

EJF Policy Proposal: Advancing Access to and Effective Delivery of Justice in the EU

As the European Justice Forum (EJF), we are committed to promoting a fair and effective civil justice system across Europe. It is with this commitment in mind that we reach out to the political groups of the European Parliament.

In light of the upcoming EU Elections and current development of the manifestos, we want to address the challenges posed by the evolving patchwork of national regulations generated by the ongoing transposition of the Representative Actions Directive (RAD), impacting **access to justice** and its **effective delivery** across the EU.

Additionally, recognising the increasing concern and potential legal challenges surrounding upcoming regulations on product liability (PLD), artificial intelligence (AI LD), digitalisation (e.g., AI Act) or climate change (e.g., CS3D), it is imperative that the **EU establishes a robust framework of safeguards and avoids economic incentives for mass litigation**. Such framework should provide clarity, accountability, and a fair legal process for industries and companies operating within Europe to foster innovation and international competitiveness.

To support a harmonious and equitable “European Civil Justice System”, we **propose to the political groups the following policy measures** by learning from “Best Practices” in Europe or other parts of the world:

1. Avoiding congestions in courts

*We support a holistic approach for dealing with mass actions. In court, this starts by a mandatory assessment of the filing of a mass claim if there are not more effective and efficient ways than an action in court to solve the respective mass problem. This should include considering the utilisation of Alternative Dispute Resolution (ADR), Online Dispute Resolution (ODR), public redress mechanisms as well as evaluating based on these criteria the different mass claim court mechanisms existing in parallel. In short, more effective and efficient ways have to be tackled first. The upcoming revision of the ADR/ODR Directive should be carried on with priority in the next mandate, to foster alternative ways of solving mass claims to avoid congestion in courts. **In short: Promoting not only access to, but primarily swift and true delivery of justice.***

2. Regulation of private third-party litigation funding

*We have as a parliamentary group already supported in plenary the legislative Initiative report (INL) on responsible private funding of litigation. This means avoiding the risks of not regulating private litigation funding such as “social inflation” as consequences of economic costs created by a litigation industry which is also hampering innovation. **In short: Access should be provided to justice, but this should not be exploited by intermediaries for profit.***

*We therefore support elements of good practice in various national transpositions of the Representative Actions Directive like in Bulgaria, Czech Republic, Germany, or Spain. They integrate important elements regarding the disclosure of funding contracts to the court (**more transparency**), disclosure of beneficial owners behind funders (anti-money laundering approach), and imposition of limits to total awards for funders (in Germany max. 10% of total award).*

*Additionally, we call to explore new models of facilitating collective litigation that include partial public funding run by a national public competence centre for selecting additional private funders potentially needed to finance mass actions. **In short: Law is not an asset class for investment, just as breaking the law is not a legitimate business model.***

3. Improving EU-wide systemic architecture

We want to further advance the EU-wide systemic architecture for dealing with cross-border mass claims. This comprises e.g., **stronger integration of the CPC-net entities** (Consumer Protection Cooperation Regulation), a **digital integration and communication tool between courts and public authorities** across Member State borders (as planned by EU Commission via “REACT” – the Representative Actions Communication Tool). Another option could be the creation of a **new Chamber at the ECJ for mass claims** with cross-border impact. **In short: Bundling knowhow and building an EU-wide infrastructure which is up to the challenge.**

4. Safeguarding balanced and effective liability regimes

We want a strict limitation or removal regarding the alleviations of the burden of proof under discussion. The cornerstone of the **Product Liability Directive** remains that the claimant must prove the damage, the defect, and the causal link between the two. As a matter of principle, changes to existing liability regimes should only be considered if systematic gaps in protection can be empirically demonstrated. This also applies in principle to innovative **digital technologies such as artificial intelligence (AI) or the Internet of Things (IoT)**. Moreover, the combination of overregulation of emerging technologies and the increased exposure to civil liability hinders innovation and places European industries at a competitive disadvantage compared to their counterparts in the USA, China and other countries. **This regulatory environment may also discourage foreign investors** from considering the EU as an investment destination.

We also see the need that legal liability provisions need to be balanced and that they truly incorporate the widely accepted principle that **due diligence with regards to the Corporate Sustainability Due Diligence Directive** is first and foremost an obligation of monitoring and internal control. Companies cannot be made liable for damages they have not caused or directly contributed to (intentionally or negligently). Companies should be able to prioritise the most salient risks and have the freedom to take appropriate actions to cease, prevent or mitigate identified adverse impacts in accordance with a risk-based approach. Without this ability to prioritise, companies cannot realistically implement due diligence requirements in an efficient way. The goal is to strike a fair balance between protecting consumers and encouraging innovation in the EU. Further analysis of potential root causes for risks and development of options for dealing with them is needed before increasing interventions with more detailed regulation. **In short: not opening the door to allowing unjustified claims.**

By championing these policy measures, political groups can aim at building effective, efficient, and fair European Civil Justice Systems that uphold the principles not only of access to, but - even more importantly – of true delivery of justice. These policies will foster greater legal clarity and cross-border coordination, ultimately benefiting citizens and stakeholders across the EU.