional Studies, Hungary
[3] Amsterdam Centre for European Law and Governance, University of Amsterdam, The Netherlands

Correspondence: Marton Varju (varju.marton@tk.hun-ren.hu)

Submitted: 31 July 2023 **Accepted:** 14 February 2024 **Published:** 18 April 2024

Issue: This article is part of the issue "From New to Indispensable? How Has the 2004 'Big Bang' Enlargement Reshaped EU's Power Balance" edited by Matej Navrátil (Comenius University) and Marko Lovec (University of Ljubljana), fully open access at https://doi.org/10.17645/pag.i376

Abstract

The EU member states have been using the action for annulment to challenge the legality of EU measures while pursuing a range of non-legal and essentially political motivations. This also holds for the V4 member states, which have also resorted to annulment actions to judicialize their legislative conflicts within the EU before the CJEU. Among the V4, Poland has been the most frequent litigant, using this institutional tool increasingly actively during the last 10 years. Poland's behavior appears to confirm expectations of differentiation among this group of member states. It also coincides with a period of political change marked by deep legislative conflicts within the EU. The V4 annulment challenges against EU legislative measures usually made a genuine effort to achieve the legal objective of annulling the challenged legal act. However, there is evidence that they also pursued certain political motivations or a combination of them. These could include the securing of gains in domestic politics, avoiding the local costs of an EU policy misfit and/or promoting a preferred policy position, and/or influencing EU competence arrangements. In a few cases, the litigant member state aimed to avoid concrete material disadvantages. Securing a legal interpretation from the CJEU that would influence the behavior of other EU actors or clarify the law affecting the position of the applicant member state also motivated some of the V4 legal challenges.

Keywords

action for annulment; CJEU; European Union; legislative conflict; political motives; V4

1. Introduction

The action for annulment regulated in Article 263 TFEU enables public and private litigants—including the member states—to challenge the legality of EU measures before the CJEU. Primarily, it is available to achieve legal objectives, such as annulling and thus avoiding the binding effects of EU legal measures and imposing legal accountability on the EU decision-making process. However, the EU member states have been using this institutional tool to achieve non-legal objectives within the broader EU political framework. Similar to other potential litigants, they have been observed to pursue particular non-legal and essentially political motivations with their annulment litigation, bringing to light the political nature of the action for annulment and its relevance in EU political and policy conflicts. Some of the political motivations concern the ability to control developments at the EU level: shaping competence arrangements in the EU, in particular between the EU and its member states, or establishing an interpretation of legal provisions that would either generate certainty in the application of the law, or influence—and possibly constrain—the behavior of EU actors. Other motivations relate to the national level: securing concrete material gains or avoiding concrete material disadvantages, promoting or defending national policy preferences and/or avoiding the costs of local adaptation that could result from a misfit between EU and national policy, and securing concrete gains in national politics, such as mobilizing public support for the government that is seen as actively protecting national interests.

In this article, we examine how the V4 member states (Czechia, Hungary, Poland, and Slovakia), since their accession to the EU, have been using the action for annulment to challenge EU legislative measures, thus judicializing the disagreements and conflicts they encounter in the EU legislative process. On the one hand, we aim to investigate whether the V4 member states have exhibited divergent behavior in this crucial aspect of membership, possibly as a result of domestic political change. On the other, we seek to explore whether they have, like other litigants, including other member states, pursued motivations with their annulment litigation beyond its legalistic objectives, and which non-legal motivations have characterized their actions. As we are interested in how these member states judicialize their legislative conflicts in the EU; therefore, we restricted the scope of our research to actions taken against EU legislative measures.

The article is structured as follows: First, we will develop our research framework, paying particular attention to the limited, but groundbreaking research on the politics of EU annulment actions and the potential non-legal motives of annulment litigants. Then, we will present the statistics for V4 annulment litigation and identify the legal claims and other complaints brought forward by the applicant V4 state in individual cases. In the third part, we will analyze this evidence, focusing on the possible non-legal motivations behind the cases. We will conclude by characterizing the use of annulment actions by the respective V4 states, both in terms of their frequency and the motivations behind litigation.

2. Research Framework

Since 2004 the V4 member states have become, albeit in varying degrees, users of annulment actions to challenge EU legislative measures before the CJEU, thus judicializing their legislative conflicts within the EU. The V4 represents a group of member states that, despite being expected to behave homogenously, have repeatedly been shown to exhibit divergent patterns of behavior in the EU (Bauerová, 2018; Mišík & Oravcová, 2022; Vachudova, 2001). Research on the Visegrad cooperation has anticipated differing national

pathways for these countries as EU members, especially for Poland, as a larger and more ambitious member state (Dangerfield, 2008; Kral, 2003; Nič, 2016; Vachudova, 2001). Furthermore, politics in these countries has, at different times and in different ways, experienced an illiberal turn and a way towards a more conflict-ridden relationship with the EU (Nič, 2016; Vachudova, 2005, 2020). Occasionally, they also have positioned themselves in opposition to the politics and policy priorities associated with the Western members (Kazharski, 2018, 2020). Examining their annulment challenges should offer an insight into whether the V4 member states have adopted differing membership strategies and whether changes in domestic politics have affected their actions in the EU.

Annulment actions against EU legislative measures represent a crucial aspect of the EU's membership. They enable the member states to continue the disagreements and conflicts that they encounter in EU decision-making within the formal parameters of judicial review proceedings before the CJEU (Adam, 2018; Adam et al., 2020). Annulment procedures have both legal and political relevance. In short, they can be used to bring legal accountability to the EU decision-making process as well as achieve a variety of political objectives, including those regarding the legislative conflict brought to the CJEU. It has been established in previous research that concerns of legality are not the only driving force for the use of annulment actions, which has its own politics with litigants following particular non-legal and essentially political motivations (Adam et al., 2020, p. 3). Legal success in itself may not be of importance for litigants, or may in fact be detrimental to the non-legal aims that they pursue with litigation (Adam et al., 2015, p. 198). This is particularly true for the member states, which, once they understand the strategic relevance of the case in domestic politics, launch their action before the CJEU without aiming to win (Adam et al., 2020, p. 193).

