

## Roundtable Dialogue on Mass Litigation in Europe: Exploring the Role of Third-Party Litigation Funding

Brussels, 26 March 2025

*The meeting took place at the invitation of Pedro Oliveira (BusinessEurope), Liesbeth Timmermans (Cefic), Ekkart Kaske (European Justice Forum) and was moderated by Isabella Wijnberg (Houthoff).*

### **Context**

The legal landscape in Europe is changing. Mass litigation has been significantly increasing over the past decade, driven by regulatory changes seeking to facilitate compensation and access to courts. According to a recently published [ECIPE study](#), the potential economic impact of increased mass litigation in the EU can reach €84.8 billion in private enforcement costs for businesses. This represents a threat to Europe's competitiveness and attractiveness as a place to do business. It was reiterated amongst the participants that the EU is strong as long as its economy remains strong. Companies fear mass (and frivolous) litigation as much as they fear overregulation.

One of the key drivers of mass litigation is Third Party Litigation Funding (TPLF). TPLF is a growing practice whereby private investors ("litigation funders") who are not a party to a dispute invest for profit in legal proceedings and pay legal and other expenses, in exchange for a share of any eventual award. Based on recent studies<sup>i</sup>, we know that there are today:

- circa 300 entities are currently involved in litigation funding in the EU;
- > 47 litigation funders are active in the Netherlands, and > 40 in Germany;
- circa 700 cases backed by litigation funders, with <100 are arbitrations;
- in Europe alone, current funding stands at circa €3B, expected to reach €7B by 2032<sup>ii</sup>;
- total funds worldwide available for TPLF have reportedly hit €16.1B, with projections of a rise to €62B by 2037<sup>iii</sup>.

The ECIPE study found that the design of Member State's legal system is important to understand the rise in mass litigation in certain countries. Low admissibility criteria, a lower threshold to bring cases to court, an opt-out claims system, and absence of regulatory provisions on litigation funding by third parties are among the important elements<sup>iv</sup>.

In 2022, the European Parliament adopted by a considerable majority a [Resolution on Responsible Private Funding of Litigation](#) asking the Commission to initiate a legislative initiative to define common minimum standards at Union level, based on a range of safeguards proposed therein.

The event was the opportunity to take stock of the situation three years after the resolution of the Parliament with different stakeholders, and exchange on next steps.

## **TPLF Impact, Benefits and Risks**

Participants acknowledged that:

- Mass litigation is affecting the risk profile and cost of doing business in Europe, with the sheer potential volume of claims, and reputational risks associated. Opt-out systems or assignment models in particular can lead to large classes and high potential liabilities;
- Seeking justice via access to court is a fundamental right, and collective redress may, in some cases, be the only route for consumers to obtain compensation, especially where the value of individual claims is small and no alternative dispute resolution mechanism is available.
- TPLF is increasingly prevalent in Europe. It is one of the means available to consumers and their organizations to access courts, and might in some cases be the only means, albeit litigation funders may not necessarily select all cases that consumers want to litigate.
- However, litigation funding is not only made available to consumers: it is also used in securities/shareholder litigation, IP litigation and antitrust damage claims for instance, which are relevant to any business sector including those engaging mostly in B2B business models.
- There is also growing use of TPLF in investment arbitration, where investors are funded to file collective claims against States.
- Litigation funders have the power to select the cases to litigate, i.e. mainly large high value lawsuits, and have a large freedom to determine the terms of funding agreements.
- Control and oversight over litigation funders is very limited to non-existent in Europe. Even if in the Netherlands, where courts have the power to review funding agreements, it is difficult in practice to obtain this from the courts and agreements are rarely disclosed. Where these have been seen, funder compensation terms are very complex to navigate.
- Litigation funder's motives are not always aligned with those of claimants; and this can lead to conflicts of interests. A recent example of such misalignment leading to disputes between funders and claimants is the Innsworth Capital/Merricks case<sup>1</sup>. This case was a particularly striking example of conflicts of interest, where the funder sued the class representative because the settlement had been reached without the funder's agreement. It may not be the only one, as funders usually include arbitration clauses in funding agreements to prevent disputes with claimants from becoming public.
- Another issue identified is the relation between the funder and the law firm, which can lead to breaches of ethical rules.
- Litigation funders may select highly speculative claims, filing the same claim in several EU countries with different return rates without this being correlated to the amount of legal costs incurred in the jurisdiction.
- In some cases, the award to the claimants is insignificant<sup>2</sup>, and funders earn a disproportionate amount of the award. Hence access to courts does not necessarily equate delivery of justice.

