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Explaining interest group litigation in Europe: Evidence from the comparative interest group survey

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Abstract

Litigation has long been a part of interest groups' lobbying tactics in the U.S. In Europe, by contrast, taking political conflicts to court has traditionally been viewed with skepticism. However, in the wake of an increasing judicialization of politics in Europe, litigation has also become part of the toolbox of European interest groups. Using original survey data from five European countries, we study how they use that tool. We show that European interest groups go to court somewhat less often than their American counterparts, but that the groups that do end up in court have similar characteristics. Overall, we find that the more politically active and resourceful a group is, the more likely it is to turn to the courts. However, a subset of politically active groups, one that deploys distinct outsider tactics, is more likely to use litigation than the rest. Government funding, however, reduces groups' propensity to litigate.

1 | INTRODUCTION

The field of interest group politics in Europe has seen burgeoning growth over the last decade (Berkhout & Lowery, 2010, p. 449; Bunea & Baumgartner, 2014, p. 1420). A significant subset of related studies asks why interest groups choose certain courses of action over others (Hofmann, 2017; Klüver et al., 2015). The "menu" of possible actions is certainly vast, ranging from "outsider" activities such as writing opinion pieces or staging protests, strikes

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or boycotts, to "insider" activities such as serving on advisory commissions. A newer point of interest for such studies in Europe has been litigation as a tactic to influence political outcomes. Court judgments can have effects that are very similar to decisions by policymakers or public administrations, which are the traditional targets of advocacy. Where an interest group believes to have legal arguments on its side, litigation can serve to alter the content of existing policies, enforce ineffective policies, or prevent undesired policy change. Originally, a predominantly American preoccupation, academic attention to how interest groups mobilize law has of late assumed a more global outlook (Epp, 1998). In Europe, the expansion of access to courts and the growing availability of directly enforceable individual rights, not least through European Union (EU) law and the European Convention on Human Rights, have led to an increased prominence of litigation and heightened attention to courts as venues for political conflict (Kelemen, 2011), despite the fact that Europeans have traditionally looked with horror at the prominence of litigation in American political culture. Whereas these newfound legal opportunities have substantially increased the possibility for civil society actors to influence public policy, some observers worry that previously cooperative patterns of governance in Europe will increasingly turn adversarial and legalistic as a consequence (Rehder, 2009). Studying litigation as an advocacy tactic in Europe is therefore increasingly relevant. A small but growing number of studies investigate how European interest groups use legal opportunities (Conant et al., 2017) and how this tactic relates to other advocacy tactics (Bouwen & McCown, 2007; Hilson, 2002). Compared to their American counterparts, however, there is little systematic comparative work done on European interest group litigation.

This article attempts to remedy this shortcoming by asking the following questions: How does litigation fit in with other advocacy tactics, and what kinds of groups engage in litigation? In particular, we investigate the effect of group resources, the source of group funding, the group's "legal consciousness" and its relationship with policymakers on its propensity to litigate. We do so by drawing on a data source that allows for an extensive comparative analysis. Studies that empirically investigate interest group litigation are usually aware of the problem of focusing merely on cases were litigation has actually occurred (Börzel, 2006, p. 129). Case study research faces the problem of identifying groups that did not engage in litigation that could be usefully compared with groups that do (Vanhala, 2017). The present study solves that problem by drawing on large scale survey data (Marchetti, 2015), in particular on data collected by the Comparative Interest Group Survey project (Beyers et al., 2020). This ongoing project surveys the interest group population in several European countries. It defines interest groups as non-governmental organized groups, who act with the purpose of influencing political decisions. Influencing politics does not have to be their primary purpose. This definition includes a broad range of groups, such as business organizations, professional associations, trade unions, cause groups and identity groups. This selection resembles the types of groups sampled in similar American studies (Knoke, 1990; Nownes & Freeman, 1998), which in principle allows for transatlantic comparisons. The present article uses the currently available data for Belgium, Lithuania, the Netherlands, Slovenia and Sweden.

The remainder of this article is structured as follows: The following section introduces a series of explanatory factors relating to interest groups' use of litigation as an advocacy tactic. This is followed by a description of the data with which we test these factors. We subsequently present our analysis, and a final section concludes.

2 | EXPLAINING LITIGATION

The American literature on interest group politics has a longstanding tradition of considering courts as a potential venue for advocacy (Bentley, 1908; Truman, 1951; Vose, 1955). Writing 40 years ago, Karen O'Connor and Lee Epstein already noted that "a legion of scholars has described the judicial lobbying of interest groups" (O'Connor & Epstein, 1981, p. 12). Since the late 1970s, several large-scale survey projects have allowed insights into the relative importance of litigation among U.S. interest group tactics (Heinz et al., 1993; Knoke, 1990; Nownes & Freeman, 1998; Scheppele & Walker, 1991; Schlozman & Tierney, 1986; Spill Solberg & Waltenburg, 2006), highlighting that litigation is less common than contacts with bureaucracy and the legislature, but more common than protest or demonstrations (Baumgartner & Leech, 1998, pp. 152–154).

In comparison, academic interest in interest group litigation in Europe is a fairly new phenomenon that is not well integrated in the mainstream literature on interest group politics. In Europe, courts have only received greater attention in the wake of an apparent judicialization (Shapiro & Stone Sweet, 2002) of European politics. This development has been attributed to the international diffusion of fundamental rights regimes (Epp, 1998) and, in the European Union (EU), the growing prominence of EU law and the EU Court of Justice (Kelemen, 2011). Empirical studies of litigation have more traditionally been the reserve of comparative law and socio-legal research (e.g., Harlow & Rawlings, 1992; Hilson, 2002; Hoevenaars, 2018; Vanhala, 2011). Studies that approach litigation from the perspective of interest group politics more narrowly are comparatively rare (e.g., Bouwen & McCown, 2007), despite the fact that in Europe, too, litigation can sensibly be integrated among the array of advocacy tactics that interest groups pursue (Vanhala, 2017). We see this article as a contribution to integrate these perspectives in the broader interest group literature.

