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Legal Mobilisation in EU Foreign Policy: A Framework for Going Beyond Case Studies

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ABSTRACT

While civil society advocacy through legal mobilisation has garnered increasing attention, the strategic use of law in EU foreign policy remains comparatively unexplored, especially when compared to fields such as migration, the environment or labour law. Legal mobilisation here is defined in a court-centred, advocacy-oriented sense, closely aligned with the notion of strategic litigation. A methodological framework is proposed to systematically identify instances in which civil society actors invoke EU foreign policy law before the Court of Justice of the EU (CJEU) to advance broader objectives. Two options are suggested to analyse legal mobilisation: analysing casebooks and exploring databases of CJEU case law. Preliminary findings highlight the central role of interest groups – representing both civil society and economic actors – as drivers of legal mobilisation, the concentration of mobilisation within specific policy areas and the wide-ranging objectives pursued by litigants when leveraging EU foreign policy law.

KEYWORDS

legal mobilisation; strategic litigation; EU foreign policy; advocacy; lobbying

Research on civil society lobbying in European Union (EU) foreign policy has attracted increasing scholarly attention in recent years (Voltolini and Eising 2017; Shapovalova 2019; Voltolini 2015). Comparatively little, however, has been written about the role of law in such mobilisation. While the value of law as a resource for campaigners has been widely documented in other EU policy domains – such as migration (Passalacqua 2022; Pijnenburg and Van der Pas 2022), environmental policy (Bothner *et al.* 2022; Reiners and Versluis 2022; Hofmann 2019) and labour law (Lejeune and Ringelheim 2019; Cichowski 2004), this dimension has received little attention in the context of EU foreign policy. On the one hand, this neglect is unsurprising given that foreign policy is widely regarded as a ‘political’ rather than a ‘legal’ matter. On the other hand, significant aspects of EU external relations are in fact ‘legalised’ (Abbott *et al.* 2000, 186). EU external relations law has consequently developed into a distinct subfield, with its practitioners highlighting that it is “actually *internal* EU law and should be

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treated as such” (Butler and Wessel 2022, 1, original emphasis). They see the Court of Justice of the European Union’s (CJEU) *ERTA* judgment¹ – in which the court developed the doctrine of the EU’s implied external powers – as the origin of this legalisation. EU external relations law therefore encompasses a broad field. This Special Issue adopts a similarly broad scope. As the editors write in their introduction, EU foreign policy can be defined in a broad sense, including its Common Foreign and Security Policy (CFSP), Common Security and Defence Policy (CSDP), external action (trade, development, enlargement) and the external dimension of internal policies (migration, environment) (Lonardo and Voltolini *forthcoming*, this Special Issue).

There are therefore strong reasons to expect that the wide range of EU legal norms bearing on EU foreign policy, broadly conceived, can be productively mobilised by civil society actors. Legal mobilisation, in its broadest sense, refers to “any type of process by which individual or collective actors invoke legal norms, discourse, or symbols to influence policy, culture, or behavior” (Vanhala 2021). This includes not only litigation but also legal claims-making outside the courtroom (Voltolini 2026, this Special Issue). Most studies of the mobilisation of EU law, however, concentrate more narrowly on “private litigants engaging in court proceedings based on a European source of law” (Conant *et al.* 2018, 1378). The present article follows this narrower definition. Legal mobilisation in this sense largely overlaps with the notion of strategic litigation, as it denotes a *strategic* use of law beyond the immediate outcome of a single court case. I will discuss subtle differences between legal mobilisation and strategic litigation in the next section but will broadly use the two terms synonymously throughout the article.

We know little about the extent to which civil society actors mobilise the law in EU foreign policy. For instance, none of the contributions to a recent Special Issue on *Strategic Litigation in EU Law* (Cebulak *et al.* 2024) addressed questions of EU foreign policy. Yet anecdotal evidence suggests that such cases do exist. Litigation initiated by *Front Polisario*, a political group advocating for the independence of Western Sahara, in relation to EU-Morocco trade relations, and by the *Organisation juive européenne*, a French civil society organisation (CSO) combating antisemitism, concerning imports from Israeli-occupied territories, has attracted attention in legal scholarship for its doctrinal importance (Kassoti and Saluzzo 2019; Harpaz 2020; Odermatt 2023). This article attempts to identify cases of legal mobilisation more systematically. It has a methodological focus but will also present substantive results that will be of interest to scholars of EU foreign policy.

Studying legal mobilisation systematically is challenging (Fleerackers 2024). Litigants do not need to be listed in a register, litigation is not subject to lobbying disclosure requirements and not all actors engaged in legal mobilisation advertise their actions. This article therefore examines the corpus of case law at the EU courts in order to identify instances of litigation that, first, invoke a legal norm associated with EU foreign policy, and second, are likely to be strategic in character. As I will show, the first step may be more straightforward than the second. While different sources offer insights into the broader ‘universe’ of EU foreign policy litigation, distinguishing strategic from ‘routine’ litigation often requires qualitative analysis. Moreover, I will show that only a

¹Commission of the European Communities v Council of the European Communities 1971, 32.

subsection of the identified instances of legal mobilisation directly contest EU foreign policy acts as such. The objectives actors pursue in legal mobilisation in this field are, like the field itself, rather diverse.

The explorative analysis undertaken in this article constitutes the first attempt to systematically map legal mobilisation in EU foreign policy, with the aim of providing a foundation for more sophisticated quantitative analyses and a basis for case selection in future studies. The methodological approach also extends beyond foreign policy and could be applied to other policy fields. In the next section, I define my use of the term legal mobilisation and identify the characteristics that make litigation strategic. I then turn to an identification of the corpus of litigation in EU foreign policy before the EU courts. I first explore the potential of using casebooks to identify the relevant corpus and use case descriptions to identify instances of the strategic use of EU foreign policy law. This section presents results based on Graham Butler and Ramses Wessel's (2022) EU external relations law casebook. The next section explores the possibility of using data compiled by the IUROPA project (Brekke *et al.* 2023) – the most comprehensive effort so far to collect data on CJEU case law. I will discuss potential avenues for future research in the conclusion.