Research on the politics surrounding annulment actions has focused predominantly on annulment challenges by both private and public actors from the national level against administrative measures issued by the European Commission (Adam et al., 2015; Bauer & Hartlapp, 2010; Mathieu & Bauer, 2018). Other works have examined how EU institutions use annulment litigation, focusing mainly on challenges against EU legislative measures in the context of conflicts over the allocation of competences within the EU institutional framework (Hartlapp, 2018a, 2018b; McCown, 2003). Challenges by member states against EU legislative measures have not been analyzed specifically. Nor have they been subjected to comparative analysis within a smaller group of member states. Generally, this area of research rests on the premise that the CJEU is an important player in the EU policy process, which is activated when stakeholders bring litigation before it (Alter & Vargas, 2000; Kelemen, 2011; Mathieu et al., 2018; Schmidt, 2018; Stone Sweet, 1999). The CJEU is assumed to have institutional agency in the EU policy framework, although its autonomy as an actor is subject to different evaluations (Alter, 1998; Carrubba et al., 2008; Garrett et al., 1998; Martinsen, 2015; Mattli & Slaughter, 1998; Ovádek, 2021).

The use of the CJEU by the member states has been subject to previous research. However, this has been limited to preliminary ruling procedures (Granger, 2004) or, as previously indicated, to annulment actions against EU administrative measures (Adam, 2016; Bauer & Hartlapp, 2010). In the latter area, the work by Mathieu and Bauer (2018, p. 667) has established that the member states decide to judicialize their conflicts with the European Commission to pursue a range of "conceptualized motivations" and not simply to claim the illegality of the challenged measure. They also underlined the clear necessity of future research regarding what types of complaints the member states raise against EU measures, how they combine them

in individual annulment actions, and how differently particular member states select and present their complaints before the CJEU (Mathieu & Bauer, 2018, p. 668).

Litigants may pursue four main types of non-legal motivations with their annulment actions. These are material gains, institutional competences, ideological goals, policy preferences, and political trust (Adam et al., 2020, p. 6). Litigants have frequently aimed to secure material gains with annulment litigation, especially to improve their budget situation, for example by avoiding substantial expenses (Adam et al., 2020, p. 84). The influencing of competence arrangements within the EU has regularly motivated annulment challenges, in particular by the member states and the EU institutions (Adam et al., 2020, p. 85). Applicants have also—though less commonly—used annulment litigation to defend or promote a particular ideological or policy position threatened by EU policy (Adam et al., 2020, p. 85). The member states have also launched annulment actions as a symbolic political act to signal the national government's "responsiveness and trustworthiness" (Adam et al., 2020, p. 85). In such cases, domestic political factors influence the legal challenge, in particular, the political benefit of communicating it to voters or using the CJEU's judgment as leverage in domestic politics (Adam et al., 2015, p. 185).

In annulment litigation launched by the member states, the motivations outlined above may overlap with further motivations. In actions aiming to secure protection for a particular national position, the national government may pursue the parallel aim of avoiding local adaptation costs that may arise from a high degree of misfit between EU and national policy (Adam, 2016, p. 2). Influencing the interpretation of the law is often a self-standing motivation for member states in annulment challenges; however, it is frequently combined with the motive of shaping EU competence arrangements (Adam et al., 2020, p. 85). When member states turn to the CJEU for a certain interpretation of the law, their motivation may also include the desire to influence the behavior of other EU actors, such as the EU institutions and other members, or bring about some degree of legal certainty in the particular area (Adam, 2016, p. 43).

In the following section, we will apply this research framework to the annulment cases launched by the V4 member states against EU legislative measures. We will rely on the evidence collected from the publicly available case documents, along with the relevant litigation statistics. Our evidence is partially incomplete as the relevant cases include both closed and pending cases, and detailed case documentation may only be obtained in the cases closed by the CJEU. We aim to examine the potential motivations of V4 member states by analyzing their legal claims, as well as the particular complaints put forward by them. By distinguishing conventional legal complaints from those revealing a political disagreement or grievance encountered in EU decision-making, we aim to identify the concrete non-legal motivation(s) pursued in the annulment case. Since the legal weakness of the annulment action may indicate that litigation was inspired by non-legal motivations, we will also consider the strength and soundness of the claims presented by the applicant.

3. Annulment Actions and the V4 Member States

The V4 member states have all launched annulment actions against EU legislative measures since their accession. In this group, Poland is the most frequent user of this institutional tool. The other three members have challenged EU legislative measures before the CJEU much less frequently (see Table 1).

When compared with other former socialist member states in the EU's periphery, the V4 member states—with the visible exception of Poland—demonstrate a similar general reluctance to challenge EU legislative measures before the CJEU. Hungary may also be regarded as another exception. In contrast to Bulgaria, Lithuania, and Romania, which only challenged the different measures adopted in the EU's 2020 transport policy package, its comparable litigation activity, as demonstrated in Table 2, was not restricted to a single area of EU action.

As demonstrated in Figure 1, except for a few years, data from the past two decades suggest a general reluctance on the part of the EU member states to bring actions for annulment against EU legislative measures. The relatively higher numbers in 2020 and 2023 relate to litigation launched against EU legislation adopted in a legislative package, such as the EU's 2020 transport policy package. Data from the last 10 years indicate that Poland has become an increasingly active litigant, responsible for the majority of legal challenges. Litigation activity from the other V4 members largely conforms to the EU average.

As the analysis of Figure 2 shows, except for the two early cases brought by Poland in 2004 and 2005, to challenge the conditions of accession in the immediate post-accession period, the first decade after 2004 was characterized by inactivity in annulment litigation against EU legislative measures by the V4 member states. This changed in the second decade of EU membership when each year saw legal challenges against EU legislation presented by the V4 members (Czechia in 2017; Hungary in 2015, 2018, 2020, and 2021; Poland in 2014, 2016, 2017, 2018, 2019, 2020, 2021, 2022, and 2023; and Slovakia in 2015). There was a higher

Table 1. The number of annulment actions by the V4 against EU legislation (2004–2023).

Czechia	Hungary	Poland	Slovakia
1	4	19	1

Table 2. The number of annulment actions from member states in the EU Eastern periphery against EU legislation before the CJEU (2004–2023).