All participants agreed that TPLF bears both benefits and risks. The most striking benefits are the enabling of some legitimate court cases and providing an outsourcing opportunity whilst the most striking risks are conflicts of interests and the financialization of justice. Hence focus should be on how to preserve the benefits whilst mitigating the risks.

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<sup>1</sup>[The Role of Funders in Collective Action Settlements.](#)

<sup>2</sup> [Judge slashes 'wholly disproportionate' bill in Mastercard case as solicitors charge £1,475 an hour | Law Gazette.](#)

## **Way forward**

The Commission just [released](#) its report “Mapping Third Party Litigation Funding in the European Union”. The aim of the study is to understand the reality of TPLF and assess whether there is a need to regulate further, beyond the principles in the Representative Actions Directive to address other forms of collective redress. According to the study:

- 54 % of respondents would like TPLF to be regulated at EU level, 4% want regulation at the national level, while only 29% do not want regulation.
- profits of funders are estimated at around 20-30%, although some stakeholders reported 40-50% and even 70% or more. Both positive and negative effects of TPLF are captured.

The vast majority of participants agreed that TPLF far exceeds the perimeter of representative actions and consumer litigation. A majority thus also accepted that regulation should be considered to prevent abuse. Discussing potential strategies to mitigate TPLF risks, almost all participants supported the 10 safeguards identified by the European Parliament in the [Resolution on Responsible Private Funding of Litigation](#).

Participants identified the following issues as amongst the most pressing to address:

- **Transparency.** Today, litigation funders operate “in the shadows”. There is no transparency on funders nor funding sources, leading to concerns about abusive practices. Lack of transparency makes the design of regulation difficult; and in practice complicates the resolution of disputes. It is a prerequisite to address risks related to conflict of interests and the financialization of justice.
- **A minimum % of the award to claimants with a flexible cap on funders ‘fees.** The aim is to avoid that justice systems are abused for the financial gain of a third party; and ensure fair compensation for claimants. Such a measure would need to be designed taking into account market dynamics of litigation funders and enforceability.
- **Capital adequacy and oversight.** There should be oversight as to whether litigation funders have adequate financial resources to fulfil their liabilities under their third-party funding agreements. Litigation funding should be regarded as a financial service, which also includes transparency on the owners behind the fund to avoid money laundering.

Jurisdictions outside Europe are considering stricter regulation of TPLF. In the US, 15 States have passed legislation on TPLF, and the US Congress is discussing the Litigation Transparency Act.

Most participants agreed that there is a need to call for regulation to ensure transparency and prevent abuse by funders. While private enforcement can enhance access to justice, it is crucial to maintain a robust legal framework that safeguards against undue influence and speculative claims. Some participants also emphasized the need for ongoing dialogue and collaboration between stakeholders to address the challenges and opportunities presented by third-party litigation funding.

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<sup>i</sup> See Commission study on Mapping Third Party Litigation Funding in the European Union, March 2025, available [here](#); European Center for International Political Economy study on the Impact of Increased Mass Litigation in Europe, March 2025 available [here](#) and [Houthoff’s 2024 Class Action Survey](#).

<sup>ii</sup> See Research Nester, Global Litigation Funding Market Size, Forecase, and Trend Highlights Over 2025-2037, available [here](#); <https://www.custommarketinsights.com/report/europe-litigation-funding-investment-market/>; <https://www.custommarketinsights.com/press-releases/europe-litigation-funding-investment-market-size/>.

<sup>iii</sup> See footnote (2).

<sup>iv</sup> Another element that drives an increase in mass litigation was innovation (e.g. innovative companies), according to the ECIPE study, given the wider exposure to experimentation and risks. Other factors, such as the [size of the economy were found not to be relevant](#) to the rise of per capita allocation of cases in some countries (e.g. Slovenia with a high rise of cases).