Like other advocacy tactics, litigation is multi-faceted. For one, interest groups use litigation to challenge law on the books. This is the story of much of the civil rights litigation in the U.S. (e.g., Vose, 1959). The same civil rights movement, however, also used litigation to enforce civil rights legislation and Supreme Court precedent against recalcitrant state governments. Environmental NGOs in Europe recently used EU environmental law to challenge restrictive national rules on interest group standing in national courts and, following successes in these cases, pursued litigation to enforce environmental standards against reluctant national authorities (Hofmann, 2019). Interest groups do not need to be party to a case to use legal proceedings to their advantage. Much attention on interest groups' use of the courts has focused on their role as interveners (or *amici curiae*) in cases brought by others (Collins & McCarthy, 2017). Beyond the courtroom, litigation outcomes can be used to mobilize larger audiences. In this regard, the value of a case lost (as a focal point in rallying against perceived injustices) can be equal to that of a case won (NeJaime, 2011, p. 984). The probability of winning is therefore not necessarily a central part of the calculation in deciding whether to pursue a case or not. For these reasons, we use the term "interest group litigation" as a broad header encompassing a multitude of motives and courses of action.

The propensity of interest groups to use (or even to consider using) litigation in order to achieve their objectives depends on a broad number of factors that should be separated analytically (Conant et al., 2017). In particular, a distinction should be made between structural factors and individual factors at the level of the group. As we will describe below, our approach favors the analysis of group-level factors.

2.1 | Structural factors

With regard to structural factors, a prominent approach focuses on what has been termed "legal opportunity structures" (Andersen, 2004; Evans Case & Givens, 2010; Hilson, 2002; Vanhala, 2012), a translation into the legal realm of the concept of "political opportunity structures" for interest group advocacy (Kitschelt, 1986; Kriesi et al., 1992). Legal opportunity structures primarily encompass legal rules on standing and costs that structure access to courts for interest groups. Rules of standing for interest groups vary widely between national legal systems, but also between different issue areas. The costs of court procedures include not only court fees and remuneration for lawyers, but also rules on who bares the cost when the court case is lost. Legal opportunity moreover includes the "legal stock" (Andersen, 2004, p. 12), that is the availability of legal rules that litigation can be based on, as well as the more contingent receptivity of the judiciary to certain types of legal argument (Andersen, 2004, p. 10; Hilson, 2002, p. 243). The latter is closely related to the older notion of "legal culture" (Gibson & Caldeira, 1996; Nelken, 2004), which encompasses culturally shared attitudes towards courts and "the law". In short, legal opportunity structures structure the incentives for interest groups to turn to the courts, but lie largely outside the control of the groups themselves. Our data include interest groups from different European countries, but our research questions are largely directed at the effects of group-level factors. In order not to confound an already complex set of explanatory variables, we have chosen an analytical approach that holds constant factors located at the level of national legal systems (such as costs and legal culture) but remain open to variation at the level of issue areas.

2.2 | Group-level factors

Among the explanatory factors located at the group-level, the most consistently investigated is that of group resources. Most studies on interest group litigation consider resources central to the mobilization of the law (Berry, 1977; Conant, 2016; Scheppele & Walker, 1991). Litigation requires expertise, time and often substantial amounts of money. Marc Galanter's important study on the question "why the haves come out ahead" highlights the advantages that well-funded and experienced litigants (so-called "repeat players") enjoy over others in court proceedings (Galanter, 1974). With increasing resources, moreover, a group will be able to choose several complementary strategies. From this we derive our first hypothesis:

Hypothesis 1. *Greater resources will make an interest group more likely to resort to litigation.*

There is no clear consensus about which indicators best cover the concept of resources, but most studies focus on a group's budget and staff. Access to legal expertise can also be subsumed under this category, in particular the question whether a group employs an in-house lawyer (Cichowski, 2016, p. 893). Taken together, a number of studies emphasize the importance of a "support structure" (Epp, 1998) to sustain litigation, consisting of financial and legal resources (Cichowski, 2007; Conant, 2016).

The existence of such a support structure could also be an expression of the "professionalization" of the interest group in question (McCarthy & Zald, 1973). Professionalization entails a transformation of organizational structures so that decisions are taken by a small professional executive (Klüver & Saurugger, 2013, pp. 186–187). This increases a group's capacity to act,

albeit at the expense of bottom-up membership influence (Skocpol, 2003, pp. 218–220). Professional groups should be more likely to master the complex tasks involved in pursing litigation:

Hypothesis 2. *More professional interest groups are more likely to resort to litigation.*

Another prominent explanatory factor is the proximity of interest groups to policymakers. While this aspect has frequently been the subject of academic attention, there is no consensus on its effect. One approach holds that powerful "insiders" have little incentive to jeopardize their good relationship to policymakers by turning to the courts. Instead, litigation is seen as a last resort when other forms of interaction have failed or relationships broken down (Macaulay, 1963; Morag-Levine, 2003, p. 460). Litigation in this view is a product of social distance, a strategy pursued by strangers that have no interest in future interaction (Coglianese, 1996, pp. 735–736). An alternative formulation of this view, the "political disadvantage theory", assumes that litigation can be a "weapon of the weak", employed by disadvantaged "outsider" groups that otherwise have little sway over policymakers (Cortner, 1968; O'Connor, 1980). There is some evidence that this assumption may hold in Europe. Dagmar Soennecken's study of German non-governmental organizations (NGOs) acting on behalf of refugees showed that groups with privileged access to policymakers through neo-corporatist channels were reluctant to use litigation to confront their counterparts (Soennecken, 2008). Lisa Vanhala's study of environmental NGOs in four European countries found that, in the case of Italian and Finnish groups, a "perceived inability to participate in policymaking" led these groups to turn to the courts (Vanhala, 2017, pp. 400–401). From this we can derive a third hypothesis:

