

## **The Impact of Increased Mass in Europe (ECIPE Paper #01/2025)**

In recent years, the European legal landscape has witnessed a sharp rise in mass litigation, significantly impacting businesses, consumers, and the broader economy. This trend is driven by increasing private enforcement mechanisms and the expansion of unregulated third-party litigation funding (TPLF).

A new study by the **European Centre for International Political Economy (ECIPE)** provides a comprehensive *macro-economic analysis* of these developments. It highlights how unchecked mass litigation could impose substantial financial burdens on businesses, hinder innovation, and ultimately raise costs for European consumers.

This summary distills the key findings of the ECIPE report, outlining the legal and economic risks associated with the current trajectory. As policymakers in Brussels shape the future regulatory framework, understanding these risks is essential to striking the right balance between consumer protection and economic competitiveness.

### **1. Growth of Mass Litigation:**

- There has been a significant increase in the number of collective action cases across the EU, with a notable peak around 2015 and a renewed surge starting in 2020.
- Countries such as the Netherlands, Portugal, Germany, and Slovenia report higher volumes of collective action lawsuits.
- The emergence of third-party litigation funding (TPLF) incentivizes more mass litigation by providing financial backing for high-value claims. Litigation funders take a significant percentage of any eventual award or judgment, reducing the actual compensation received by claimants and raising concerns about the fairness of the redress system.

### **2. Economic Impact:**

- The study highlights that mass litigation entails substantial costs for businesses, including settlement payments and increased insurance premiums. These costs are passed on to consumers in the form of higher prices for goods and services.
- The European Commission is increasingly introducing private rights of action into new or revised EU Directives and Regulations. The ECIPE study shows that private enforcement systems, while offering flexibility, introduce uncertainty and higher compliance costs, which can hinder innovation.
- The potential economic impact of mass litigation on the EU economy is significant, with private enforcement costs for businesses projected to range from €28.3 billion to €84.8 billion, depending on the growth scenario.

- The market capitalisation losses for the EU's most innovative companies are estimated to range from €15.5 billion to €46.5 billion.
- Litigation costs as a share of claim value could increase from the current level of 20.3% to between 22.6% and 27.1%.

### **3. Country Hot-Spots:**

- The Netherlands, Portugal, and Germany are identified as the most susceptible to an increase in mass litigation due to their efficient judicial systems and institutional frameworks that support collective actions.
- Countries like Denmark, Lithuania, and Sweden have implemented legal guardrails that safeguard against frivolous mass litigation.

### **4. Scenario-Based Analysis:**

- The report outlines three scenarios (Low, Medium, and High Growth) to capture a range of potential outcomes if the EU continues to embrace new mechanisms for private enforcement and allow unregulated TPLF.
- In the Low Growth Scenario, private enforcement costs for businesses are projected to be €28.3 billion, litigation costs as a share of claim value could increase to 22.6%, and market capitalisation losses for innovative companies could be €15.5 billion.
- In the Medium Growth Scenario, private enforcement costs for businesses are projected to be €56.5 billion, litigation costs as a share of claim value could increase to 24.8%, and market capitalisation losses for innovative companies could be €31.0 billion.
- In the High Growth Scenario, private enforcement costs for businesses are projected to be €84.8 billion, litigation costs as a share of claim value could increase to 27.1%, and market capitalisation losses for innovative companies could be €46.5 billion.

EU policymakers must carefully consider the economic implications of increased mass litigation to avoid a high growth scenario. Implementing legal guardrails and encouraging the use of alternative dispute resolution for consumer redress can help mitigate the adverse economic effects and ensure a balanced approach to justice and economic stability. The EU needs to address the driver behind these claims, unregulated TPLF, and provide oversight of this practice to ensure fair redress for consumers and protect businesses from opportunistic claims.