Bulgaria	Croatia	Estonia	Latvia	Lithuania	Romania	Slovenia
3 (2020 transport package)	0	1	0	2 (2020 transport package)	3 (2020 transport package)	0

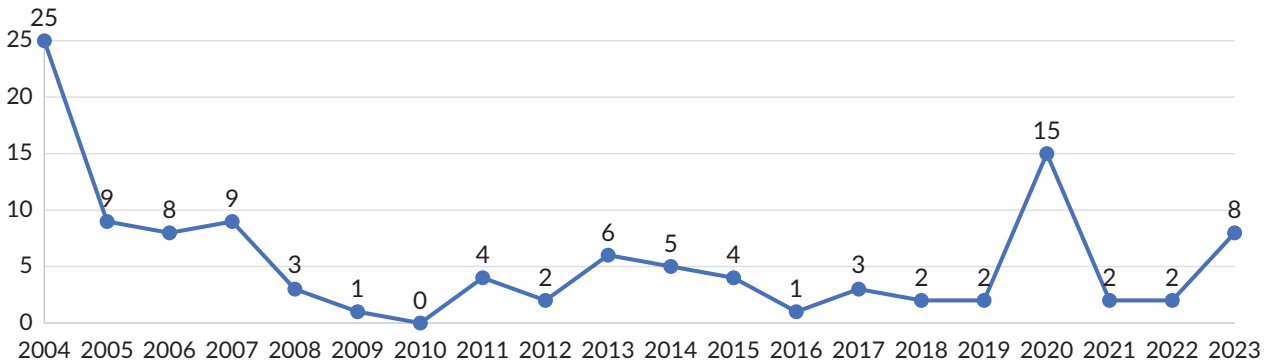


Figure 1. The number of annulment actions brought to the CJEU against legislative measures by all EU member states (2004–2023).

intensity of litigation activity in the years when the EU adopted complex legislative packages—in 2020 due to the EU transport policy package (Hungary and Poland) and in 2023 due to the EU climate law package (Poland).

Thematically, the legal actions brought by the V4 members against EU legislative measures concerned five larger areas of EU action (see Figure 3). These were the conditions of accession, internal market harmonization, including the common transport market, asylum, and migration, the protection of the EU's financial interests (and the EU rule of law), and energy and climate change. From the V4 group, only Poland challenged the asymmetric conditions of EU accession, although one of its actions was supported by the interventions of Hungary, Latvia, and Lithuania. So far, legislative measures in EU energy and climate change policy have only been contested by Poland. Only the V4 member states directly impacted by migration policies measures and policies for the protection of financial interests showed interest in challenging them. Internal market harmonization seems to be a common, although not particularly intensively litigated, area of concern for these member states.

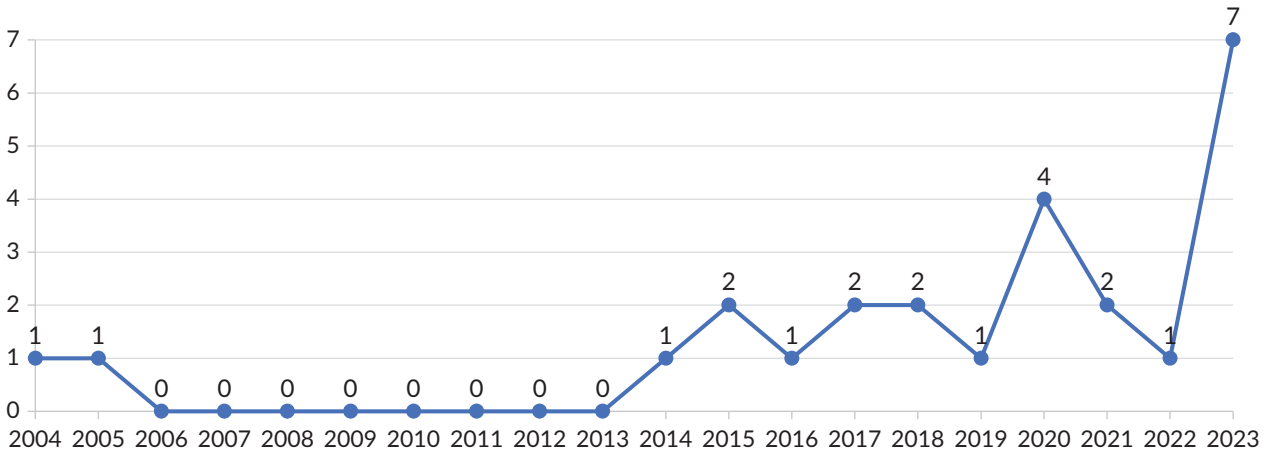


Figure 2. The temporal distribution of annulment actions from the V4 member states against EU legislation before the CJEU (2004–2023).

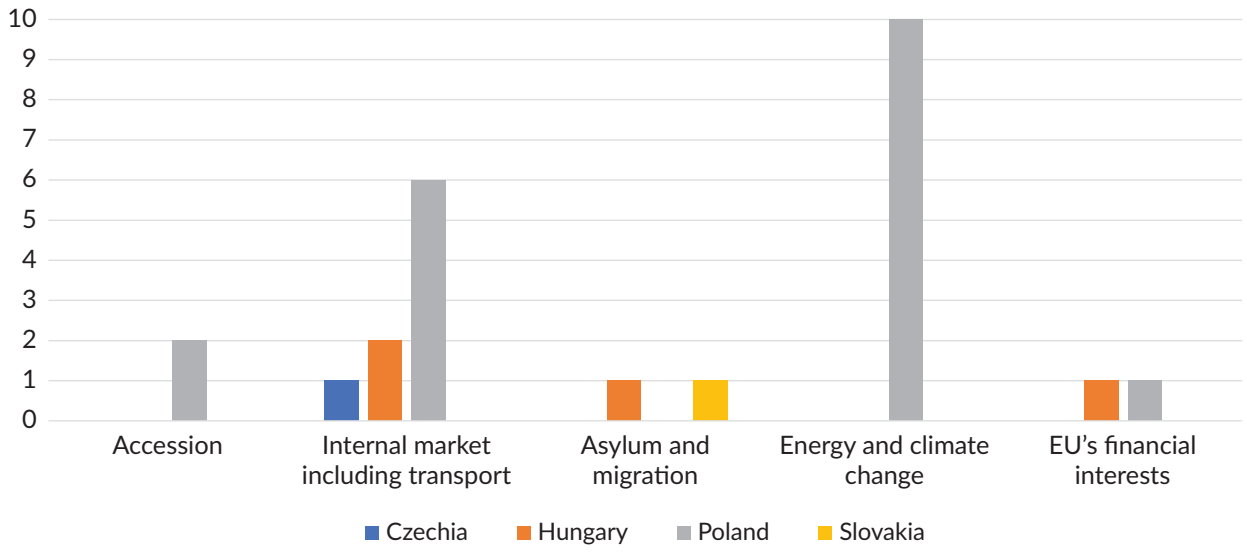


Figure 3. Areas of EU action affected by annulment actions from the V4 member states (2004–2023).