Hypothesis 3a. *"Outsider" groups are more likely to resort to litigation.*

This view, however, is not uncontested. Another strain of scholarship has highlighted the conservative nature of the law, which tends to "secure and sustain the privileges of unequal power" (McCann, 2008, p. 525). This view has two implications. For one, outsider groups that challenge the status quo would have little incentive to engage with the legal system, as it is biased against them. For the other, insider groups in a position of power would have more of an incentive to use the legal system to secure their position. Some evidence supports this view. Susan Olson's study of interest group litigation in the Minnesota federal district court found that, while courts may be more open to politically disadvantaged groups than other political arenas, powerful insiders also litigate (Olson, 1990). Cary Coglianese's study of interest groups' interaction with the U.S. Environmental Protection Agency came to the conclusion that litigation did not disturb relations between interest group representatives and agency staff (Coglianese, 1996). Similarly, Lisa Vanhala's study of French environmental NGOs found that the groups most closely in contact with policymakers were also the most likely to use litigation against public authorities (Vanhala, 2016). From this we can derive two alternative hypotheses:

Hypothesis 3b. *"Outsider" groups are less likely to resort to litigation.*

Hypothesis 3c. *"Insider" groups are more likely to resort to litigation.*

Testing these hypotheses presupposes that it is possible to classify groups as either "insiders" or "outsiders", and that these pursue distinct advocacy tactics that combine to form mutually exclusive insider or outsider "strategies" (Baumgartner & Leech, 1998, p. 162; Milbrath, 1963,

p. 41). Since we believe that the existence of such distinct strategies should be an empirical question, we primarily interpret our hypotheses to imply that litigation will or will not tie in with "typical" insider or outsider tactics and leave it up to the analysis to show whether they cluster into clearly discernible strategies. In this sense, H3a expects litigation to tie in with tactics that are usually pursued at a distance from policymakers, such as the use of mass media or participation in demonstrations and protests (whereas H3b expects a negative relationship). H3c, in turn, expects litigation to tie in with advocacy tactics that imply close contact with policymakers, such as serving on advisory committees or responding to consultations.

An additional factor relating both to resources and to the proximity of groups to public authorities is the source of their funding, in particular the question whether they receive public funding. Scholars have discussed the possible consequences of financial government support, including how co-optation and resource dependency can limit the autonomy and political activity of civil society organizations (Pfeffer & Salancik, 2003). Resource dependence leads to the obvious concern that civil society groups may moderate their behavior in order not to "bite the hand that feeds them". Empirical studies have come to different conclusions. Chaves et al. (2004) find no evidence that government funding suppresses political activity of non-profit organizations in the U.S. Bloodgood and Tremblay-Boire (2017), on the other hand, argue that public donors are likely to discipline NGOs via implicit or explicit threats to withdraw funding should their activity become too radical. Using data from the European Union transparency register, they find that the share of government funding in NGO budgets is negatively associated with lobbying expenditure. We are not aware of any study explicitly linking government funding with groups' propensity to litigate. Nevertheless, it seems reasonable to assume that contesting policy in courts is a type of advocacy tactic that would be particularly vulnerable to dependency on government funding:

Hypothesis 4. *Public funding makes an interest group less likely to resort to litigation.*

A final factor that is frequently invoked in explaining interest group litigation is a group's awareness of the opportunities offered by law and the legal system. Not all groups that potentially could litigate will choose that strategy. For some, a lack of what Marc Galanter has called legal "capability" or "competence" will constitute an impediment to choosing litigation as a course of action (Galanter, 1976, p. 936). In this sense, groups require an ability to conceive of their cause as a legal issue, they need to have information about possible legal avenues of redress and the available remedies, and knowledge on how to manage the claim or how to seek professional counsel. Authors often use the term "legal consciousness" (Silbey, 2009) to describe a similar predisposition. This term is often used in a broad sense to include not only awareness of legal opportunities but also a group's normative predisposition to accept litigation as a legitimate strategy to pursue political goals (Vanhala, 2009, pp. 739–744):

Hypothesis 5. *Greater "legal consciousness" makes an interest group more likely to resort to litigation.*

Our research questions ask how litigation fits with other tactics in the advocacy toolbox and which groups are more likely to litigate than others. Our reading of the existing literature indicates that we should study in particular the amount, types and origins of the resources that groups have access to, their degree of professionalization, the character of their relationship to policymakers, and their knowledge of opportunities for pursuing politics in courts. We now turn to the data upon which our analysis is based.

3 | DATA

The data used here is based on the Comparative Interest Group Survey Project[1] (CIGS), which involves the systematic mapping and surveying of interest group populations in several European countries (Beyers et al., 2020). At the time of writing, data is available for five countries: Belgium, Lithuania, Netherlands, Slovenia and Sweden.[2] In all these countries, CIGS conducted a comprehensive mapping of the interest group population at the national level. The sampling procedures used to define the interest group populations differ somewhat between the different countries, depending on available data. CIGS uses a combination of bottom-up and top-down approaches. Beyers et al. (2020) present a more detailed overview of the sampling procedure. Groups contacted included such that primarily engaged in advocacy as well as such that were only occasionally politically active. Response rates to the survey were in line with standards for such research: 41% for the Belgian survey (693 out of 1,691 contacted groups),[3] 38% for the Dutch survey (937 out of 2,479 contacted groups),[4] 40% for the Lithuanian survey (365 out of 905 contacted group),[5] 36% for the Slovenian survey (439 out of 1,203 contacted groups),[6] and 42% for the Swedish survey (650 out of 1,534 contacted groups).[7]

Our sample is a selection of small and medium-sized countries, all members of the European Union, spanning both Western European neo-corporatist and Eastern European post-communist political systems. They have as yet not received the same amount of academic attention as other, usually larger countries in interest group research. We believe that their diversity increases the generalizability of our results. We should nonetheless be careful with transferring results to larger pluralist (U.K.) or statist (France) countries, or to countries in Southern Europe. However, we have no *a priori* theoretical reason to believe that the theoretical mechanisms identified in the previous section should work very differently in those other types of political systems in Europe.