Legal mobilisation and strategic litigation

The term 'legal mobilisation' has a somewhat complex etymology. One of the earliest and most frequently cited definitions is Frances Zemans' (1983, 700): "The law is thus mobilized when a desire or want is translated into a demand as an assertion of one's rights". Zemans' use of the term refers to the ability of individuals – as claimants – to participate in the political system without having to engage in collective action. This approach contrasts with an alternative understanding of legal mobilisation as an expression of collective action that addresses "larger social conflicts among organised groups, especially [those] entailing 'reform-oriented' legal strategies" (McCann 2008, 527). This conceptual ambiguity is unlikely to be resolved. The present article includes action by both individuals and collective actors but retains an advocacy-oriented perspective. Moreover, there is no clear consensus in the literature on what types of activity constitute legal mobilisation, particularly whether this must involve court proceedings or whether broader acts of legal claims-making should also be considered. This article adopts a court-centric approach akin to that proposed by Emelio Lehoucq and Whitney Taylor (2020, 186, 179), who suggest that legal mobilisation should entail the "invocation of a formal institutional mechanism", which denotes the "use of a venue within the state to file a claim against another actor".

While Lehoucq and Taylor's discussion of legal mobilisation focuses on social movements, I adopt the broader conception used by Lisa Conant *et al.* (2018), who extend the analysis to include companies and business interest groups when examining the conditions for mobilising European law. Advocacy-oriented approaches to legal mobilisation typically conceive of it as 'strategic'. My use of the term is therefore akin to 'strategic litigation', which Kris van der Pas (2021, 119) describes "as part of the umbrella term 'legal mobilisation'". She argues that to be considered strategic, litigation should be deliberately chosen from a set of alternatives, "as a means to reach an overarching objective" (123). This objective lies "beyond the case concerned" (124). This approach contrasts with

‘routine’ litigation, which, as Sofie Fleerackers (2024, 878) writes, “does not envision broader change beyond the interest of the individual litigant”. Similarly, Pola Cebulak *et al.* (2024, 800) write that strategic litigation is “a legal action initiated to achieve broader social, political, or economic ends”. The concept clearly overlaps with an advocacy-oriented, court-centric approach to legal mobilisation. However, while the literature on strategic litigation also considers public authorities as potential protagonists (Schmidt 2000; Hofmann 2013), research on legal mobilisation predominantly focuses on civil society.

To summarise, my cases of interest include all invocations of EU foreign policy law (broadly construed) by civil society actors (individuals, groups and companies) in legal proceedings (litigation) that are not routine, but part of broader strategic aims in advocacy. In this sense, I am looking for cases that can be classified as ‘lobbying by other means’. The next section discusses potential sources of data to identify such cases.

Identifying cases of legal mobilisation in EU foreign policy

The first step to identify relevant cases is to construct a corpus of litigation in EU foreign policy law; the second is to isolate cases brought by civil society actors with a strategic interest. Below, I present two strategies to do so.

Casebooks as a data source

The first strategy is to construct a corpus of court cases in EU foreign policy by relying on the assessments of experts. In a collection of commentaries on cases decided by the CJEU, commemorating the 50th anniversary of the ERTA judgment, Graham Butler and Ramses Wessel (2022, 4-5) invited authors to identify the cases that “have defined EU external relations law”. The authors acknowledge that “what is an ‘important’ case in EU external relations law, subsequent to *ERTA*, is a relative concept, situationally dependent, and highly subjective” (6). Across 92 chapters, the collection covers 116 cases.² While subjective and by necessity incomplete, this selection provides a starting point to identify cases of legal mobilisation in EU foreign policy. I rely on the case descriptions to derive information on the identity of the litigant(s), their objectives in engaging in litigation and the potential strategic nature of their action. I will show that the objectives pursued by litigants – even where their action can be considered ‘lobbying by other means’ – are highly diverse and that even detailed case descriptions do not always allow for straightforward distinctions between ‘routine’ and ‘strategic’ cases.

Figure 1 depicts the applicants in the 116 cases. 19 cases are opinions pursuant to what is now Article 218(11) TFEU.³ Such opinions must be requested by member state governments or EU institutions, and these requests constitute an important channel for contesting both horizontal and vertical allocations of competences. As such, they are clearly strategic, but they are not pursued by civil society actors. The same holds for inter-institutional conflicts pursued through actions for annulment initiated by either member

²All code and data are available at https://github.com/ahofmann-eu/foreign_policy_law.

³According to Article 218(11) TFEU, the CJEU can give an opinion “as to whether an [international] agreement envisaged is compatible with the Treaties. Where the opinion of the Court is adverse, the agreement envisaged may not enter into force unless it is amended or the Treaties are revised”.

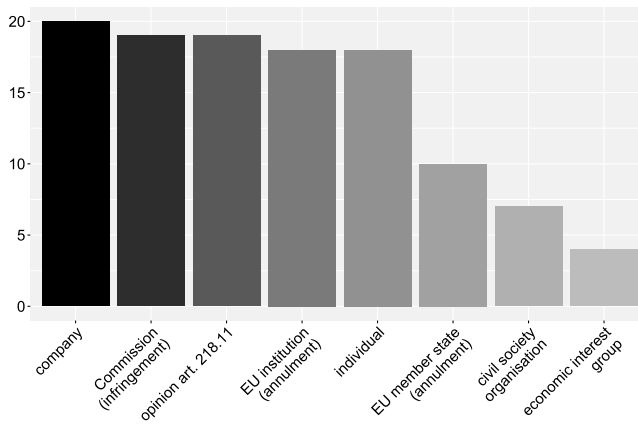


Figure 1. Litigants in cases covered in Butler and Wessel (2022).

state governments or EU institutions. The casebook contains 28 such cases (18 initiated by EU institutions, 10 by member state governments). 19 cases are infringement cases pursued by the Commission against member state governments. While these cases can be considered as strategic (Schmidt 2000; Hofmann 2013), they were not initiated by civil society actors.

This leaves 48 cases with civil society actors as applicants. They comprise preliminary references, actions for annulment and their appeals. Following Conant *et al.* (2018), I will divide these civil society actors into three categories: Interest groups (made up of CSOs and economic interest groups), companies and individuals. I follow Jan Beyers *et al.* (2008, 1009) in emphasising a distinction between interest groups in a narrow sense from a broader notion of organised interests, which can include companies. The distinction is relevant because as representatives of collective interests, interest groups are the most likely actor to pursue strategic objectives through litigation. They are unlikely to become involved in legal proceedings as part of their routine operations. The situation is different for companies, which are far more likely to engage in business disputes resolved through legal procedures as part of day-to-day operations. Such cases do not need to be strategic and may focus solely on solving conflicts between the parties involved. Routine conflicts can also arise between companies and administration about, for example, individual fines or denied permits. Most studies of legal mobilisation focus on interest groups, including economic interest groups (Hofmann 2025), whereas research on companies as actors of legal mobilisation remains rare (Fleerackers 2024). The same applies to individual actors. Individuals do not routinely engage with the legal system and are also in a much less favourable position to pursue legal mobilisation, an activity that requires legal expertise and financial resources (Hofmann and Naurin 2021). The nature of the litigant may therefore serve as a useful predictor of whether the legal action is strategic. Following this logic, I organise my findings according to the type of litigant.