Thus far, the V4 member states have failed with their annulment challenges against EU legislative measures, as all the actions were rejected by the CJEU. In their annulment actions, this group raised different complaints against the EU legislative measures. The discriminatory or unacceptably differentiated treatment of member states emerged as a complaint in several cases. In the two early cases concerning the conditions of accession, Poland essentially challenged the asymmetric transitional arrangements of the accession period that disadvantaged the new member states vis-à-vis the position enjoyed by older state members.

In the direct agricultural payments case (*Poland v. Council*, 2007), Poland explicitly claimed that there was unacceptable discrimination between the old and the new member states in accessing direct agricultural subsidies in the Common Agricultural Policy. It aimed to protect its position held during the accession negotiations, that its agriculture was entitled to complete access to the entire Common Agricultural Policy, and contended that the "phasing-in system" agreed in the Act of Accession for direct subsidies for the new member states as set out in Council Decision of 22 March 2004 (2004) was unlawful. In the other case (*Poland v. Parliament and Council*, 2007), Poland did not rely on the equal treatment principle. It challenged Directive 2005/36/EC (2005) on the ground that it was not supported with adequate reasons. The directive, which retained the rule included originally in the Act of Accession, prescribed a longer period of professional experience as a condition for the automatic recognition of Polish qualifications for health care workers than that applicable to other national qualifications.

Discrimination among the member states as an explicitly formulated complaint emerged only exceptionally in subsequent V4 annulment litigation. In one of its 2023 climate law cases (*Poland v. Parliament and Council*, n.d.a), Poland, as part of its multi-tiered litigation strategy, put forward a general claim of discriminatory treatment (and of creation of an "unjustified imbalance") among the member states. In the atmospheric pollutant emissions case *(Poland v. Parliament and Council*, 2019), Poland contended—among its other claims—that in the legislative process, the member states and their interests were subjected to unequal treatment, which contradicted the EU principle of sincere cooperation. It also claimed that the measure violated the principle of equality of member states as it imposed the same obligations on members with different economic, social, and technological conditions. This latter complaint of subjecting different member states in objectively distinct economic and social contexts to equal European requirements was raised in other cases too. For example, in the cases *Hungary v. Parliament and Council* (2020) and *Poland v. Parliament and Council* (2020), where these member states challenged the Directive (EU) 2018/957 (2018), it was not evident that a non-discrimination claim was being formulated. However, it was contended that the new common rules eliminated legitimate competitive advantages, enjoyed by a certain cohort of member states due to the lower wages and lower labor costs in their economies, within the EU.

As an alternative complaint, V4 cases challenged EU legislative measures for the disproportionate or unfair disadvantages they allegedly caused for economies and societies in the EU periphery or a particular member state. In the 2020 transport policy package cases—see *Hungary v. Parliament and Council* (n.d.) and *Poland v. Parliament and Council* (n.d.g, n.d.h, n.d.i)—the applicants claimed that the new regulatory requirements, by excessively increasing their regulatory, financial, and operational burdens, undermined the position of transport undertakings from the "EU-13 member states" in the competition with their West European competitors. The competitive position of undertakings in Eastern Europe was also undermined by the imposition of uniform EU rules despite their objectively different situation from undertakings from Western Europe. Hungary contended specifically that this violated the non-discrimination principle as

regards the undertakings affected, which should have been considered by the EU legislature alongside the "special circumstances" of countries on the EU periphery. In its early energy and climate change policy cases (*Poland v. Parliament and Council*, 2018, 2019), Poland complained about the excessive and disproportionate local costs of implementing the EU measure and/or its potential for undermining the competitiveness of the economic sector affected and the national economy at large. In its tobacco control regulation case (*Poland v. Parliament and Council*, 2016), Poland challenged the internal market harmonization measure on the ground that it threatened to disadvantage the Polish economy disproportionately, amounting to concrete economic and social losses.

The failure to analyze using reliable evidence and data and to take into account a member state's particular situation, interests, or reservations about the EU policy in the EU legislative process emerged as a complaint in a considerable number of Polish annulment cases. Substantively, this complaint is largely congruent with the complaint concerning the disproportionate local disadvantages of EU policy; however, it was raised as a separate annulment claim. In some instances, it was linked to other substantive complaints, such as the ones regarding the threat of vital national interest and the ignorance in the EU decision-making process of the actual pressures and limitations faced at the national level. Poland has been using different concrete legal claims to put forward this complaint before the CJEU. In its more recent energy and climate change policy cases, it relied on the EU principle of energy solidarity (*Poland v. Parliament and Council*, n.d.c, n.d.d, n.d.e), the EU principle of sincere cooperation (*Poland v. Parliament and Council*, n.d.d, n.d.e), the principle of proportionality (*Poland v. Parliament and Council*, n.d.c, n.d.d), the requirements imposed in Article 191(3) TFEU on the impact assessment preparation of EU environmental policy measures (*Poland v. Parliament and Council*, n.d.a, n.d.b), and the general requirement of adequate legislative impact assessment (*Poland v. Parliament and Council*, n.d.a, n.d.b, n.d.c). These actions followed the example set in the earlier atmospheric pollutant emissions case (*Poland v. Parliament and Council*, 2019), in which Poland claimed the violation of the principles of sincere cooperation, equal treatment, proportionality, openness, transparency, the general requirement of adequate legislative impact assessment, and the obligation to provide sufficient reasons.