4 | LITIGATION AND ADVOCACY TACTICS IN FIVE EUROPEAN COUNTRIES

We start our analysis by providing a descriptive overview of the frequencies of litigation and other tactics used by interest groups in the five countries. Thereafter, we employ a principal component analysis to address the question of how litigation fits in with other advocacy tactics. Finally, we conduct a multivariate regression analysis in order to study which group characteristics are associated with litigation as an advocacy tactic.

4.1 | How common is litigation compared to other tactics?

CIGS has systematically asked respondents about the advocacy tactics they pursue. This allows us to place litigation in a rich context of alternative advocacy tactics. Figure 1 lists such tactics ordered by their relative frequencies. The survey items asked how often the respondents had engaged in the listed activities "in order to influence public policy" within the last 12 months.[8] We coded their answer as "yes" (1) if the respondent answered that the group had carried out this activity "at least once" or more. An important exception is our central variable of interest, litigation. The corresponding survey item is phrased differently, and the time period is longer: "*During the past three years, did your organization initiate or in other ways contribute to legal*

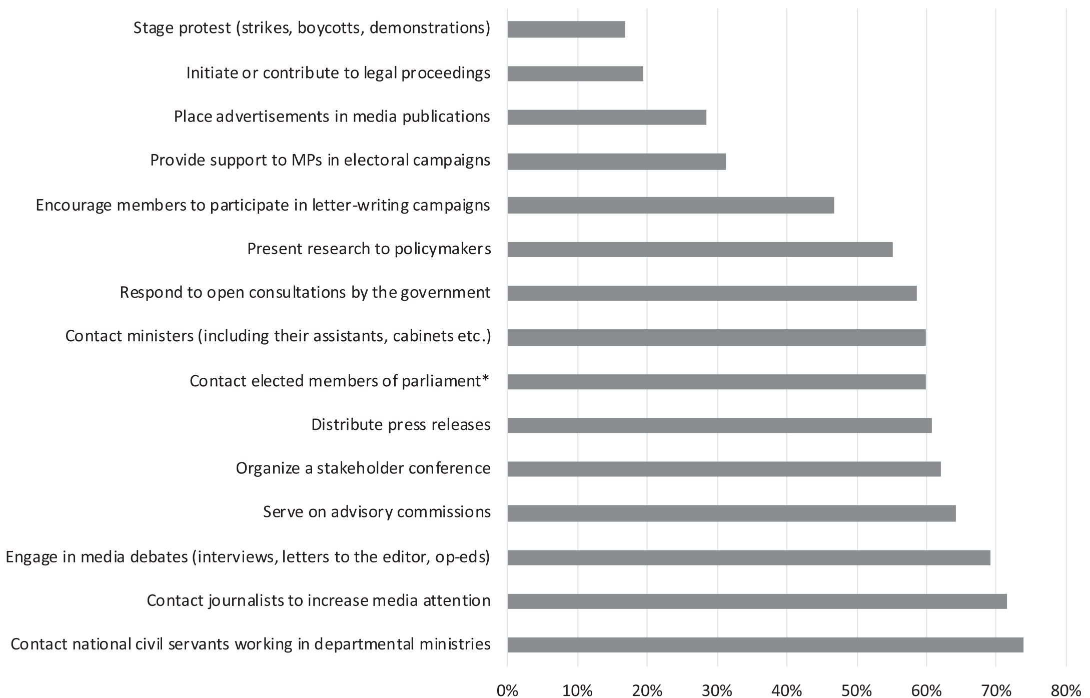

FIGURE 1 Interest group tactics (CIGS). *Note*: Share of interest groups indicating that they have used the listed tactics. *This is a combination of two survey items that asked about contact with elected members from majority or governing parties and minority or opposition parties

proceedings, in order to claim rights and/or promote your organization's goals?" This has the important ramification that a positive answer to this question is more likely than for those about other advocacy tactics.

What Figure 1 demonstrates first of all is that interest groups use a combination of many different tactics. 10 out of the 15 tactics listed are used by more than half of the respondents. The most frequently used tactics are contact with ministerial departments, contact with the media, and participation in advisory commissions. Litigation, on the other hand, is a comparatively rare advocacy tactic in the five countries studied. About 19% of respondents reported having engaged in litigation within the last three years. An even smaller percentage reports having engaged in protests, but the difference in time periods (within the last 12 months as opposed to the last three years) indicates that litigation is likely an even rarer strategy.

4.2 | Is litigation part of a distinct bundle of tactics?

We proceed by conducting a principle component analysis (PCA) on the strategies reported in Figure 1. Instead of the binary coding presented there, we use here the variables' full range of scores from 1 ("never used") to 5 ("used every week"). Results are presented in Tables 1 and 2.