Civil society organisations

In the Butler and Wessel collection, seven cases involve CSOs as litigants. According to the case descriptions, five of these cases are likely to involve strategic objectives.

They either constitute attempts to influence EU foreign policy or rely on international law to challenge EU and domestic practices. A clear example of legal mobilisation is a case brought by *Pesticide Action Network Europe* and *Stichting Natuur en Milieu*.⁴ This case concerned the EU's implementation of the Aarhus Convention⁵ – a UN convention which both the EU and the member states have ratified. The European Commission denied the two CSOs' request for an internal review of a Commission decision on limit values for pesticide residue in food and feed (Thies 2022), arguing that the decision in question was not a reviewable act under EU law. In response, the CSOs initiated an action for annulment against this decision. They were successful before the General Court but lost on appeal to the Court of Justice (*Ibid*). The strategic nature of this case lies in its relevance for the broader advocacy efforts of these groups, which include challenges to Commission decisions in the process of approving pesticides for the EU market. The outcome therefore has clear ramifications for the CSOs' 'opportunity structure' (Hilson 2002; Andersen 2006) to pursue their goals.

Another instance of legal mobilisation is a case brought by French CSO *Organisation Juive Européenne*, a group dedicated to combating 'everyday antisemitism' and largely composed of lawyers (de Coustin 2024). The organisation supported the legal action of a winery located in an Israeli settlement in the West Bank against a French food-labelling requirement. The rule required wine produced in such settlements to carry a label reading 'product originating in the West Bank (Israeli settlement)'.⁶ The CSO argued that the French requirement contravened EU labelling rules. However, their action was unsuccessful: the CJEU confirmed that EU food labelling rules also required this designation of origin (Poli 2022). Given the general objectives of the CSO, it appears the case was motivated not only by a specific legal issue but by broader policy ambitions.

Three cases brought by *Front Polisario* and *Western Sahara Campaign UK* – CSOs advocating for the independence of Western Sahara from Morocco – also fit this category.⁷ Both groups challenged the validity of the application of various agreements between the EU and Morocco to the territory of Western Sahara (Kassoti 2022). The strategies of these groups are covered in more detail in another contribution to this Special Issue (Voltolini 2026).

Two further cases in the casebook involve CSOs as litigants, but do not qualify as instances of legal mobilisation. *Al Barakaat International Foundation*⁸ and *Organisation des Modjahedines du peuple d'Iran*⁹ challenged decisions by EU institutions to impose restrictive measures (sanctions) against them (Redmond 2022; Eckes 2022). These actions appear to be primarily motivated by self-interest and aimed at outcomes limited to the individual cases rather than pursuing broader objectives.

⁴*Stichting Natuur en Milieu and Pesticide Action Network Europe v Commission* 2012, 300.

⁵United Nations Economic Commission for Europe (UNECE) Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, 25 June 1998.

⁶*Organisation juive européenne and Vignoble Psgaot Ltd v Ministre de l'Économie et des Finances* 2019, 954.

⁷*Front Polisario v European Union* 2015, 953; *Front Polisario v Council* 2016, 973; *Western Sahara Campaign v Commission* 2018, 118.

⁸*Kadi and Al Barakaat International Foundation v Council and Commission* 2008, 461.

⁹*Organisation des Modjahedines du peuple d'Iran v Council* 2006, 384.

Economic interest groups

Four cases in the collection involve economic interest groups as litigants. In my reading of the case descriptions, the litigants brought these as ‘test cases’ with clear broader implications for whole industries. *Air Transport Association of America* (ATAA) – an association representing the interests of the US air transport industry (now renamed *Airlines for America*) – initiated a judicial review procedure under UK law to challenge the application of the EU Emissions Trading Systems (ETS) to flights originating or terminating outside of the EU (Bosse-Platière 2022).¹⁰ Five environmental CSOs and two additional economic interest groups intervened in the proceedings before the High Court. The *International Air Transport Association* and the *National Airlines Council of Canada* supported ATA’s claim that the United Kingdom’s (UK) implementation of the ETS infringed international law, whereas the environmental CSOs – *Aviation Environment Federation*, *World Wildlife Fund UK*, *European Federation for Transport and Environment*, *Environmental Defense Fund* and *EarthJustice* – opposed the claim. Their participation in domestic proceedings granted them access to the CJEU when the case was referred by the UK’s High Court of Justice, which is notable given that *amicus* interventions by civil society actors face significant obstacles under CJEU rules of procedure if they are not parties to the original case. In this case, the CJEU ultimately upheld ETS rules (Bosse-Platière 2022).

Another judicial review case under UK law was brought by several business associations to challenge the UK implementation of EU rules on standards of liability for ship-source pollution.¹¹ These were stricter than those contained in the International Convention for the Prevention of Pollution from Ships (MARPOL). The trade associations *International Association of Independent Tanker Owners*, *International Association of Dry Cargo Shipowners*, *Greek Shipping Co-operation Committee* (a London-based affiliate of the Union of Greek Shipowners) and the *International Salvage Union* (an association of marine salvage companies) argued that EU rules infringed MARPOL and the United Nations Convention on the Law of the Sea (UNCLOS). The CJEU ruled that MARPOL was not binding on the EU and that UNCLOS did not confer individual rights enforceable against the EU (Mendez 2022). No CSOs participated in this case.

In the third case, *EEC Seed Crushers and Oil Processors Federation (Fediol)*, a trade association, challenged the Commission’s refusal to take measures against the Argentinian government for alleged illicit commercial practices.¹² *Fediol* requested the Commission to examine unfavourable differences in Argentinian export duties on whole soya beans (which could be crushed in Europe) and soya oil produced in Argentina. Although the Commission acknowledged that this practice existed, it maintained that it did not conflict with obligations under the General Agreement on Tariffs and Trade (GATT). As *Fediol* had previously won a CJEU case establishing the reviewability of decisions for which the Commission enjoys a large margin of discretion, it now challenged the Commission’s interpretation of GATT. The CJEU accepted the admissibility of the challenge but sided with the Commission on the substance (Perišin and Antonaki 2022).

¹⁰ATAA v Secretary of State for Energy and Climate Change 2011, 864.

¹¹Intertanko and Others v Secretary of State for Transport 2008, 312.

