



**November 2024**

# Call for regulation of private Third-Party Litigation Funding (TPLF) at EU level

## *Joint statement*

Our organisations support the integrity of impartial, fair, and balanced civil justice systems in Europe that allow effective and efficient enforcement of claimants' rights while respecting those of defendants. A properly functioning justice system is important for the competitiveness and attractiveness of the EU economy. A civil justice climate that is abundant in abusive claims and mass private third-party funded litigation, creates a chilling effect that deters businesses from innovating, investing, competing, and prospering. If civil litigation remains funded by unregulated private third parties, we expect a surge in speculative litigation in the EU, which would undermine public confidence in the European justice systems at a time when maintaining faith in our democratic institutions is so critical.

In view of the rapidly changing litigation funding environment in the EU, we believe that it is critical to regulate private TPLF to prevent a wave of mass litigation cases in Europe. TPLF is a for-profit business model that allows private financiers, investment firms, and hedge funds, to sign confidential deals with lawyers or qualified entities to invest in lawsuits or arbitration in exchange for a significant portion of any compensation that may be awarded, sometimes as much as 40% of the total compensation but can go even substantially higher. The financial incentives of such practices encourage frivolous and predatory litigation, but they also shortchange genuine claimants and consumers. Third-party litigation funders currently operate in a regulatory vacuum and without any transparency requirements. This lack of oversight is in stark contrast with other related sectors, such as legal and financial services, that are highly regulated within the EU.

While litigation funders do not need to register at the EU level or in member states, publicly available data confirms that a growing number of private litigation funders have established themselves across the EU since the adoption of the [Representative Actions Directive](#),<sup>1</sup> and that the industry continues to grow strongly in Europe. Additionally, private litigation funding is increasingly active in business-to-consumer claims,<sup>2</sup> and private funders themselves see Europe as a major area for the growth of their business.<sup>3</sup>

The introduction of a purely profit-motivated third party, often non-EU based, into the traditional lawyer-client relationship, raises serious ethical concerns and presents an economic security

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<sup>1</sup> More than 100 funders can be found in just a few countries like the Netherlands, Germany, Spain, and France.

<sup>2</sup> TPLF has also traditionally been frequent in B2B cases in areas of law such as intellectual property, competition, commercial, securities, and insolvency law, as well as in out-of-court cases such as arbitration, particularly in Investor-State-Dispute Resolution (ISDS).

<sup>3</sup> See Deminor Litigation Funding, 'Litigation Funding from a European Perspective Current status of the market, recent issues and trends' page 6, available at: <https://5024961.fs1.hubspotusercontent-na1.net/hubfs/5024961/deminor-litigation-funding-from-a-european-perspective-by-erik-bomans.pdf>.

threat for Europe.<sup>4</sup> Funders are frequently the initiators of claims and may exercise control over decisions taken on behalf of claimants, and in this context, they prioritise their own financial aims over the interests of claimants. Faced with years of litigation brought by claimants with support from well-resourced funders, expensive legal costs, and reputational risk, defendants are often forced to settle even unmeritorious claims. Further, funders regularly arrange to be paid first and may take a disproportionate share of any award, leaving claimants who suffered harm with little or no redress (especially in opt-out cases).

In 2022, the [European Parliament adopted by a considerable majority a Resolution on Responsible Private Funding of Litigation](#). **This resolution, and the safeguards proposed, should be considered as a solid foundation for the regulation of TPLF in the EU. Transparency, regulatory oversight, and fair competition in the litigation funding market allowing claimants to freely choose between funders, should be at the core of an EU legislative proposal.** Appropriate EU regulation is needed to ensure transparency for all parties in the judicial process, including judges, as regards the ultimate origin of any third-party funds and the litigation funding agreement. Further safeguards could be considered including a system of registration of private funders at the EU level, as proposed by the European Parliament's Resolution, coverage of adverse costs, including damages resulting from counterclaims by the defendant, a cap on the amount that the private financier can demand from the final settlement or award/judgment, which is proportionate to its investment and risk, and a prohibition on foreign or sovereign state funding.

If Europe continues to neglect proper oversight of private TPLF we risk our courts becoming profit facilitators for litigation funders, at the expense of European companies, consumers, and the integrity of our court systems. We must avoid a culture of excessive or abusive litigation that disincentivizes innovation and instrumentalises the justice system for obscure aims. Such practices can increase prices<sup>5</sup>, reduce consumer choices in the long term, and ultimately harm Europe's global competitiveness and the Single Market.

Therefore, our organisations, representing a broad spectrum of European businesses, call for regulation of TPLF at EU level to help maintain trust in the justice and financial systems and to ensure that the legal environment remains just, fair, and balanced for all.

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<sup>4</sup> See for example this [Bloomberg Law Article](#) which suggests that some litigation funders might have ties with foreign sovereign wealth funds and state-owned enterprises originating in various parts of the world, including the Middle East, Asia, and Russia.

<sup>5</sup> See Swiss Re Institute, "Social inflation: litigation costs drive claims inflation", available at: <https://www.swissre.com/institute/research/sigma-research/sigma-2024-04-social-inflation.html>.

## List of signatories

**AmCham EU** – American Chamber of Commerce to the EU;

<https://www.amchameu.eu/>

**BUSINESSEUROPE**; <https://www.businesseurope.eu/>

**CEFIC** – European Chemical Industry Council; <https://cefic.org/>

**DIGITALEUROPE**; <https://www.digitaleurope.org/>

**EBF** – European Banking Federation; <https://www.ebf.eu/>

**EJF** – European Justice Forum; [www.europeanjusticeforum.org](http://www.europeanjusticeforum.org)

**EFPIA** – European Federation of Pharmaceuticals Industries and Associations;

<https://www.efpia.eu/>

**EuroCommerce**; <https://www.eurocommerce.eu/>

**ILR** – US Chamber of Commerce Institute of Legal Reform;

<https://instituteforlegalreform.com/>

**Insurance Europe**; <https://www.insuranceeurope.eu/>

**MedTech Europe**; <https://www.medtecheurope.org/>