Both the Kaiser criterion (eigenvalue > = 1) and the results of a parallel analysis (Hayton et al., 2004) suggest we retain two components. The components allow us to discern groups in the data. Within component 1, all tactics show moderate positive factor loadings within a fairly narrow range and roughly in the order of frequencies reported in Figure 1. We interpret this to

TABLE 1 Principal component analysis

Principal components/correlation **Rotation: (unrotated = principal)**			**Number of obs = 2,141** **Number of comp. = 15** **Trace = 15** **Rho = 1.0000**	
Component	**Eigenvalue**	**Difference**	**Proportion**	**Cumulative**
Comp1	6.56918	5.37265	0.4379	0.4379
Comp2	1.19653	0.228561	0.0798	0.5177
Comp3	0.96797	0.0581205	0.0645	0.5822
Comp4	0.90985	0.0581205	0.0607	0.6429

TABLE 2 Principal components (eigenvectors)

	Comp1	**Comp2**
Contact national civil servants working in departmental ministries	0.2723	**−0.3752**
Contact journalists to increase media attention	0.3082	0.1263
Engage in media debates (interviews, letters to the editor, op-eds)	0.3126	0.1129
Serve on advisory commissions	0.2554	**−0.2876**
Organize a stakeholder conference	0.2544	−0.0748
Distribute press releases	0.3066	0.1181
Contact ministers (including their assistants, cabinets, political appointees)	0.2608	**−0.2590**
Contact elected members of parliament	0.3063	−0.0581
Respond to open consultations by the government	0.2613	−0.1903
Present research to policymakers	0.2709	−0.2029
Encourage members to participate in letter-writing campaigns or sign petitions	0.2382	**0.3044**
Provide support to members of parliament in their electoral campaigns	0.2682	0.0605
Place advertisements in media publications	0.1476	0.2008
Initiate or contribute to legal proceedings	0.1521	**0.3787**
Stage protest (strikes, boycotts, demonstrations)	0.1793	**0.5480**

mean that component 1 reflects groups' activity level. More active interest groups generally employ a broad mix of frequently used tactics. Component 2, however, suggests the existence of a dimension in the clustering of tactics that relates to the notion of insider vs. outsider strategies. Litigation, protest and letter-writing campaigns correlate positively with this component, the latter of which are tactics pursued at a distance from policymakers and usually associated with outsider groups. Inversely, typical insider tactics, such as serving on advisory commissions and contacting ministers and government officials correlate negatively with this component. We ran the same PCA separately for the five countries in our sample and found the same component in each of them (see Supporting Information). There is therefore evidence for the existence of groups that pursue distinct outsider strategies, of which litigation forms a part, and groups that pursue insider strategies, of which litigation is not a part. This finding is congruent with H3a, but not with H3b, and gives support to the political disadvantage theory. However,

the fact that this component only explains about 8% of the total variance in our sample indicates that the majority of interest groups in the five European countries does not specialize in any particular strategy.

4.3 | Who litigates?

We now proceed to analyze which groups use litigation. CIGS data allows us to break down our results by group types included in our sample and their country of origin (Table 3).[9]

The differences between groups are stark. On the one side, 58% of trade unions in our sample responded having been involved in litigation, a significantly higher percentage than for any other group type. By their nature, trade unions engage in labor disputes, either collectively in the context of collective bargaining or on behalf of individual members against their employers. Such conflicts have a high propensity to end up in court. This makes trade unions particularly likely to respond "yes" to the survey item on litigation. Cause groups are also slightly more "litigious" than the average. At the bottom of the spectrum, leisure groups, public institutions and such groups that did not fit any of the pre-defined categories are less likely than the average to resort to litigation in order to advance the group's causes. This overview provides an indication that a distinction between groups that pursue specific interest (such as unions, business groups or professional associations) and groups that pursue diffuse interest (such as cause groups) does not explain differences in the propensity to litigate, even though groups pursuing diffuse interest may be disadvantaged by rules of standing.

As is evident, the responses also vary between countries. In Sweden, about 30% of respondents reported having engaged in litigation, whereas in Belgium, Lithuania and Slovenia only about 13–15% of respondents did so. Moreover, litigation rates by group types also vary significantly across countries. Dutch labor unions are much less likely to litigate than their Belgian

TABLE 3 Litigation by group type and country

	Belgium	Lithuania	Netherlands	Slovenia	Sweden	% by type	*N* by type
Business groups	18%	11%	19%	11%	36%	**20%**	451
Professional associations	18%	2%	20%	8%	28%	**14%**	506
Trade Unions	80%	50%	30%	54%	75%	**58%**	90
Identity groups	15%	16%	17%	8%	37%	**17%**	311
Cause groups	14%	38%	32%	26%	29%	**26%**	526
Leisure groups	5%	14%	21%	6%	20%	**11%**	303
Public institutions	13%	5%	10%	29%	18%	**12%**	103
Other	5%	9%		22%	10%	**9%**	64
% by country	**15%**	**13%**	**20%**	**14%**	**30%**		
N by country	645	353	383	367	606		2,354

Note: Percentages are reported within countries, unless otherwise indicated.

counterparts. Swedish identity groups and Slovenian public institutions, in turn, are more litigious than their peers in the other countries. An explanation for this variation may lie with system-level factors that were outlined in the theory section. While we present below some tentative evidence that speaks against stark effects of variation in rights of standing, other aspects of national legal systems, such as cost and legal culture, may drive cross-country differences. Specificities of national industrial relations regimes may also play a role. In order to keep our empirical model reasonably precise, however, our present analysis concentrates on within-country variance and leaves country-level patterns aside. Clearly, there is room here for future research.

Finally, in order to test the influence of the group-level factors introduced in the theory section, we perform a multivariate regression analysis. The dependent variable is the answer to the question whether groups have used litigation in the past three years. Our first hypothesis focuses on the resources and expertise available to the respondent, with the expectation that presence of these will favor the use of litigation. The CIGS dataset contains a number of suitable indicators. We chose to focus on staff as an indicator for resources. We transformed a survey item on paid full time staff, originally a continuous variable, into an ordinal scale with 7 intervals (0, 1, 2–5, 6–10, 11–20, 21–50, and "over 50"). For a measure of expertise, we included (as a dichotomous variable) a survey item that asked about the presence of an in-house legal expert.