¹²Fediol v Commission 1989, 254.

Finally, in another case arising from a UK judicial review procedure, the *Cyprus Potato Marketing Board* – a ‘semi-government’ trade association (Andreou 2015) – together with several exporters of citrus fruit, challenged the import into the UK of fruit and vegetables from Turkish Northern Cyprus without certificates issued by the authorities of Greek Cyprus.¹³ The CJEU sided with their position (Tryfonidou 2022).

One case that was not litigated by an economic interest group (but rather a company) nevertheless warrants discussion in this section because of its similarity to *Fediol v Commission* discussed above. The proceedings arose from a complaint lodged by the *Committee of European Printer Manufacturers*, a trade association, to the Commission about alleged dumping practices by Japanese exporters of dot matrix printers.¹⁴ On this occasion, the Commission accepted the complaint of the interest group and the case took the form of an action for annulment brought by the Japanese manufacturer Nakajima against the Commission’s imposition of anti-dumping duties on its products (Perišin and Antonaki 2022).

Companies

Although companies are the most frequent litigants before the EU courts (Hermansen *et al.* 2025), only 20 cases in Butler and Wessel’s casebook were primarily litigated by companies. The case descriptions do not indicate a clearly identifiable strategic objective beyond the immediate case outcome in any of these cases. These cases were included in the collection because of their doctrinal significance in developing the relationship between EU law and international law, but none of the litigants appears to have specifically set out to settle questions of constitutional importance, nor do the litigants attempt to influence EU foreign policy. They are instances of ‘random noise’ resulting in doctrinal innovation, examples of which I have previously described in the context of labour law litigation (Hofmann 2025).

In a subset of these cases, litigants relied on international law to challenge the validity of EU acts that impeded their business practices. For example, the *International Fruit Company* and three other Dutch companies litigated against import restrictions on apples imposed by the Commission, claiming that these measures infringed on rights derived from GATT.¹⁵ However, the case description does not indicate that this represented a concerted effort to overturn the import regime (Petti and Scott 2022). In other cases, companies challenged unfavourable national measures on the basis of international agreements that the EU had entered into. For example, *Conceria Bresciani*, an importer who challenged an Italian veterinary and public health inspection duty on imported cowhides from Senegal, claimed that the measure infringed the Yaoundé Conventions of 1963 and 1969¹⁶ (Roes 2022).¹⁷ Some cases in the casebook involved doctrinal issues in EU external relations law that were rather peripheral to the immediate interests of the litigants. In one case, Italian aviation company *Elitaliana* challenged the awarding of a public contract to a competitor.¹⁸ This would be routine public procurement litigation if

¹³The *Queen v Minister of Agriculture, Fisheries and Food* 1994, 277.

¹⁴*Nakajima All Precision v Council of the European Communities* 1991, 186.

¹⁵*International Fruit Company v Produktschap voor Groenten en Fruit* 1972, 115.

¹⁶Convention of Association between the European Economic Community and the African and Malagasy States associated with that Community, 20 July 1963; Association Convention between the European Economic Community and the African and Malagasy States associated with that Community, 29 July 1969.

¹⁷*Bresciani, v Amministrazione Italiana delle Finanze* 1976, 18.

¹⁸*Elitaliana, v Eulex Kosovo* 2013, 292; *Elitaliana v Eulex Kosovo* 2015, 753.

the tender had not been issued by a CFSP mission in Kosovo for helicopter services, which raised the question of whether such decisions could be challenged at all. Finally, four cases in the casebook were litigated by companies who were the target of EU sanctions regimes.¹⁹

Individuals

Individuals (natural persons) are the second most frequent type of litigant before the CJEU (Hermansen *et al.* 2025). It is often assumed that individuals are the least likely type of litigant to engage in legal mobilisation, given the limited resources individuals can muster to pursue complex strategies (Galanter 1974). The Butler and Wessel casebook appears to support this assumption, with only 18 cases involving individuals as litigants. There is little indication in the case descriptions that the individuals pursued interests beyond their own predicaments. However, as examples concerning EU asylum policy show, case descriptions focused on doctrinal developments may miss potential test cases when the sponsor is not named in court documents.

Three cases in the sample concern litigation brought by *Yassin Abdullah Kadi*, a Saudi Arabian national suspected of association with the *Al-Qaeda* network, against EU sanctions due to his inclusion on a UN sanctions list.²⁰ Four cases concern individuals as defendants in criminal proceedings. Although ‘passive’ litigation strategies – where actors transgress laws in order to showcase their unjustness – exist (Harlow and Rawlings 1992, 9; Vanhala 2009, 750), there is no indication in the case descriptions that the defendants willingly broke the law to challenge the rule as such, rather than to pursue personal profits.²¹

The cases involving individuals as applicants also show little face-value evidence of strategic action. One individual sought to rely on an EU-Russia agreement to qualify as a European Economic Area (EEA) football player to avoid limits imposed on non-EEA players by the Spanish football association (Łazowski 2022).²² An Italian magistrate judge contested a decision by the Italian Minister for Justice to deploy her to Bosnia and Herzegovina as part of an EU police mission (Prete 2022).²³ A displaced Greek Cypriot from the North litigated against two British citizens who had purchased property in Northern Cyprus, asserting that the property had been illegally expropriated from him by Turkish Cypriot authorities (Skoutaris 2022).²⁴ Four cases in the casebook concern questions of visas and residence permits for Turkish nationals under the 1963 EU-Turkey association agreement.²⁵ Finally, six cases in the sample challenge aspects of EU migration policy, a highly politicised policy field where all action is potentially of a strategic nature. For example, a family of Syrian nationals challenged the Belgian authorities’ refusal to issue humanitarian visas, which would have allowed them to travel to Belgium to submit asylum applications (Halleskov 2022).²⁶ From the case description alone, there is no indication of strategic

¹⁹Racke, *vs* Hauptzollamt Mainz 1998, 293; *Bosphorus v Minister for Transport, Energy and Communications* 1996, 312; *Rosneft, v Her Majesty’s Treasury and Others* 2017, 236; *Bank Refah Kargaran v Council and Commission* 2020, 793.

²⁰*Kadi v Commission* 2010, 418; *Kadi v Council and Commission* 2005, 332; *Kadi and Al Barakaat International Foundation v Council and Commission* 2008, 461.

²¹*Judgement of the Court – Cornelis Kramer and Others* 1976, 114; *Attorney General v Burgoa* 1980, 231; *Anklagemindigheden v Poulsen* 1992, 453; *Donckerwolke v Procureur de la République* 1976, 182.