Competence arrangements within the EU, in parallel with the protection of national competencies and policy autonomy, presented a further area of challenge in V4 annulment litigation. A complaint could be formulated as a simple claim that the legal basis selected to adopt the challenged measure was unsuitable (*Hungary v. Parliament and Council*, 2020; *Poland v. Parliament and Council*, n.d.e, n.d.f, 2020) or in a more elaborate argumentative way, aiming to protect national competences and/or prevent EU interferences in areas of exclusive national competence (*Hungary v. Parliament and Council*, 2020). The violation of the conferred powers principle has also been raised in several cases (*Czechia v. Parliament and Council*, 2019; *Poland v. Parliament and Council*, n.d.a). In the Polish energy and climate change policy cases (*Poland v. Parliament and Council*, n.d.a, n.d.b, n.d.c, n.d.d, n.d.e, n.d.g, n.d.j, n.d.k, 2018, 2019), the central claim was that an incorrect legal basis had been used to adopt the legislative measures challenged. The choice of this legal base prevented Poland from protecting the national competence in determining the national energy mix and the general structure of the energy supply. Poland also complained about external interference in its energy sovereignty, in particular as regards its choice of relying on fossil fuels within its energy system. In annulment litigation against internal market harmonization measures (*Czechia v. Parliament and Council*, 2019; *Poland v. Parliament and Council*, 2016), the litigant member states raised the traditional, although usually unsuccessful claim that the internal market harmonization competence conferred on the

EU cannot be used to adopt measures the genuine aim of which is to regulate the market. The Czech case (*Czechia v. Parliament and Council*, 2019) also claimed that the EU measure constituted unlawful interference in core areas of national sovereignty and the fundamental rights of its citizens. In some cases (*Poland v. Council*, 2007; *Poland v. Parliament and Council*, 2018), the illegality of the measure was claimed also on account of violation of the relevant power arrangements among the EU institutions.

The V4 annulment cases also challenged EU legislative measures for what seemed like genuine legal errors. The lack of proportionality, in light of the objectives to be achieved, of the regulatory or administrative burdens that may arise from the challenged measure for the member states and/or for individuals was litigated frequently (*Czechia v. Parliament and Council*, 2019; *Hungary v. Parliament and Council*, n.d., 2020; *Poland v. Parliament and Council*, n.d.a, n.d.b, n.d.e, n.d.g, n.d.h, n.d.i, n.d.k, 2016, 2018, 2020; *Slovakia and Hungary v. Council*, 2017). The legal errors litigated also included the violation of the Charter of Fundamental Rights (*Poland v. Parliament and Council*, n.d.g, n.d.h, n.d.i, 2022b), the breach of the principle of good faith (*Poland v. Council*, 2007), unjustified discrimination between private individuals (*Poland v. Parliament and Council*, n.d.e), the violation of the principles of legal certainty, legislative clarity, and/or the protection of legitimate expectations (*Czechia v. Parliament and Council*, 2019; *Hungary v. Parliament and Council*, n.d., 2020; *Poland v. Parliament and Council*, n.d.g, n.d.h, n.d.i, n.d.j., 2018, 2020), the breach of the institutional dimension of the subsidiarity principle (*Poland v. Parliament and Council*, n.d.e, 2016), and the violation of parallel provisions of EU law (*Hungary v. Parliament and Council*, 2020; *Poland v. Parliament and Council*, 2020). In its recent climate law cases, Poland decided to litigate the violation of the EU's general socio-economic objectives laid out in TEU and TFEU provisions by pointing out that EU policy will lead to economic decline, reduced social well-being, a rise in unemployment, and greater social equality and exclusion (*Poland v. Parliament and Council*, n.d.b, n.d.c). It also claimed a breach of the proportionality principle on account of these negative social consequences (*Poland v. Parliament and Council*, n.d.b).

Generally, the annulment actions from the V4 member states challenged EU legislative measures on multiple grounds. This was demonstrated clearly in the earlier overview of the different legal claims and complaints raised in V4 annulment litigation. Slovakia and Hungary followed the same strategy in their annulment actions (*Slovakia and Hungary v. Council*, 2017) against the Council's 2015 temporary relocation mechanism decision (Council Decision (EU) 2015/1601, 2015) in the field of EU asylum and migration policy. They contended that the measure was disproportionate and violated legal certainty and legislative clarity, it was adopted using the wrong legal base, the legislative process was vitiated by serious errors, (during the adoption of the measure) the respective powers of the EU institutions had not been observed, the measure was adopted by qualified majority even though the European Council favored a decision by consensus, national parliaments had not been allowed political control over its adoption, and the EU legislature had failed to take into account the particular local circumstances and relevant changes in them. The Hungarian and the Polish challenges (*Hungary v. Parliament and Council*, 2022; *Poland v. Parliament and Council*, 2022a) against the EU rule of law conditionality regulation (Regulation (EU, Euratom) 2020/2092, 2020) were constructed similarly. They claimed the violation of EU competence arrangements on multiple grounds, of parallel provisions of EU law, the principle of proportionality, and the principle of legal certainty. Poland also claimed the breach of the institutional dimension of subsidiarity, the obligation to provide sufficient reasons, and the principle of equality of member states. It also tried to litigate the key TEU and TFEU provisions introduced to protect national competences, the essential functions of member states, and national identities.

4. Analysis

The litigation statistics suggest that Poland has adopted, in the specific domain of judicializing legislative conflicts within the EU, a different approach to EU membership from the other V4 states. Its preparedness to bring disagreements and conflicts before the CJEU has varied over time; however, the data indicate a behavior that is exceptional within the V4 group and, more recently, even within the EU. Hungary's behavior may also be distinguished among the V4. Hungary was a somewhat more active and conscious litigant than the very reluctant Czechia and Slovakia. The increase of litigation activity by Poland in the second decade of EU membership coincided with a change of government and domestic politics; however, there is no obvious relationship between the political turn and the cases launched. The case files in the Czech, Hungarian, and Slovak cases do not enable do not enable inferences about the impact of national politics on the use of annulment litigation.

Analyzing the motivations of the V4 member states in annulment litigation against EU legislative measures, having regard to the complexity and the sometimes controversial nature of claims and complaints presented in their cases, is a challenging task. In the majority of cases, the litigant member state put forward a multi-tiered annulment challenge that addressed a broad range of alleged legal errors combining conventional and less conventional complaints. It is rather difficult to distinguish, based on the case documents, which of these multiple claims presented genuine legal challenges and which were submitted for a different purpose, for example, to express a political grievance instead of convincing the CJEU of the illegality of the EU measure. In such circumstances, it may be impossible to establish that the member state concerned did not have any interest in achieving the narrower legal objective of securing the annulment of the challenged EU measure and was pursuing exclusively one or more possible political motivations with its action. The complexity of multi-tiered annulment claims also means that any attempt to determine with precision which exact non-legal motivation, or which combination of motivations, may have driven the litigant member state to judicialize its legislative conflict within the EU may encounter considerable difficulties. As a final difficulty, the V4 annulment cases involved different types of challenges, with certain groups of cases sharing similar patterns, which require different ways of assessing the potential motivation of the litigant member state.