Hypothesis 2 focuses on professionalization. We included a survey item that asked about the influence of the board of directors or executive committee on political strategies, which we recoded to run from 1 ("not at all influential") to 4 ("very influential") so that a higher number denotes greater professionalization.[10]

Our next hypotheses concern proximity to policymakers. According to the political disadvantage theory (H3a), groups that are remote from the policymaking process should favor the use of litigation. Our alternative hypotheses H3b and H3c expect not these groups but powerful insider groups to be more likely to litigate. We include several indicators for proximity and remoteness. The first is a survey item that tests for ties to policymakers by asking how often policymakers initiate contact with the respondent's organization. Answers are coded from 1 ("never") to 5 ("at least once a week).[11] We further follow the indication of the principle component analysis that litigation ties in with tactics that are associated with outsider groups. We use a group's propensity to engage in public protest as an indicator for an outsider strategy. We therefore include the survey item that asks about such activities (strikes, boycotts, demonstrations). Answers are coded from 1 ("did not engage in this") to 5 ("at least once a week"). We are aware, however, that protest is not exclusively used by outsider groups. As an additional indicator we therefore include a survey item that asks the respondent to characterize their relationship to national authorities. Answers range from 1 ("very cooperative") to 4 ("very conflictual"). We believe this survey item to be a strong indicator for "outsiderness" in this respect.

Corresponding to our fourth hypothesis, bridging resource-based explanations and proximity-based explanations, we include in the analysis information about the source of a group's funding. Groups that rely on public funding may be more restricted in their choice of tactics than groups that do not. The data contains an item that asks about the percentage of a group's budget stemming from national government funding, which we include in the analysis.

Our final hypothesis (H5) concerns a group's "legal consciousness". We include in the analysis an item that asks the following question: "*How important are legal uncertainties within your area of interest as a challenge for the maintenance of your organization*?" We concede that this indicator only partially addresses the rich concept of legal consciousness, but at a minimum we find that it covers aspects of "legal competence" in the sense that awareness of legal uncertainties also indicates an awareness of the law, and hence the potential for litigation. We will

interpret our findings accordingly. The answers are situated on a five-point scale, where 1 is "not at all important" and 5 is "very important".

In addition, we have included a number of control variables. First, our analysis assumes interest groups to have a strategic orientation towards policy outcomes. However, the CIGS sampling procedure does not guarantee that all interest groups in our sample primarily pursue political goals. Previous research has indicated that politically active groups are more likely to use litigation (Scheppele & Walker, 1991). We therefore include as a control a survey item that asks whether a group engages in "advocacy/lobbying". We assume that a group that answers "yes" to this question regularly pursues political objectives. Second, our descriptive overview of litigation by group types has highlighted that trade unions and cause groups were disproportionally "litigious" compared to other group types. In order to prevent results being driven by such groups, we have included them as controls. Finally, we also control for differences in litigation activity across policy areas. This allows us to account for rules of standing that may vary across subject matters within national legal systems. The survey presented respondents with a closed list of policy areas and asked them to identify which areas they were involved in.[12]

Table 4 presents summary statistics for our explanatory variables.[13]

We ran three separate logistic regressions on our dependent variable,[14] including country dummies in order to control for country-level effects. The first model includes our central explanatory variables, the second adds controls for policy areas and the third omits two variables for reasons outlined below (direction of causality). Table 5 reports results in log odds.

In line with Hypothesis 1 concerning the impact of resources, increasing levels of permanent staff increase the likelihood of a group to report having engaged in litigation. Having in-house legal expertise also has a strong positive effect on the dependent variable. This is in line with most previous findings from both Europe and the U.S. (e.g., Kelemen, 2003; Scheppele & Walker, 1991). An objection could be that causality might run the other way for "in-house legal expertise". Our dependent variable asks about involvement in legal proceedings "within the last three years", whereas this indicator refers to the moment the survey was administered. The respondent groups may have acquired such expertise or decided to hire a lawyer only after

TABLE 4 Summary statistics

	Obs	Mean	*SD*	Min	Max
Litigation	1303	0.2394474	0.4269101	0	1
Staff	1303	3.156562	1.711994	1	7
In-house lawyer	1303	0.2801228	0.4492314	0	1
Executive influence	1303	3.531082	0.7292923	1	4
Contacted by policymakers	1303	2.442824	0.9951844	1	5
Protest	1303	1.285495	0.660375	1	5
Degree of conflict	1303	2.017652	0.6992392	1	4
Public budget	1303	16.71067	29.58852	0	100
Legal uncertainty	1303	3.494244	1.29921	1	5
Lobbying	1303	0.637759	0.4808325	0	1
Trade union	1303	0.0391404	0.1940035	0	1
Cause group	1303	0.2532617	0.4350465	0	1

having been involved in litigation. We see no way of excluding such an explanation. In any case, excluding this indicator from the analysis, as we do in model 3, does not change our results.

By contrast, we find no confirmation for Hypothesis 2. Our indicator for professionalization does not have a statistically significant impact on the propensity of groups to litigate.[15] This suggests that, given the same resources, professionally run groups are not more likely to litigate than others.

Results relating to the impact of a group's proximity to policymakers are particularly interesting. We pursue here the question whether litigation is a tactic that is pursued by groups that also pursue "typical" insider or outsider tactics. Corresponding to Hypothesis 3c, "insiderness", measured in terms of contacts initiated by policymakers, has a positive effect on the likelihood of a group turning to the courts. Groups that are contacted more often are also more likely to litigate. This confirms the argument that there is no contradiction between litigation and maintaining regular ties with policymakers (Coglianese, 1996; Spill Solberg & Waltenburg, 2006; Vanhala, 2016).