²²*Simutenkov v Ministerio de Educación y Cultura and Real Federación Española de Fútbol* 2005, 213.

²³*H v Council and Commission* 2016, 569.

²⁴*Apostolides, v David Charles Orams and Linda Elizabeth Orams* 2009, 271.

²⁵*Meryem Demirel v Stadt Schwäbisch Gmünd* 1987, 400; *SZ Sevince v Staatssecretaris van Justitie* 1990, 322; *Demirkan v Bundesrepublik Deutschland* 2013, 583; *Savatli v Bundesrepublik Deutschland* 2009, 101.

²⁶*X and X v État belge* 2017, 173.

objectives. The final cases discussed here, brought by two Pakistani and an Afghan national, show some face-value evidence of strategic action, primarily because of the abstract nature of their claim.²⁷ They initiated actions for annulment against the European Council's EU-Turkey statement, which was designed to encourage the Turkish government to prevent the departures of refugee boats to Greece (Gatti 2022). Judging from the case description, it is hard to see how this challenge would have improved the immediate personal situation of the plaintiffs, who had all applied for asylum in Greece at the time.

What we can learn from casebooks

Casebooks serve as a convenient source for identifying cases of legal mobilisation. By defining cases of relevance and providing detailed descriptions, they make it possible to search for signs of strategic action. The Butler and Wessel collection confirms the centrality of interest groups – both CSOs and economic interest groups – as protagonists of legal mobilisation. Judging from the case descriptions, nine of the eleven cases litigated by interest groups show evidence of a strategic nature. Companies, while significantly more frequent litigators, appear to be largely interested in immediate case outcomes rather than broader strategic goals. Similarly, individuals, at least judging by case descriptions, do not seem likely to engage in legal mobilisation.

An important takeaway is the diversity of objectives pursued by litigants relying on EU foreign policy law. Some cases are direct contestations of EU foreign policy in a narrow sense, such as the cases brought by *Front Polisario*. Others are more indirect, such as the case brought by *Organisation Juive Européenne* against a product labelling requirement. Economic interest groups have brought legal challenges against EU measures with implications for external trade, such as those brought by *ATAA* and *Fediol*. Other such groups have used international law to challenge EU market regulation, such as the case against EU rules on ship-source pollution. Yet others have relied on EU trade agreements to challenge national measures. While many of these cases represent 'lobbying by other means' that challenge public policy, the authors and the types of policies being contested are remarkably diverse.

Casebooks also have the advantage of ensuring relevance. All cases included in the Butler and Wessel collection have made a significant contribution to doctrinal developments in EU foreign policy law. These are cases with relevance beyond the individual proceedings, reflecting the broader objectives that legal mobilisation aims to achieve. This selection of cases is therefore most likely to include instances of legal mobilisation. However, such a selection is by necessity limited. As Butler and Wessel (2022, 6) themselves admit: "Although we have tried to be as comprehensive as possible – with great help by our contributors – the cases that are the subject of analysis in this book are far from the only ones that are relevant to fully understand this field of study". Moreover, casebooks do not capture failed attempts at legal mobilisation – those where an intended doctrinal development did not take place.

Another unavoidable drawback is that case descriptions can reveal only so much. Drawing on external sources, a closer examination of the cases brought by individuals on asylum and migration – prominent areas of legal mobilisation – indicates strategic dimensions not captured in the case descriptions. For example, Tristan Wibault, legal

²⁷*NF v European Council* 2017, 128; *NF v European Council* 2018, 705; *NG v European Council* 2017, 129, 130.

counsel to the Syrian family who acted as plaintiffs in *X and X v État belge*,²⁸ had close ties to the CSO *Comité Belge d'Aide aux Réfugiés* (CBAR), which may indicate strategic intent (Inter-Environnement Bruxelles 2017). Several of the Turkish nationals in the visa and residence cases were represented by the same lawyer, who in interviews had signalled a broader agenda to achieve visa liberalisation for Turkish nationals (Poyraz 2012). Strategic test cases of this kind are difficult to detect systematically. The identity of the legal counsel, systematically recorded in CJEU judgments, may be an indicator of strategic action, albeit one that requires more investigation. I will return to this issue in the conclusion.

CJEU databases as data sources

An alternative approach to using casebooks is to start with the full set of CJEU cases relevant to EU foreign policy and identify those that are strategic based on a limited set of characteristics recorded in public datasets. This approach avoids subjective selection and includes 'failed' cases, but it also captures a large number of routine, non-strategic proceedings. The limited amount of case information available in such datasets makes it difficult to distinguish routine cases from strategic ones. Given my previous findings, I adopt a schematic approach in which I treat actions brought by interest groups as likely strategic and actions brought by companies and individuals as likely routine.

CJEU caselaw databases have by now been rendered readily machine-readable. The IUROPA project (Brekke *et al.* 2023) is to date the largest systematic effort to collect publicly available data on CJEU proceedings and provides an excellent basis on which to pursue a systematic approach to case selection. In order to identify relevant cases, I first extracted from EUR-Lex all international agreements and all legal acts that carry a directory code of either CFSP (Directory Code 18) or External Relations (Directory Code 11). I matched the CELEX numbers of these acts with the IUROPA CJEU database platform (Fjelstul *et al.* 2024a), which includes a table that lists all legal acts cited by CJEU judgments between 1954 and the end of 2022.²⁹ This yielded a list of 1,919 judgments that cited at least one act in my selection of EU foreign policy law.

I complemented these data with information on all other legal acts cited in these judgments and the number of references to each act. This allowed me to identify the most frequently cited legal act in each judgment. I deleted all references to CJEU statutes and rules of procedure in order to concentrate on the substantive content of each case. Based on the EUR-Lex metadata available on each act (title, Eurovoc descriptors, subject matter and directory codes), I identified whether this act concerned a restrictive measure (a sanction), other EU external policies or an internal policy.

Figure 2 shows the 1,919 cases, ordered by the year of the judgement and grouped according to the category of the most frequently cited legal act. It shows that the number of judgments citing EU foreign policy law has drastically increased over time, with a significant increase after 2010 driven strongly by sanctions litigation (Finelli 2026, this Special Issue). It also shows that a substantial subsection of cases citing sources of foreign policy law primarily concern internal policies. The most prominent

²⁸*X and X v État belge* 2017, 173.

²⁹The table contains all legal acts listed on EUR-Lex under the category 'Instruments cited in case law'.