As a particular problem for our analysis, it is rather evident that in some cases the member state concerned aimed to bring before the CJEU a political grievance suffered in EU decision-making and it had to seek ways to present its grievance as a legal error that is admissible in an action for annulment. In these cases, it is difficult to establish whether the applicant believed that the reframing of its political grievance as a ground for annulment may lead to legal success in litigation, or it had no intention of succeeding with its legal claim and its purpose with litigation was political. As shown earlier, Poland, and to some extent Hungary and Slovakia too, tried judicializing the intra-EU conflict, claiming that its interests and/or its economic and social circumstances (or those of the member states in the EU's Eastern periphery) had been suppressed or overlooked in EU decision-making. The relevant Polish annulment actions seem to have resorted to different legal strategies, which suggests experimentation with potential legal grounds to bring this grievance before the CJEU. In a few cases, the action claimed discrimination between the member states and the violation of the principle of equality. In other cases, the grievance was formulated as a complaint of disproportionate or otherwise unacceptable disadvantaging of the member state(s) affected. Alternatively, the member state concerned would claim a failure to assess appropriately the consequences of the challenged EU measure at

the national level. These choices by Poland can indicate that it had genuine intentions of eventually succeeding with its claim, or the opposite, that its aim was solely to voice its grievance in different ways.

Because of the limited legal claims submitted to the CJEU, the early Polish cases challenging the conditions of accession are perhaps the least complicated to analyze. Poland disagreed with the unequal conditions of membership laid out in the Act of Accession and challenged the subsequently adopted EU legislative measures implementing them. Although it managed to put together generally respectable legal challenges, its annulment claims were not particularly strong considering that the legal situation arising from the relevant provisions of the Act of Accession was clear. The Polish applications were dismissed by the CJEU in relatively short judgments. The broader motivations of Poland for these actions are not disclosed in the case documents; however, the strength of Poland's legal arguments and their eventual treatment in the CJEU's judgments suggest that the actions may have primarily served symbolic political purposes, indicating the preparedness of the government to protect local interests, in particular financial or other similar interests of domestic constituents. Securing full access to EU agricultural subsidies and reducing the burdens of accessing the EU labor market for domestic workers were salient issues in national politics in the immediate post-accession period. By actively challenging the EU legislative rules contradicting local interests, the national government could expect to gain political benefits at the national level.

As discussed in the previous section, in the four cases challenging internal market harmonization directives, the litigant member states put forward legal claims that are rather conventional in annulment litigation. They included the use of an unsuitable legal base to adopt the contested legislative measure, the violation of general principles of EU law, and the breach of specific provisions of EU substantive law. The choice of these claims may indicate that litigation aimed to secure the annulment of the challenged EU measure. However, since the majority of the alleged legal errors related to the division of competences between the EU and the member states, it is rather evident that the member state concerned also aimed to interfere with EU competence arrangements, possibly to its own advantage. These claims also demanded the interpretation of the law from the CJEU, indicating that the actions might have been motivated by the intention of shaping the legal discourse and, with that, influencing the behavior of the EU actors that participate in the EU legislative process. The circumstance that the claims relating to the use of the EU's internal market harmonization legal base were not particularly strong and that the CJEU dismissed them together with the other claims, as well as the reliance in some of the cases on rather unconventional complaints against the challenged EU measure suggests the presence of other motivations too.

The complaints alleging that the internal market harmonization measure in question caused disproportionate economic and social disadvantages domestically or that it undermined legitimate national competitive advantages are likely to have been motivated by the determination of the litigant member state to avoid the costs of adaptation that may arise from a misfit between national policy and the uniform policy implemented by the common EU rules. Arguably, these complaints also represent policy preferences in the member state concerned that are different from the objectives of the EU policy. Signaling towards the relevant local constituents the preparedness of the national government to protect their interests may also have motivated these actions. The harmonized rules increased the regulatory burdens of identifiable national actors and/or interfered with their preferred way of conduct. Poland's action against the digital single market copyright directive (Directive (EU) 2019/790, 2019) is perhaps an exception within this group of cases. The legal challenge claiming the breach of EU fundamental rights seemed genuine and Poland genuinely

sought a legal interpretation from the CJEU. However, no other motivation for the action can be identified based on the documents of the case.

The actions in the road transport cases combined annulment grounds that, on the one hand, suggest a genuine intention by the litigant member state to secure the annulment of the challenged measure. However, on the other, as revealed in the previous section, Hungary and Poland also made it clear in their largely corresponding actions that the local costs and other burdens of policy adaptation would be disproportionately, unfairly high, and that their policy preferences do not correspond with the EU policy's direction. Based on the specific arguments put forward in support of the legal claims, the actions may also have been submitted to the CJEU to demonstrate, in the domestic political arena, the preparedness of the national government to protect the interests of local actors, thus gaining their trust.

The motivations of Poland in its energy and climate change policy annulment cases appear to be similarly multifaceted. Based on the legal claims litigated in these cases, it cannot be excluded that Poland launched these actions with a genuine interest in legal success. However, multiple indications demonstrate that achieving the annulment of the challenged EU measures may not be/may not have been a priority for Poland. In particular, from time to time, it relied on a litigation strategy, such as the claim of discrimination between the member states or the claims regarding atmospheric pollutant emissions, that had not proven successful the first time around. Its actions also included legal claims, such as the violation of the general socio-economic objectives expressed in the TEU and the TFEU, that are likely to be inadmissible before the CJEU. The potential political motivations pursued by Poland also emerge from the particular complaints put forward in the cases. Poland specifically addressed the EU competence arrangements aiming to shelter national competences. It also sought legal interpretation on the division of competences in energy policy. Finally, it also made it clear that it was dissatisfied with the local disadvantages of EU policy and the overlooking of particular local circumstances and that it aimed to protect evident local interests. Therefore, motivations, such as the protection of national policy preferences, the avoidance of policy adaptation costs, and even political signaling towards the electorate and/or other political partners might have influenced its actions.