On the other hand, our set of indicators for "outsiderness", the propensity to use an obvious outsider tactic (protest) and the degree of antagonism towards policymakers, also has a positive effect on litigation. Engaging in protest increases the likelihood of a group to turn to the courts, as does an increasing antagonism. This clearly disconfirms H3b and lends support to H3a. We draw three conclusions from this. First, we find that the propensity of groups to litigate increases with their general level of political activity, irrespective of their status as insider, outsider, or neither. This is indicated by the positive effect of our control variable for groups that engage in lobbying, as well as the positive correlation of all advocacy tactics with component 1 in the principal component analysis. Groups that are less litigious are those that are only occasionally politically active. This finding is in line with previous survey results (Scheppele & Walker, 1991, p. 176). Second, our findings support the contention that litigation does not conflict with regular contacts with policymakers. Third, the principal component analysis has indicated the existence of groups that pursue distinct outsider strategies, and these groups do not shy away from litigation. Rather, we find confirmation for the political disadvantage theory, with the qualification that courts are not *primarily* a venue for political outsiders. However, outsiders are particularly prone to resort to litigation. We want to stress that the effect of the variables indicating "outsiderness" is stronger than that of those indicating proximity to policymakers. Figure 2 visualizes these effects in terms of predicted probabilities.

Groups that engage in protest have a higher predicted probability of having also engaged in litigation than groups that are contacted by policymakers. The effect of conflictual relations with national authorities is even starker. However, only about 7% of groups in our sample reported protesting at least every quarter, and only about 20% reported conflictual or very conflictual relations. The data therefore point to the existence of a small but litigious subset of outsider groups.

Moving on, confirming Hypothesis 4, the source of a group's funding also has a distinct effect on our dependent variable. Groups that receive public funding are less likely to have engaged in litigation. Proximity in terms of funding appears to deter groups from turning to the courts. This speaks in favor of the argument that government funding may constrain groups against using more adversarial tactics (Bloodgood & Tremblay-Boire, 2017), and that litigation is in that category.

Moreover, groups reporting that legal uncertainty within their area of interest is an important challenge were more likely to have engaged in litigation. This provides some support to our final hypothesis (H5) that "legal consciousness" increases the likelihood of litigation. However, we treat this finding with caution. Our indicator only addresses one aspect of a decidedly complex concept. Moreover, the same objection that applied to "in-house legal expertise" (reverse causality) applies to this indicator, too. The respondent groups may have realized the

TABLE 5 Results

	Model 1	Model 2	Model 3
Staff	0.142**	0.150**	0.194***
In-house lawyer	0.842***	0.873***	
Executive strategy	−0.146	−0.151	−0.103
Contacted by policymakers	0.272**	0.262**	0.327***
Protest	0.439***	0.416***	0.452***
Degree of conflict	0.694***	0.653***	0.669***
Public budget	−0.008**	−0.009**	−0.010***
Legal uncertainty	0.307***	0.320***	
Lobbying	0.550**	0.556**	0.624**
Trade union	1.394***	1.362**	1.545***
Cause group	0.187	0.187	0.123
Lithuania	0.204	0.231	0.203
Netherlands	0.282	0.280	−0.081
Slovenia	0.246	0.346	0.381
Sweden	1.135***	1.169***	1.1522***
Migration and asylum		−0.119	−0.220
Economy		−0.113	−0.133
Health		0.236	0.229
Fight against crime		0.136	0.328
Energy		0.020	−0.027
Education		−0.297	−0.179
Gender		0.108	0.064
Social policy		0.181	0.131
Environment		−0.003	−0.091
Consumer protection		0.111	0.170
Agriculture		0.419	0.325
Development cooperation		−0.436	−0.391
Foreign policy		0.212	0.231
Defense		0.120	−0.132
European integration		−0.142	0.053
Science and research		−0.166	−0.161
Transport		0.209	0.114
Culture		−0.015	0.029
Employment		0.185	0.247
Constant	−6.182***	−6.229***	−5.338***
N	1303	1294	1318
Pseudo r^2	0.2188	0.2303	0.1920