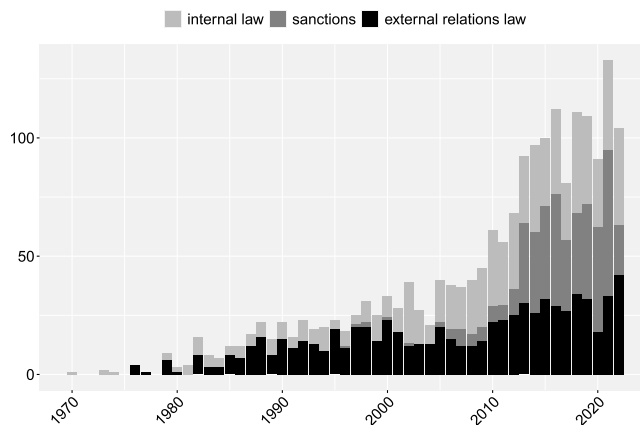


Figure 2. Development of EU foreign policy case-law over time.

among these are issues related to the EU's internal market, competition policy and environmental policy. The number of 'genuine' external relations cases has remained mostly stable since the mid-1990s and relates primarily to trade policy (commercial policy, customs and tariffs).

In the next step, I identify the applicants in my selection of cases. This information is based on a typology of all parties to CJEU proceedings contained in the 'parties by judgment' table in IUROPA's CJEU database platform. These data are hand-coded by the IUROPA project team and are complete from the year 2000 (Fjelstul *et al.* 2024b). As outlined above, common conceptualisations of legal mobilisation assume that its protagonists are civil society actors. As before, I classify these actors into one of four categories: CSOs, economic interest groups, companies and individuals.³⁰

Figure 3 shows the number of cases brought by different types of litigants, with additional information about the subject matter of the case. Based on these numbers, it must be highlighted that the Butler and Wessel casebook presents a highly skewed sample of foreign policy cases. Actions for annulment brought by EU institutions and member states are rare in the overall population. We know that such actions are strategic and often address controversial questions about the vertical and horizontal allocation of competences in the EU (Adam *et al.* 2020) – they are therefore strongly oversampled in the Butler and Wessel casebook, where they made up almost a quarter of all cases. Infringement procedures brought by the Commission are equally marginal in foreign policy law. Figure 3 shows that 85 per cent of all cases are brought by a civil society actor – as opposed to less than half in the Butler and Wessel casebook.

Companies are the single most frequent applicants in cases that cite a source of EU foreign policy law. About a third of cases they litigate primarily pertain to EU external relations law – mainly trade policy. Individuals are the second largest category of litigants. More than half of their cases relate to EU sanctions. In comparison, CSOs and economic interest groups are rarely parties to EU foreign policy law cases. My sample

³⁰My categories 'economic interest groups' and 'CSOs' are amalgamations of group types identified by the IUROPA team (Fjelstul *et al.* 2024b, 166–7). See my coding file at https://github.com/ahofmann-eu/foreign_policy_law for how I constructed these categories.

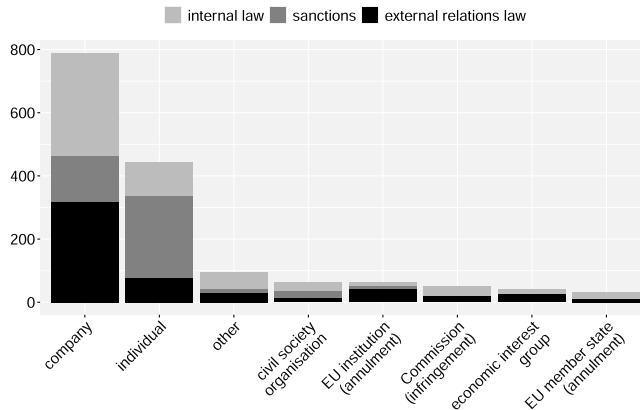


Figure 3. Litigants and subject matter in foreign policy cases since 2000.

contains 64 cases initiated by CSOs and 42 initiated by economic interest groups. As the previous chapter has shown, interest groups are the most likely type of litigant to pursue strategic objectives. As an explorative endeavour, I concentrate on these cases in more detail. 25 of the 106 cases initiated by interest groups were challenges to EU sanctions imposed on the litigant group. As these litigants were likely motivated by self-interest, I excluded the cases going forward, leaving 81 cases with a likely strategic dimension. To test whether a database approach can serve to identify instances of legal mobilisation, the following sections use the description of the case facts in CJEU judgments to investigate the existence of strategic intent.

Civil society organisations

The present sample contains most of the cases included in the casebook: the two *Front Polisario* cases³¹ and the case brought by *Pesticide Action Network* and *Stichting Natuur en Milieu* appear in both samples. Like the latter case, 17 additional cases in the present sample concern interpretations of the Aarhus Convention. Seven of these concerned standing in national proceedings.³² In other cases, CSOs relied on the Aarhus Convention to challenge the actions of EU bodies before the General Court.³³ CSOs also used the Aarhus Convention as a source of rights in access to information requests.³⁴ The sample also contains other cases about access to information beyond environmental matters. Spanish CSO *Access Info Europe* contested the Commission's

³¹The *West Sahara Campaign* case is missing in this sample because IUROPA coders have erroneously classified 'The Queen' as applicant in the UK judicial review proceeding.

³²*Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen eV v Bezirksregierung Arnsberg* 2011, 289; *Landschaftsschutz Umweltorganisation v Bezirkshauptmannschaft Gmünd* 2017, 987; *Deutsche Umwelthilfe eV v Bundesrepublik Deutschland* 2013, 523; *Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen ASBL v Conseil des ministres* 2019, 622; *Deutsche Umwelthilfe eV v Freistaat Bayern* 2019, 1114; *Deutsche Umwelthilfe eV v Bundesrepublik Deutschland* 2022, 857.

³³*TestBioTech and Others v Commission* 2016, 736; *TestBioTech v Commission* 2018, 135; *ClientEarth v European Investment Bank* 2021, 42; *Vereniging Milieudefensie and Stichting Stop Luchtverontreiniging Utrecht v Commission* 2012, 301; *Stichting Comité n 65 Ondergronds Helvoirt v Commission* 2021, 892.