In their challenges against the 2015 temporary relocation mechanism, Hungary and Slovakia put together a complex set of rather similarly formulated legal claims. These claims reveal several motivations for their actions beyond the objective of securing the annulment of the Council's decision that both these members, having regard to the litigated legal errors, assumedly pursued. Both member states contended that the EU measure does not fit with local policy preferences and with the particular local circumstances and the changes in them. They also aimed to influence competence arrangements in this specific area of emergency EU action. Regardless of the strength of the legal claims presented in the cases, the launching of the actions had evident benefits in national politics in the political circumstances of the time. The annulment actions against the rule of law conditionality regulation relied on legal claims that suggest that legal success was a probable aim for the litigant member states. However, the actions also reveal that both Hungary and Poland wanted to address competence arrangements within the EU, aiming to avoid an unwanted extension of EU competences into matters of national importance. Poland went further and litigated, in a not particularly convincing manner, some general EU institutional principles to support its claim against the exercise of EU competences and EU intervention in domestic matters. Considering the specific objectives of the conditionality regulation, these were annulment actions in which the outcome of litigation had a direct impact on the material interests of

the member state concerned. Also, both cases presented an evident opportunity for national governments to demonstrate their trustworthiness and responsiveness towards local constituents.

5. Conclusions

The V4 member states have been using the action for annulment to challenge EU legislative measures, and there is evidence that they have been using the procedure for purposes beyond its legalistic objectives. Confirming expectations of divergent behavior among this group in the EU, Poland has emerged as the most frequent V4 litigant to judicialize its EU legislative conflicts. In the last decade, coinciding with a period of illiberal political change domestically, it has become the EU's most frequent user of annulment actions against EU legislation. The other V4 member states have been more reluctant litigants. Only Hungary shows some propensity to bring its legislative conflicts to the CJEU. The areas of conflict judicialized by Poland included EU energy and climate change policy, internal market harmonization including transport policy harmonization, the linking of the EU's financial interests to the EU rule of law framework, and, immediately after 2004, the conditions of EU accession. Poland initiated parallel annulment challenges against the measures in significant EU regulatory packages, most recently the 2023 climate law package. Poland's legal challenges have been characterized by repeated attempts to complain that EU decision-making and the legislative measure adopted had overlooked particular interests or particular socio-economic conditions in Poland or other member states in the EU periphery. Additionally, it also complained about discriminatory or unacceptably differentiated treatment among the member states by EU legislation adopted to realize common European objectives. The evidence we have collected, which was predominantly legal—and sometimes incomplete—evidence, did not provide proof that Poland's annulment challenges or the specific complaints raised would have been influenced by a change in domestic policy.

The case documents examined revealed that V4 challenges against EU legislative measures have pursued one or a combination of the political motivations identified in previous research. In litigation by every V4 member state, we found evidence that the applicant state—the issue being a component of its legal challenge—aimed to shape EU competence arrangements, either to protect national competences or to avoid EU interference with certain domestic matters. As a parallel motivation, they also sought to influence the CJEU's interpretation of the relevant competences provision. Avoiding the costs of local policy adaptation and/or the protection of the promotion of a particular policy preference has also motivated the actions for annulment launched by the V4 member states, in particular litigation by Poland. The motivation for securing material gains was not particularly prevalent in annulment litigation by the V4 member states against EU legislative measures. This may be explained by the circumstance that this particular motivation had been established by previous research in connection with annulment actions initiated against EU administrative measures with direct financial implications that were issued in the context of EU State aid, agricultural, or regional development policy. In our assessment, the case documents provide evidence that the member states in the V4 group have tried to secure gains in domestic politics with their annulment challenges. We inferred this from the litigation strategy pursued in the case and/or the relative strength of legal claims concerning their likelihood of success before the CJEU, sometimes together with the concrete policy or political context of the case.

Conflict of Interests

The authors declare no conflict of interests.

Data Availability

To have access to the data contact the corresponding author.

Supplementary Material

Supplementary material for this article is available online in the format provided by the authors (unedited).

References

Adam, C. (2016). *The politics of judicial review: Supranational administrative acts and judicialized compliance conflict in the EU*. Palgrave Macmillan.

Adam, C. (2018). Multilevel conflict over policy application–detecting changing cleavage patterns. *Journal of European Integration*, *40*(6), 683–700.

Adam, C., Bauer, M. W., & Hartlapp, M. (2015). It's not always about winning: Domestic politics and legal success in EU annulment litigation. *Journal of Common Market Studies*, *53*(2), 185–200.

Adam, C., Bauer, M. W., Hartlapp, M., & Mathieu, E. (2020). *Taking the EU to court: Annulment proceedings and multilevel judicial conflict*. Palgrave Macmillan.

Alter, K. J. (1998). Who are the "Masters of the Treaty"?: European governments and the European Court of Justice. *International Organization*, *52*(1), 121–147.

Alter, K. J., & Vargas, J. (2000). Explaining variation in the use of European litigation strategies: European Community law and British gender equality policy. *Comparative Political Studies*, *33*(4), 452–482.

Bauer, M. W., & Hartlapp, M. (2010). Much ado about money and how to spend it! Analysing 40 years of annulment cases against the EU Commission. *European Journal of Political Research*, *49*(2), 202–222.

Bauerová, H. (2018). The V4 and European integration. *Politics in Central Europe*, *14*(2), 121–139.

Carrubba, C. J., Gabel, M., & Hankla, C. (2008). Judicial behavior under political constraints: Evidence from the European Court of Justice. *American Political Science Review*, *102*(4), 435–452.

Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece. (2015). *Official Journal of the European Union*, L248/80. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015D1601

Council Decision of 22 March 2004 adapting the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, following the reform of the common agricultural policy. (2004). *Official Journal of the European Union*, L93/1. https://eur-lex.europa.eu/eli/dec/2004/281/oj

Czechia v. Parliament and Council, C-482/17, EU:C:2019:1035 (2019).

Dangerfield, M. (2008). The Visegrád Group in the expanded European Union: From pre-accession to post-accession cooperation. *East European Politics and Societies*, *22*(3), 630–667.

Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications. (2005). *Official Journal of the European Union*, L255/22. https://eur-lex.europa.eu/eli/dir/2005/36/oj

Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. (2018). *Official Journal of the European Union*, L173/16. https://eur-lex.europa.eu/eli/dir/2018/957/oj

Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC. (2019). *Official Journal of the European Union*, L130/92. https://eur-lex.europa.eu/eli/dir/2019/790/oj

Garrett, G., Kelemen, R. D., & Schulz, H. (1998). The European Court of Justice, national governments, and legal integration in the European Union. *International Organization*, *52*(1), 149–176.

Granger, M.-P. F. (2004). When governments go to Luxembourg: The influence of governments on the Court of Justice. *European Law Review*, *29*(1), 3–31.

Hartlapp, M. (2018a). Power shifts via the judicial arena: How annulments cases between EU institutions shape competence allocation. *Journal of Common Market Studies*, *56*(6), 1429–1445.