**$p<.01$; ***$p<.001$.

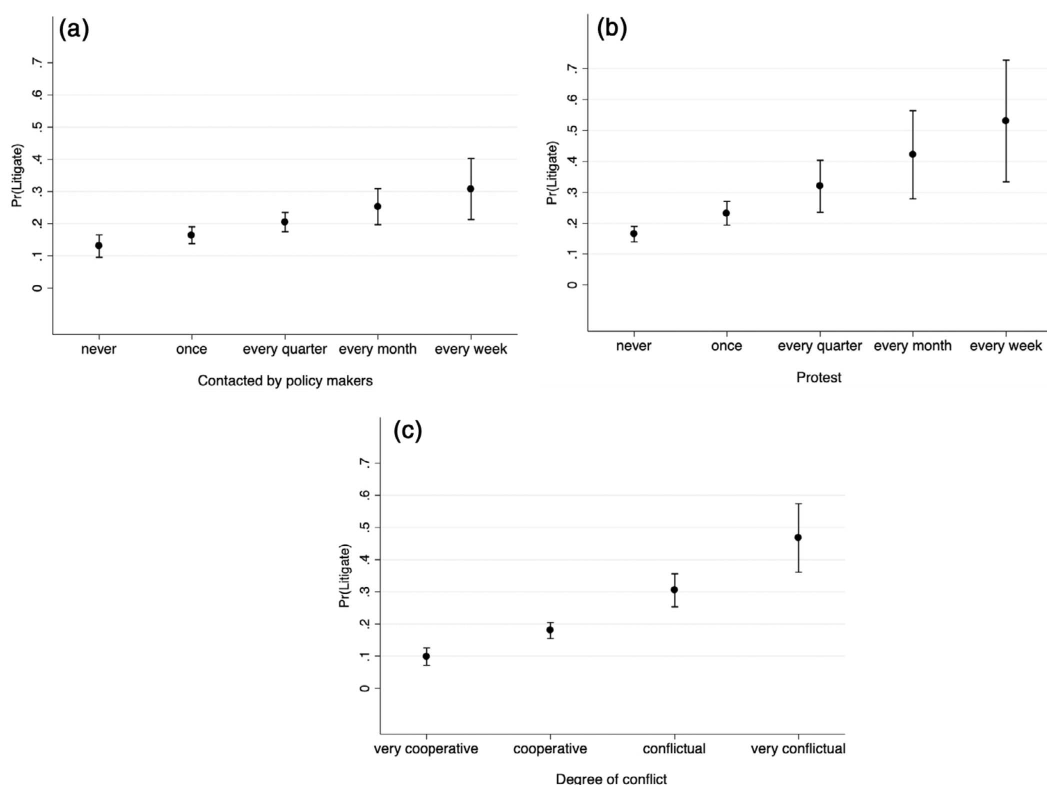

FIGURE 2 Adjusted predictions with 95% confidence intervals

importance of legal uncertainty only after a court case. Omitting this variable, as in model 3, does not change our results.

Finally, model 2 adds controls for the policy areas groups are active in, but none of these have a statistically significant effect on the propensity of groups to litigate.

5 | CONCLUSION

This article pursued two questions: how does litigation fit in with other advocacy tactics, and what kinds of groups engage in litigation? We designed our analysis to focus on explanatory factors at the group-level and hold constant structural factors located at the level of national legal systems. We do find significant variation between countries, but cannot at present differentiate between alternative explanations for this variation. However, we find that policy focus does not impact a group's propensity to litigate. This suggests two things. First, contrary to theoretical expectations, rights of standing, which vary between policy areas, may have less explanatory value than other factors that make up the legal opportunity structure for interest group litigation. Second, this can also count as evidence that groups representing diffuse interest do not necessarily have less "access to justice" than groups pursuing specific interests. This notion is supported by our finding that trade unions and cause groups are more litigious than other group types.

At the group level, we find support for resource-based explanations of interest group litigation. Public funding, however, seems to deter groups from using the courts. We also find

tentative support for the notion that "legal consciousness" affects groups' propensity to litigate, but we concede that our indicator only partially captures this notion.

Another interesting finding relates to the political disadvantage theory. On the one hand, we find that close contact with policymakers does not deter groups from litigation. This suggests that litigation does not preclude regular relations between interest groups and policymakers – a key concern for observers of an increase in "adversarial legalism" as a regulatory style in Europe (Kelemen, 2011; Rehder, 2009). On the other hand, we also find litigation to be part of a bundle of tactics that are usually associated with outsider groups. Groups that employ outsider tactics such as protests and boycotts, and groups that have an antagonistic relationship with policymakers are more likely to turn to the courts than others.

These findings do not have to contradict one another. Most groups cannot be classified as distinct insiders or outsiders. Rather, litigation is part of the "toolkit" of many politically active interest groups. However, while only a small subsection of our sample, groups that can be classified as outsiders are particularly litigious. These groups evidently do not regard the law as a medium to "secure and sustain the privileges of unequal power" (McCann, 2008, p. 525), but rather as a source to achieve policy change even in the face of conflict with authorities, as the political disadvantage theory suggests. These observations offer a systematic explanation for the contradictory findings of previous case studies (Coglianese, 1996; O'Connor, 1980; Soennecken, 2008; Vanhala, 2016, 2017).

Looking ahead from our findings, we suggest that more work should be done on the dynamics between litigation and other advocacy tactics over time. Our cross-sectional data do not allow us to infer whether the combination of litigation and insider tactics is sustainable, or whether litigation eventually drives conflict that leads to a gradual deterioration of cooperative relations. Conversely, the legal arena might allow outsider groups to create and maintain ties with policymakers. Action in the courtroom may provide leverage to outsider groups in order to gain a seat at the table in future interactions. With an increasing supply of both procedural and substantive rights in Europe, much of it driven by EU law, there is no reason to believe that the importance of litigation as an advocacy tactic is static.

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CONFLICT OF INTEREST

The authors declare no potential conflict of interest.

ENDNOTES

[1] http://www.cigsurvey.eu.

[2] Data collection is ongoing for the Czech Republic, Italy, Poland, and Portugal.

[3] The Belgian interest group project was coordinated by Jan Beyers and Frederik Heylen.

[4] Data collection in the Netherlands was coordinated by Joost Berkhout, Marcel Hanegraaff, and Caelesta Braun, assisted by Jens van der Ploeg.

[5] The Lithuanian project was coordinated by Algis Krupavičius and Ligita Šarkutė, assisted by Vitalija Simonaitytė and Vaida Jankauskaitė.

[6] The Slovenian research team consisted of Danica Fink Hafner, Mitja Hafner Fink, Meta Novak, Luka Kronegger, and Damjan Lajh.

[7] The Swedish interest group survey has been conducted by Frida Boräng and Daniel Naurin.

[8] For the exact phrasing of all survey items in this study, see the basic questionnaire available at https://acim.uantwerpen.be/files/documentmanager/project/survey_questionnaire_basic.pdf.

[9] Data on the group type is not based on a survey item, but is based on a classification by the CIGS research team.

[10] See Supporting Information for an alternative to this indicator. Results are robust across indicators.

[11] See Supporting Information for an alternative to this indicator. Results are robust across indicators.

[12] Multiple responses were possible and, unfortunately, we have no means to identify the area of primary activity.

[13] Restricted to the observations included in model 1. See Supporting Information for summary statistics on control variables.

[14] See Supporting Information for alternative model specifications. Our results remain robust across models.

[15] We find the same result for an alternative indicator (see Supporting Information).

DATA AVAILABILITY STATEMENT

Data used in this article is available at www.cigsurvey.eu. Stata .do files for replication are available at www.ahofmann.eu.

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SUPPORTING INFORMATION

Additional supporting information may be found online in the Supporting Information section at the end of this article.

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