³⁴*Deutsche Umwelthilfe v Bundesrepublik Deutschland* 2013, 523; *Stichting Natuur en Milieu and others v College voor de toelating van gewasbeschermingsmiddelen en biociden* 2010, 779; *Stichting Greenpeace Nederland and PAN Europe v Commission* 2013, 523; *ClientEarth v Commission* 2013, 482; *ClientEarth v Commission* 2015, 486; *ClientEarth and The International Chemical Secretariat v European Chemicals Agency* 2015, 675.

refusal to grant access to internal documents containing advice on the legality of the EU-Turkey Statement under EU and international law.³⁵ Czech association *CEE Bankwatch Network* contested the Commission's refusal to grant access to documents concerning a 2013 decision to grant a loan to a Ukrainian state-owned company operating nuclear power plants.³⁶ In all of these cases, it is unlikely that access to the documents in question was a goal in itself. Rather, it stands to reason that the requests were part of a larger advocacy effort in the relevant policy area. In two cases, Danish trade unions relied on the United Nations Convention on the Rights of Persons with Disabilities to achieve better employment protections for workers.³⁷ Finally, a case brought by Austrian CSO *Wählergruppe Gemeinsam* hinged on a passive right to vote in elections for chambers of workers, an Austrian public law body representing workers' interests, for Turkish nationals under the EU-Turkey Association agreement.³⁸ Only two cases initiated by CSOs in this sample do not show indications of strategic intent. Both relate to grants financed by the European Development Fund. One group challenged an order to repay a grant received from the fund,³⁹ while the other challenged its exclusion from grant award procedures,⁴⁰ in both cases on account of apparent fraud. Litigation was therefore motivated by self-interest.

Economic interest groups

Ten cases brought by economic interest groups resembled the conflict adjudicated in the *Fediol* case described above. Various associations of producers (biodiesel,⁴¹ metal and metal products,⁴² salmon,⁴³ sweetcorn,⁴⁴ condiments,⁴⁵ cotton textiles,⁴⁶ plastics⁴⁷ and tyres⁴⁸) either challenged a Commission decision to initiate anti-dumping procedures or demanded that the Commission do so (and challenged the Commission's refusal). In a related case with a slightly different constellation of actors, a Belgian consumer association, *Bureau Européen des Unions de Consommateurs*, challenged a Commission decision to initiate anti-dumping proceedings relating to cotton fabrics at the request of the economic interest group *Cotton and Allied Textile Industries of the European Union*.⁴⁹ These cases all aimed to influence the Commission's anti-dumping policy for whole product classes and can therefore be classified as strategic action. This type of advocacy is apparently rather common.

Three cases concerned conflicts over the interpretation of international copyright law that had potentially far-reaching consequences for entire industries. First, the Italian

³⁵ *Access Info Europe v Commission* 2018a, 69; *Access Info Europe v Commission* 2018b, 71.

³⁶ *CEE Bankwatch Network v Commission* 2018, 97.

³⁷ *HK Danmark v Dansk almennyttigt Boligselskab* 2013, 222; *Fag og Arbejde v Kommunernes Landsforening* 2014, 2463.

³⁸ *Judgement - Wählergruppe Gemeinsam* 2003, 260.

³⁹ *Cestas v Commission* 2008, 115.

⁴⁰ *Pro NGO! v Commission* 2018, 755.

⁴¹ *Unitec Bio SA v Council* 2016, 505.

⁴² *Euroalligies v Commission* 2001, 166; *Eurofer v Commission* 2020, 96; *China Chamber of Commerce and others vs Commission* 2021, 278.

⁴³ *Marine Harvest Norway v Council* 2012, 135.

⁴⁴ *AETMD v Council* 2017, 916.

⁴⁵ *FICF and others v Commission* 2004, 360.

⁴⁶ *Eurocoton v Council* 2005, 104.

⁴⁷ *CPME and others v Council* 2017, 25.

⁴⁸ *CRIA and CCCMC v Commission* 2022, 266.

⁴⁹ *BEUC v Commission* 2000, 21.

royalty collection agency, *Società Consortile Fonografici* (SCF), was engaged in a conflict with the Association of Italian Dentists concerning music licensing fees for music played in dental practices.⁵⁰ When negotiations between the associations broke down, the SCF launched what was presumably a test case against a single dentist. The CJEU sided with the dentist, deciding that playing music in dentists' offices did not constitute a distribution of licensed work to the public under international copyright law. Second, Dutch publishers' associations, *Nederlands Uitgeversverbond* and *Groep Algemene Uitgevers*, successfully litigated against a platform selling 'second-hand' ebooks.⁵¹ This case was seen as having large precedential value for digital reselling in general (Meyer 2019). Third, the Spanish association of music producers, *Productores de Música de España* (*Promusicae*), litigated against *Telefónica*, a telecommunications company that also operates as a large internet service provider, to compel that company to release the names of individuals suspected of illegally downloading licensed material.⁵² The CJEU ruled that EU copyright law, interpreted in light of international law, did not contain an obligation to disclose such data.

In a creative invocation of the Aarhus Convention, several Belgian associations of lawyers claimed an infringement of the Convention's access to justice provisions, alongside the European Convention on Human Rights and the International Covenant on Civil and Political Rights, in a challenge to EU VAT rules that mandated the introduction of VAT on legal services, which in Belgium had previously been exempt.⁵³ Other strategic litigants include an association of fishermen on the French Mediterranean coast, who challenged the discharge of freshwater into an inlet by a state-run hydroelectric power plant, which the group argued had an adverse effect on the marine environment.⁵⁴ The association successfully relied on the direct effect of an international agreement on the 'Protection of the Mediterranean Sea against Pollution from Land-based Sources' that the EU had entered into. Cases with no indication of a strategic interest included three conflicts about financial liability under the TIR Convention⁵⁵ for the non-payment of a customs duty by a transport company.⁵⁶

What we can learn from CJEU databases

As expected, the broader scope of the database approach also returns more instances of litigation. This avoids the selection bias of casebooks and reveals evidence of legal mobilisation in cases that are doctrinally unremarkable. Given limited systematic data, my approach took a shortcut to identify instances of litigation with strategic intent, relying entirely on the nature of the litigant. The database approach largely supports the assumption that cases brought by interest groups (outside of sanctions litigation) generally harbour a strategic intent. Only a small minority of cases in my sample were brought for non-strategic purposes. I see no reason to doubt that this applies beyond the case of foreign policy. On the other hand, I had no means of identifying strategic

⁵⁰*Società Consortile Fonografici v Marco Del Corso* 2012, 140.

⁵¹*Nederlands Uitgeversverbond and Groep Algemene Uitgevers v Tom Kabinet Internet BV and Others* 2019, 1111.

⁵²*Productores de Música de España (Promusicae) v Telefónica de España SAU* 2008, 54.

⁵³*Ordre des barreaux francophones et germanophone and Others v Conseil des ministres* 2016, 605.

⁵⁴*Pêcheurs de l'étang de Berre v Électricité de France (EDF)* 2004, 464.

