



EUROPEAN COMMISSION

Maroš Šefčovič
Vice-President

A 007282 01.12.2022

Brussels, 01/12/ 2022

Dear President Metsola,

I write in relation to the European Parliament's resolution of 13 September 2022 with recommendations to the Commission on Responsible private funding of litigation.

The resolution asks the Commission to closely monitor and analyse development of third party litigation funding ("TPLF") in the Member States of the European Union, with particular attention to the implementation of Directive (EU) 2020/1828 and, after the expiry of the deadline for its application, namely 25 June 2023, and taking into account its effects, to propose a directive establishing common minimum standards on commercial TPLF, following the recommendations annexed to the resolution.

The resolution was discussed in the College at its meeting of 30 November 2022. In accordance with the political commitment made by President von der Leyen in her Political Guidelines as regards resolutions adopted by the European Parliament under Article 225 Treaty on the Functioning of the European Union (TFEU), the Commission is pleased to inform the Parliament that it intends to follow-up on the resolution in full respect of proportionality, subsidiarity and better law-making principles and also its international commitments as explained below.

The Commission shares the starting point of the resolution that it is useful and appropriate to monitor and analyse the legislation and practices of the Member States to assess if they have appropriate mechanisms to prevent, combat and sanction potential negative phenomena associated with TPLF. As noted in the resolution, TPLF is addressed in Union law by the Directive on Representative Actions for the protection of the collective interests of consumers, which contains binding rules in that respect for actions within its scope. According to that directive, if TPLF is allowed at national level, Member States shall adopt rules ensuring the transparency of TPLF, the avoidance of conflicts of interest and the protection of the procedural autonomy of the party using TPLF.

Ms Roberta Metsola
President of the European Parliament

The directive also provides for the possible intervention by national courts and authorities to preserve the fairness of funding agreements. Correct transposition and application of the Representative Actions Directive may change the legislative landscape of the TPLF in the Member States. The directive is binding for the representative actions for the protection of the collective interests of consumers within its scope of application. However, Member States may extend the mechanism established by it to other areas of law not covered by its material scope of application and other types of legal actions. Since the majority of the Member States has not adopted national legislation to regulate TPLF, the implementation of the Representative Actions Directive will imply the need to consider this issue in its entirety, including the question whether a more horizontal approach going beyond the scope of the Representative Actions Directive should be chosen. In order to have a clear overview of the situation of TPLF in the Union, it is necessary to wait for the completion of the implementation of the directive and to see how, on the basis of the implementing laws, practices in the Member States are shaped. Therefore, the Commission appreciates the conclusion of the resolution which calls for a Commission to table a legislative proposal only after the entry into application of the Representative Actions Directive and taking into account its effects.

The Commission, so far, does not have an overview of the activities related to TPLF and whether there is specific evidence of negative effects in the European Union potentially associated with the TPLF and referred to in the resolution. The Commission is aware of evidence of such negative effects in third countries, in particular in Australia and the United States. It will need to be assessed if differences in the legal and judicial systems of those third countries and the Member States of the EU may have a bearing on the existence of a risk of such negative effects in the EU.

In view of following up to the resolution, the Commission will launch a mapping exercise to collect information on relevant regulations and practices in the Member States once the deadline for application of Directive (EU) 2020/1828 expire. An external study will be commissioned to this end, and the stakeholders will be given the opportunity to share their experience and ideas. In this context, all proposals contained in the resolution of the European Parliament and annexed draft directive will be taken into account. Based on the information collected in this exercise, the Commission would be able to take a more detailed position in relation to the solutions proposed in Parliament's resolution.

The Commission looks forward to continuing engaging with the Parliament on this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Maroš Šefčovič', written in a cursive style.

Maroš Šefčovič