Hartlapp, M. (2018b). Why some EU institutions litigate more often than others: Exploring opportunity structures and actor motivation in horizontal annulment actions. *Journal of European Integration*, *40*(6), 701–718.

Hungary v. Parliament and Council, C-551/20 (n.d.).

Hungary v. Parliament and Council, C-620/18, EU:C:2020:1001 (2020).

Hungary v. Parliament and Council, C-156/21, EU:C:2022:97 (2022).

Kazharski, A. (2018). The end of "Central Europe"? The rise of the radical right and the contestation of identities in Slovakia and the Visegrad four. *Geopolitics*, *23*(4), 754–780.

Kazharski, A. (2020). An ad hoc regionalism? The Visegrád four in the "post-liberal" age. *Polity*, *52*(2), 250–272.

Kelemen, D. R. (2011). *Eurolegalism*. Harvard University Press.

Kral, D. (2003). *Profile of the Visegrád countries in the future of Europe debate* (Working Paper). EUROPEUM Institute for European Policy. http://pdc.ceu.hu/archive/00002118/01/Visegrad_in_Convention.pdf

Martinsen, D. S. (2015). *An ever more powerful court? The political constraints of legal integration in the European Union*. Oxford University Press.

Mathieu, E., Adam, C., & Hartlapp, M. (2018). From high judges to policy stakeholders: A public policy approach to the CJEU's power. *Journal of European Integration*, *40*(6), 653–666.

Mathieu, E., & Bauer, M. W. (2018). Domestic resistance against EU policy implementation: Member states motives to take the Commission to court. *Journal of European Integration*, *40*(6), 667–682.

Mattli, W., & Slaughter, A.-M. (1998). Revisiting the European Court of Justice. *International Organization*, *52*(1), 177–209.

McCown, M. (2003). The European Parliament before the bench: ECJ precedent and EP litigation strategies. *Journal of European Public Policy*, *10*(6), 974–995.

Mišík, M., & Oravcová, V. (2022). The myth of homogeneity: The Visegrad group's energy transition. In G. Wood, V. Onyango, K. Yenneti & M. A. Liakopoulo (Eds.), *The Palgrave handbook of zero carbon energy systems and energy transitions* (pp. 1–24). Palgrave Macmillan.

Nič, M. (2016). The Visegrád group in the EU: 2016 as a turning-point? *European View*, *15*(2), 281–290.

Ovádek, M. (2021). Supranationalism, constrained? Locating the Court of Justice on the EU integration dimension. *European Union Politics*, *22*(1), 46–69.

Poland v. Council, C-273/04, EU:C:2007:622 (2007).

Poland v. Parliament and Council, C-442/23 (n.d.a).

Poland v. Parliament and Council, C-444/23 (n.d.b).

Poland v. Parliament and Council, C-445/23 (n.d.c).

Poland v. Parliament and Council, C-451/23 (n.d.d).

Poland v. Parliament and Council, C-505/23 (n.d.e).

Poland v. Parliament and Council, C-512/23 (n.d.f).

Poland v. Parliament and Council, C-553/20 (n.d.g).

Poland v. Parliament and Council, C-554/20 (n.d.h).

Poland v. Parliament and Council, C-555/20 (n.d.i).

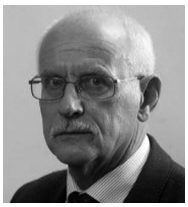
Poland v. Parliament and Council, C-675/22 (n.d.j).
Poland v. Parliament and Council, C-771/23 (n.d.k).
Poland v. Parliament and Council, C-460/05, EU:C:2007:447 (2007).
Poland v. Parliament and Council, C-358/14, EU:C:2016:323 (2016).
Poland v. Parliament and Council, C-5/16, EU:C:2018:483 (2018).
Poland v. Parliament and Council, C-128/17, EU:C:2019:194 (2019).
Poland v. Parliament and Council, C-626/18, EU:C:2020:1000 (2020).
Poland v. Parliament and Council, C-157/21, EU:C:2022:98 (2022a).
Poland v. Parliament and Council, C-401/19, EU:C:2022:297 (2022b).
Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget. (2020). *Official Journal of the European Union*, L433/1. https://eur-lex.europa.eu/eli/reg/2020/2092/oj
Schmidt, S. K. (2018). *The European Court of Justice and the policy process*. Oxford University Press.
Slovakia and Hungary v. Council, C-643/15 and C-647/15, EU:C:2017:631 (2017).
Stone Sweet, A. (1999). Judicialization and the construction of governance. *Comparative Political Studies*, *32*(2), 147–184.
Vachudova, M. A. (2001). The division of Central Europe. *The New Presence*, *3*(3), 12–14.
Vachudova, M. A. (2005). *Europe undivided: Democracy, leverage, and integration after communism*. Oxford University Press.
Vachudova, M. A. (2020). Ethnopopulism and democratic backsliding in Central Europe. *East European Politics*, *36*(3), 318–340.

About the Authors

Marton Varju is a research professor at the Institute for Legal Studies, HUN-REN Centre for Social Sciences in Budapest. He is also affiliated with the Faculty of Social Sciences, ELTE University, Budapest. Marton holds a PhD in law from the University of Hull, UK. His research interests lie in European legal studies, the regulation of novel technologies, and the Europeanisation of legal systems.

Veronika Czina is a research fellow at the HUN-REN Centre for Economic and Regional Studies, Institute of World Economics. She holds an MA in international relations from ELTE University, Budapest (2012) and from Central European University (2013). She earned her PhD from the University of Debrecen in 2021. Previously, she has been an external lecturer at ELTE University, Institute of Political and International Studies. Her research focuses on Hungary's membership of the EU, the EU rule of law mechanism, and EU decision-making.

Kati Cseres is an associate professor of law at the Amsterdam Centre for European Law and Governance (ACELG) and program director of the MA in EU law at the University of Amsterdam. She is the co-director of the Good Lobby Profs initiative and an editor of the journal *Legal Issues of Economic Integration*. Her research investigates uneven power structures and relations in (EU) competition law, consumer law, constitutional law, and sectoral regulation (energy law).



Ernő Várnay is a research professor at the Institute for Legal Studies, HUN-REN Centre for Social Sciences in Budapest. He was formerly professor of law and head of department at the University of Debrecen, Faculty of Law. His research interests lie in the institutional and procedural law of the EU, EU constitutional law, and empirical European legal studies.