⁵⁵Customs Convention on the International Transport of Goods under Cover of TIR Carnets, 14 November 1975.

⁵⁶*AEBTRI v Nachalnik na Mitnitsa Burgas* 2017, 88; *BGL v Bundesrepublik Deutschland* 2003, 490; *ASTIC v Administración General del Estado* 2010, 820.

intent among the large number of cases brought by companies and individuals. The database, as used here, only shows that such cases are numerically much more important than suggested by the casebook.

A principal advantage of the database approach over the casebook is that it can shed light on the intensity of mobilisation efforts on certain issues. While the impact of the Aarhus Convention and efforts to leverage trade law in anti-dumping disputes were covered in the casebook, the database shows that these are areas of intense mobilisation. Where such cases do not add much to the doctrinal innovations of previous cases, they are unlikely to be covered in casebooks. Given space constraints, casebook editors may have also preferred to avoid clusters of cases from the same field. The database approach can show where doctrinal innovations were seized upon by litigants and, conversely, where such innovations failed to generate increased mobilisation. It has also identified areas of foreign policy law – such as international intellectual property law relating to music and publishing, or the UN Convention on the Rights of Persons with Disabilities – as sources for legal mobilisation that were not covered at all in the Butler and Wessel casebook.

My findings here echo those concerning the casebook, highlighting the significant diversity of objectives pursued by litigants relying on EU foreign policy law. The comparatively large number of cases relying on the Aarhus Convention or the Danish cases on the UN Convention on the Rights of Persons with Disabilities indicate that international law can be a resource in conflicts that are primarily about internal policy (such as environmental or labour law). Leveraging annulment proceedings against Commission decisions in anti-dumping conflicts, on the other hand, is clearly a form of ‘lobbying by other means’ that targets external trade as an element of foreign policy. At the same time, the database contains no cases beyond those covered in the casebook that challenge EU foreign policy outside of trade.

A drawback of this approach, aside from the inability to generate insights on companies and individuals, is the need to identify a body of EU foreign policy law from the outset against which to match CJEU cases. The choice here was to select legal acts labelled as pertaining to external relations, CFSP or international agreements in EUR-Lex. The absence of *Vignoble Psagot Ltd v Ministre de l'Économie et des Finances*⁵⁷ in the database sample highlights that some cases relevant to EU foreign policy are not grounded in EU foreign policy law – *Psagot*, for example, relied on EU product labelling laws. I do not, however, see a way to sensibly establish an objective list of all EU legal acts with potential external implications.

Conclusion

Legal mobilisation has emerged as an important component of civil society advocacy in Europe. This turn to the law is well documented in many policy fields, but not in foreign policy. My article has mapped the field by highlighting cases where civil society actors invoke EU foreign policy law in CJEU proceedings to pursue broader policy goals beyond their immediate interests in the conflict at hand. It established a methodological framework for identifying such cases based on expert casebooks and systematic database

⁵⁷*Vignoble Psagot Ltd v Ministre de l'Économie et des Finances* 2019, 954.

analysis, and provided an empirical foundation for future research. This framework offers a step forward from individual, highly selective case studies. Rather than relying on impressionistic examples or the visibility of select high-profile cases, it offers a strategy for capturing strategic action that might otherwise be overlooked.

I would like to highlight five takeaways that can inform future research. First, the most easily identifiable form of legal mobilisation is legal action involving interest groups, be they CSOs or economic interest groups. Only a small number of these cases did not show evidence of strategic intent. While CSOs are traditionally the focus of academic attention on legal mobilisation, more could be done to study the litigation efforts of economic interests in Europe (Fleerackers 2024; Hofmann 2025; Glavina 2023). For example, the database approach highlighted that litigation is a prominent tool in trade conflicts concerning anti-dumping measures. The IUROPA database I used here contains a typology of litigants that can be used for systematic research.

Second, while casebooks help identify doctrinally relevant instances of legal mobilisation, the database approach can show the intensity of mobilisation in certain fields. The database showcased the great number and the variety of cases brought by CSOs (and one professional organisation) that rely on the Aarhus Convention to claim access to information and judicial review, both at the national and the EU level. These cases also encompass many failed efforts at doctrinal innovation. Environmental CSOs, for example, repeatedly attempted to improve their standing to challenge EU acts with implications for the environment, such as the authorisation of pesticides or potentially harmful chemicals – all to no avail.

Third, litigants rely on EU foreign policy law to pursue a broad range of objectives. The invocation of EU external relations law by itself does not signify that actors are interested in foreign policy as such. The database showed that while many cases cite external relations law, many rely on it to support arguments based on internal EU law. Others concern the domestic implications of external commitments, such as the numerous cases about the Aarhus Convention or international intellectual property law. Only a minority of the cases in the sample are genuine advocacy efforts targeting EU foreign policy. The cases concerning Western Sahara clearly fall into this category, as does the *Psagot* case about product labelling from Israeli-occupied territories, and action brought by the *Cyprus Potato Marketing Board* challenging the importation of produce from North Cyprus into the UK, which contested the economic basis of the Turkish Republic of North Cyprus. Two cases addressed the EU-Turkey statement of 2016. One, brought by asylum seekers, directly challenged the agreement through an action for annulment; another targeted the release of information. The largest cluster of cases targeting foreign policy, however, are the cases brought by economic interest groups in disputes about anti-dumping measures.

Fourth, insights from the casebook confirm that companies and individuals comparatively rarely engage in strategic legal mobilisation. However, this statement comes with an important caveat: both approaches I employed probably underestimate the number of test cases brought by interest groups in the name of individuals (and potentially companies, too). Neither database descriptors nor case descriptions readily allow for an identification of test cases, which may rely on collective actors operating in the background that are not explicitly named in court documents. One approach that might address this problem is to focus on the identity of the legal counsel. The involvement

of a Belgian CSO in the migration case *X and X*,⁵⁸ for example, could only be identified through research into statements by the lawyer listed in the case. For areas with a high likelihood of strategic action, like asylum and migration, a deep dive into lawyer CVs may be fruitful. This approach is labour-intensive but can help identify test cases and instances of cause-lawyering (Scheingold and Sarat 2004).

Finally, the number of cases covered in the Butler and Wessel casebook that were brought by litigants without strategic intent highlights that routine action, or ‘random noise’ (Hofmann 2025), can and does result in important doctrinal development. Research on legal mobilisation can at times oversell its claim that doctrinal developments result from strategic efforts.

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⁵⁸*X and X v État belge* 2017, 173.

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